
Delaware Register of Regulations

Issue Date: December 1, 2007

Volume 11 - Issue 6, Pages 701 - 841



Winterthur Museum & Country Estate, Winterthur, Delaware

IN THIS ISSUE:

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Proposed

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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 November 15, 2007.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 17	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 17	4:30 p.m.
May 1	April 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))14 **DE Admin. Code** 745**Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)****745 Criminal Background Check for Public School Related Employment****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment by requiring student teachers to have criminal background checks prior to placement in a school setting.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to criminal background checks for student teachers and does not directly affect the student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to criminal background checks for student teachers and does not directly whether students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to criminal background checks for student teachers and will help ensure students' health and safety are better adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to criminal background checks for student teachers and does not directly affect that students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to criminal background checks for student teachers and preserves the necessary authority and flexibility of decision making at the local board and school levels.

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 related to criminal background checks for student teachers and does not place unnecessary reporting or administrative requirements or mandates on decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is related to criminal background checks for student teachers and does not change where the regulatory authority lies.

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 related to criminal background checks for student teachers and is consistent with the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is related to criminal background checks for student teachers and there is not a less burdensome method for addressing the purpose of this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Currently the state provides funds for criminal background checks.

745 Criminal Background Check for Public School Related Employment

1.0 Definitions

“Continuously Employed” means having worked in the same public school district or charter school for at least ninety one (91) working days in the prior school year. Substitute teachers shall be considered Continuously Employed when they have worked forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools. Persons participating in a student teacher assignment shall be considered Continuously Employed when they have participated for forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools as a student teacher.

“Covered Personnel” means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and
- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.
- Effective July 1, 2008, all persons participating in student teaching activities in a public school district or charter school.

Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:

- Instructors in adult corrections institutions;
- Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;
- Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
- Substitute food service workers.

10 DE Reg. 684 (10/01/06)

2.0 Procedures for Candidates for Employment or Student Teaching, or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

2.1 A final candidate for a Covered Personnel position, as defined in 1.0, in a public school shall be subject to the following procedures:

2.1.1 After notification by a school district or charter school that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on site appointment arranged by the school district or charter school. School districts and charter schools at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.

2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts and charter schools as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.

2.1.3 The candidate shall have the original of the completed criminal background check sent to one school district or charter school. A copy of all information sent to the school district or charter school shall be sent by the State Bureau of Identification to the candidate.

2.1.4 As a part of the application for public school related employment, assignment as a student teacher, or as a part of the contract for services, the candidate shall sign a release form approved by the Department of Education. The release will allow the school district or charter school that was sent the original of the completed criminal background check to do the following:

2.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or district or charter school chief personnel officer of other Delaware school districts or charter schools considering the person as a candidate.

2.1.4.2 Send the original criminal background check to the placing school district or charter school if the candidate is hired or placed under contract in another Delaware school district or charter school,

2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).

2.1.5 Each final candidate shall have a determination of suitability made by the school district or charter school and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in 5.0.

2.1.6 Final candidates for employment, or student teaching, or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met-;

2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;

2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district or charter school;

2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware school district or charter school which was sent the original background check.

2.1.6.4 The out of state candidate shall sign a release to allow the school district or charter school receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a Covered Personnel position. School districts or charter schools may use funds other than state funds to pay for criminal background check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one school district or charter school during the course of the school year.

10 DE Reg. 684 (10/01/06)

3.0 Procedures for School Districts and Charter Schools for Criminal Background Checks on Candidates for Employment or Student Teaching, or for Persons Providing Services Under a Contract

3.1 School districts and charter schools shall require all persons subject to the law and these regulations to complete a release as a part of the application, assignment as a student teacher, or contract submissions process and, if they become a final candidate for a Covered Personnel position, to initiate the criminal background check process prior to entering into the Covered Personnel position.

3.2 The school district or charter school sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:

3.2.1 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and assured that a signed release is on file in the requesting district or charter school, confirm the receipt of that original and disclose its contents to the superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for hire;

3.2.2 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and sent a copy of the signed release on file in the requesting district or charter school, send the original criminal background check to the requesting Delaware school district or charter school if the candidate is placed in a Covered Personnel position; and

3.2.3 If sent any subsequent criminal history information on the person hired, assigned as a student teacher, placed under contract or assuming an extra duty position in another district or charter school, forward such information to the school district or charter school.

3.2.4 School districts or charter schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to school districts or charter schools. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.

3.3 The school district or charter school, in accordance with 11 **Del.C.** §8571(b), (d) and (e), shall make a determination of suitability for employment, or assignment to student teaching on each person it requested to initiate the criminal background check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment, or assignment as a student teacher based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as set forth in 5.0.

3.4 When a candidate is finally placed in a Covered Personnel position the district or charter school shall do the following if the original of the completed criminal background check is not yet in its possession:

3.4.1 Make a written request to the school district or charter school that received the original of the completed criminal background check to forward the original copy to the placing district or charter school for placement in the employee's, student teacher, or contractor's file. As a part of the request, the placing district or charter school shall forward a copy of the release signed by the candidate.

3.4.2 Notify the State Bureau of Identification that the candidate has become Covered Personnel in the district or charter school and is no longer associated with the school district or charter school that received the original of the completed criminal background check.

3.5 A school district or charter school may place the candidate in a Covered Personnel position provisionally in accordance with 11 **Del.C.** §8571(f); however, the school district or charter school shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

10 DE Reg. 684 (10/01/06)

4.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"

4.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not Continuously Employed by a Delaware school district or charter school within that period, the district or charter school receiving the original criminal background check need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware school district or charter school, the original criminal background check shall be kept on file for a minimum of five (5) years.

4.2 Each person who has been Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of 11 **Del.C.** §8571.

4.3 A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personnel position shall comply with 11 **Del.C.** §8570, et seq., and these regulations before being

hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 **Del.C.** §8570, et seq., and these regulations.

10 DE Reg. 684 (10/01/06)

5.0 Determination of Suitability and Appeal Process

5.1 A person covered by 11 **Del.C.** §8570, et seq., and these regulations, shall have the opportunity to respond to a school district or charter school regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 **Del.C.** §8571(d). Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district or charter school pursuant to the factors listed in 11 **Del.C.** §8571(d).

5.2 The school district or charter school shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 5.3.1 through 5.3.3.

5.3 Appeal for Reconsideration

5.3.1 An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from placement in a Covered Personnel position, pursuant to 11 **Del.C.** §8571, by submitting a letter of appeal to the district superintendent or charter school director within ten (10) working days of the receipt of written notice.

5.3.2 The appeal shall be reviewed by the district superintendent or charter school director and the appellant shall have the right to be heard by the district superintendent or charter school director within ten (10) working days of the receipt of the letter of appeal.

5.3.2.1 Local school districts and charter schools shall develop procedures for appeals for reconsideration. The process shall be as informal and accessible as possible, but shall allow for impartial and complete review.

5.3.3 A written decision shall be rendered by the district superintendent or charter school director within ten (10) working days of the hearing. A decision made by the district superintendent or charter school director under this appeal procedure is final, unless the district or charter school has made specific provisions for appeal to another entity within the district or charter school. The decision shall not be appealable to the State Board of Education or to the Department of Education.

10 DE Reg. 684 (10/01/06)

6.0 Confidentiality

6.1 All information and records pertaining to criminal background checks, pursuant to 11 **Del.C.** §8570, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

6.1.1 Access to criminal background check records, and letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the district superintendent or charter school director and the district or charter school chief personnel office and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential.

6.1.2 All such records shall be kept in locked, fireproof cabinets;

6.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Covered Personnel position.

10 DE Reg. 684 (10/01/06)

7.0 Penalties

The district superintendent or charter school director or the district or charter school chief personnel officer shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 11 **Del.C.** §8571.

10 DE Reg. 684 (10/01/06)

8.0 Subsequent Criminal History Information

8.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by the State Bureau of Identification to the district superintendent or charter school director or district or charter school chief personnel office and shall be used by district or charter school in making a determination about the person's continued suitability for placement in a public school environment.

8.2 If subsequent criminal history information is mistakenly directed to a district or charter school other than the current district or charter school of Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.

8.3 If a person is known to be in a Covered Personnel position in more than one district or charter school, the superintendent, director or chief personnel officer of the district or charter school receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent, charter school director or district or charter school chief personnel officer of the other school district or charter school.

5 DE Reg. 865 (10/1/01)

10 DE Reg. 684 (10/01/06)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 340

Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)

340 Certification Theater Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation **DE Admin. Code 340 Certification Theater Teacher**. This 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 update the certification area, and to bring it under the auspices of the Professional Standards Board as required in 14 Del.C. The amended regulation title will read 1558 Theater Teacher. This amended regulation sets forth the requirements for a Theater Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, January 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, the Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have

acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

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

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

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

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

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

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

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

~~340 Certification Theater Teacher~~

~~Effective July 1, 1993~~

~~**1.0 The Following Shall be Required for the Standard License in Grades 9 to 12 and is Valid in Grades 5 to 8 in a Middle Level School.**~~

~~1.1 Bachelor's degree from an accredited college and,~~

~~1.2 Completion of an approved teacher education program in Theater.~~

~~**2.0 The Following Shall be Required for the Standard Endorsement (for Teachers with 3 or fewer classes of theater)**~~

~~2.1 Standard Delaware License in a secondary content area and,~~

~~2.2 A minimum of 15 semester hours from the following areas of Theater: History of the Theater, Play Direction, Acting, Stagecraft, Play Production, Voice and Speech, Stage Management, Make up and Costuming, Stage Lighting, or Methods of Teaching Theater or Drama.~~

~~**3.0 Licenses That May be Issued for This Position Include Standard, Standard Endorsement and Limited Standard.**~~

~~3.1 The Limited Standard License may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

1558 Theater Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Theater Teacher. This certification is required for grades 9 to 12, and is valid in grades 5 to 8 in a Middle Level school.

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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:

“Approved Accrediting Agency” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.

“Accredited institution” means an institution that has received accreditation from an approved accrediting agency.

3.0 Standard Certificate

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

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

3.1.2 Has met the requirements as set forth in 14 **DE Admin Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and.

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

4.1 If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin Code** 1505 Standard Certificate 3.1.5:

4.1.1 Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Theater, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or

4.1.2 Has obtained certification in Theater from an accredited institution.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1549

Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1549 Dance Teacher

A. Type of Regulatory Action Requested

New Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation **DE Admin. Code** 1549 Dance Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to adopt this regulation in order to broaden certification opportunities for educators in the areas of Visual and Performing Arts. This adopted regulation sets forth the requirements for a Dance Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, January 2, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, the Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1549 Dance Teacher**1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Dance Teacher. This certification is required for grades 9 to12, and is valid in grades 5 to 8 in a Middle Level school.

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

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unless the context clearly indicates otherwise:

“Approved Accrediting Agency” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.

“Accredited institution” means an institution that has received accreditation from an approved accrediting agency.

3.0 Standard Certificate

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

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

3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and.

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

4.1 If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5:

4.1.1 Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Dance, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or

4.1.2 Has obtained certification in Dance from an accredited institution.

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

Irrevocable Funeral Arrangements and Burial Trusts

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to irrevocable funeral arrangements and burial trusts.

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 December 31, 2007.

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

Statutory Authority

House Bill #137, *An Act to Amend Title 5 of the Delaware Code Relating to Preneed Funeral Contracts*
5 Del.C. Ch. 34, *Preneed Funeral Contracts*

Background

Since January 30, 1992, Delaware law has allowed the establishment of irrevocable trust accounts for prepaid funerals. The irrevocable trust may represent all funds or any portion of payments made under the burial agreement, contract or plan.

Summary of Proposal

House Bill #137 with House Amendment 1 adds a new section that amends §3404(a) of Title 5 by increasing from \$10,000 to \$15,000 the amount of funds that may be placed in an irrevocable trust for a preneed funeral contract. The effective date is January 1, 2008. As such, DSSM 20340.5, *Irrevocable Funeral Arrangements* and DSSM 20400.12.2, *Burial Trusts* are revised to incorporate this mandatory provision.

DMMA PROPOSED REGULATION #07-52 REVISION:

20340.5 Irrevocable Funeral Arrangements

Effective January 30, 1992, Delaware law allows the establishment of irrevocable trust accounts for prepaid funerals. The irrevocable trust may represent all funds or any portion of payments made under the burial agreement, contract or plan. The principal sum (excluding accrued interest) may not exceed \$5,000. Effective ~~March 22, 1996~~ January 1, 2008 the principal sum may not exceed ~~\$10,000~~ \$15,000. Irrevocable trusts established under ~~Section 304~~ Title 5, Chapter 34 of the **Delaware Code** must contain the following mandatory provisions.

20340.5.1 Irrevocable

The trust must include a provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary.

20340.5.2 Alternative Disposition

The trust must include a provision for the alternative disposition of trust funds upon discontinuation of business or inability to provide goods or services in accordance with the terms of the trust.

20340.5.3 Inadequate Funds

The trust must include a provision which sets forth that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary.

20340.5.4 Excess Funds

The trust must include a provision which sets forth that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary.

20340.5.5 Contributions to Trust

The trust must include a provision which sets forth that the trustee may, from time to time, accept periodic monetary

contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed ~~\$10,000.00~~ \$15,000.00.

20340.5.6 Maximum Amount

The trust must include a provision which shall state "In no event shall the principal amount of the trust exceed ~~\$10,000.00~~ \$15,000.00 plus interest".

Once an irrevocable trust is executed in conjunction with a burial contract, the funds are not available to the buyer. Any written request for a refund of money is no longer an option. The irrevocable trust arrangement will offset the \$1500 burial allowance. This is effective for irrevocable trust arrangements executed on or after January 30, 1992.

(Break in Continuity of Sections)

20400.12 When Application Of The Trust Provisions Would Cause Undue Hardship

20400.12.1 Undue Hardship

20400.12.2 Burial Trusts

20400.12.1 Undue Hardship

Undue hardship exists when application of the trust provisions would deprive the individual of medical care such that his/her life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the individual of food, clothing, shelter or other necessities of life AND there are no State facilities available to take care of this individual in the absence of Medicaid eligibility.

20400.12.2 Burial Trusts

A burial trust is a trust established by an individual for the purpose of paying, at some point in the future, for the various expenses associated with the individual's funeral and burial. Irrevocable prepaid burial trusts that do not exceed ~~\$10,000~~ \$15,000.00 are exempted under the undue hardship policy.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Acquired Brain Injury Medicaid Waiver Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Waiver Program (ABIWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver 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) 255-4454 by December 31, 2007.

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

Statutory Authority

- Legal basis of the Medicaid home and community-based services (HCBS) waiver: Section 1915(c) of the Social Security Act
- Purpose and intent of a Medicaid HCBS: Section 1902(c) of the Social Security Act
- Allows states to create the HCBS waiver program: Omnibus Budget Reconciliation Act of 1981, Section 2176
- The Code of Federal Regulations (CFR) specifically dealing with HCBS services are in Title 42, Parts: 431.50, 435.3, 435.217, 435.726, 435.735, 440.1, 440.180, 440.250, 441.300 through 441.306, and 441.310.

Summary of Proposal

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed revises the rules and regulations governing the administration of the ABIWP, and describes the types of services available under the program. The regulations being amended, also, define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

And, to simplify the policy format, Section 20700.5 is substantially revised, renumbered, and reorganized for greater clarity and ease of reading.

DMMA PROPOSED REGULATION #07-51 REVISION:

~~20700.5 ACQUIRED BRAIN INJURY MEDICAID WAIVER PROGRAM~~

~~The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a home and community based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.~~

~~The earliest implementation date for the ABIMWP is October 10, 2004.~~

~~20700.5.1 ELIGIBILITY CRITERIA~~

~~To be eligible for the ABIMWP, an individual must:~~

- ~~1. be a Delaware resident~~
- ~~2. be between 18 and 64 years of age (persons who enter the waiver before age 65 may remain in the waiver after age 65)~~
- ~~3. meet the financial and medical criteria for the DSS Long Term Care Medicaid Program and meet nursing facility admission criteria.~~

~~Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD.~~

~~Financial eligibility is determined by DSS.~~

~~Program eligibility is determined by DSAAPD. An individual must meet all of the following criteria:~~

- ~~a. have an injury to the brain which is not hereditary or congenital (Acquired Brain Injury)~~
- ~~b. have a need of one waiver service, in addition to case management, on a monthly basis~~
- ~~e. have a physical, cognitive and/or behavioral symptom of an acquired brain injury and currently reside in a nursing facility or is at risk for placement in a nursing facility~~
- ~~d. have completed or would no longer benefit from intensive, inpatient, post-trauma or rehabilitation programs~~

e accept and maintain case management services

20700.5.2 NUMBER OF RECIPIENTS

There is a maximum number of recipients who may be served under the ABIMWP each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ABIMWP services so the maximum number will not be exceeded.

20700.5.3 COST EFFECTIVE REQUIREMENT

In order for an applicant to be eligible for the ABIMWP, the applicant's cost of care cannot exceed the cost of their care if the same applicant were institutionalized. This determination is made on an aggregate basis which considers all ABIMWP recipients. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on ABIMWP recipients. A DSAAPD worker determines cost effectiveness.

20700.5.4 APPROVAL

Upon approval, DSS will send a notice of approval to the applicant or the applicant's representative and the ABIMWP provider. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

20700.5.5 POST ELIGIBILITY BUDGETING

See DSSM 20720 and 20995.1 for patient pay calculation.

For recipients residing in Assisted Living facilities, the personal needs allowance is equal to the current Adult Foster Care rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the assisted living provider.

For recipients residing in community based settings, the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is providing the most costly service.

20700.5.6 DAYS APPROPRIATE FOR BILLING

The waiver provider may not bill for any day that the recipient is absent from the program or facility for the entire day. The waiver provider may bill for services for any day that the recipient is present in the facility or program for any part of the day.

If the recipient resides in an assisted living facility, the waiver provider may not bill Medicaid for room and board.

20700.5.7 HOSPITALIZATION OR ILLNESS

Waiver services will terminate upon hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient in accordance with the Delaware Regulations for Assisted Living Facilities outlined in section 63.409.

20700.5.8 ABIMWP SERVICES

Acquired brain injury waiver services will include the following:

- Case Management
- Personal Care
- Respite Care

Adult Day Expanded Services
Specialized Medical Equipment and Supplies
Personal Emergency Response Systems (PERS)
Assisted Living Program
Behavioral and/or Cognitive Services

8 DE Reg. 557 (10/01/04) (Section 20700.5 added)

DMMA POL-20700.5 ACQUIRED BRAIN INJURY MEDICAID WAIVER

<u>20700.5.A</u>	<u>Acquired Brain Injury (ABI) Medicaid Waiver Defined</u>
<u>20700.5.B</u>	<u>ABI Eligibility Criteria</u>
<u>20700.5.C</u>	<u>ABI Program Eligibility</u>
<u>20700.5.D</u>	<u>ABI Number of Participants</u>
<u>20700.5.E</u>	<u>ABI Cost Effectiveness Requirement</u>
<u>20700.5.F</u>	<u>ABI Notification of Approval</u>
<u>20700.5.G</u>	<u>ABI Post Eligibility Budgeting</u>
<u>20700.5.H</u>	<u>ABI Billing of Appropriate Days</u>
<u>20700.5.I</u>	<u>ABI Program Absences Due to Hospitalization</u>
<u>20700.5.J</u>	<u>ABI Medicaid Waiver Program Services</u>

DMMA POL-20700.5.A ABI MEDICAID WAIVER DEFINED

1. The Acquired Brain Injury (ABI) waiver program is a home and community based services program funded by the Division of Medicaid and Medical Assistance (DMMA).
2. The ABI waiver is operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD).
3. This waiver is targeted to individuals with an acquired brain injury aged 18 years of age and above.
4. The individual must meet Medicaid criteria for nursing home admission.
5. The earliest implementation for the ABI waiver is December 1, 2007.

DMMA POL-20700.5.B ABI ELIGIBILITY CRITERIA

1. The individual must be a Delaware Resident.
2. The individual must meet the financial and medical criteria for the DMMA Long Term Care Medicaid Program.
3. Medical eligibility is determined by the DSAAPD Pre-Admission Screening Unit. DSAAPD also accepts Long Term Care medical eligibility determinations performed by the DMMA Pre-Admission Screening Unit.
4. Financial eligibility is determined by the DMMA.
5. The individual must meet program eligibility guidelines (see DSSM 20700.5.C).

DMMA POL-20700.5.C ABI PROGRAM ELIGIBILITY

1. The individual must have an injury to the brain which is not hereditary or congenital, degenerative, or induced by birth trauma.
2. The individual must have a need of at least one enhanced ABI waiver service in addition to case management.
3. The individual must have a physical, cognitive, and/or behavioral symptom of an ABI, which requires supervised and/or supportive care.
4. The individual must be at risk of placement or currently residing in a nursing facility.
5. The individual must have completed or no longer benefit from intensive inpatient, post-trauma or rehabilitation program(s).
6. The individual must accept and maintain case management services.

DMMA POL-20700.5.D ABI NUMBER OF PARTICIPANTS

1. There is a maximum number of participants who may be served under the ABI waiver program each year.
2. The total unduplicated number can not exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS).

PROPOSED REGULATIONS

3. The DSAAPD will monitor the number of participants.

DMMA POL-20700.5.E ABI COST EFFECTIVENESS REQUIREMENT

1. The cost of care for an ABI waiver recipient can not exceed the cost of care if institutionalized.
2. The cost of care is determined on an aggregate basis which considers all ABI waiver recipients.
3. An average monthly cost for institutionalization is used to determine the amount that may be spent on an ABI waiver recipient's care.
4. The DSAAPD determines cost effectiveness.

DMMA POL-20700.5.F ABI NOTIFICATION OF APPROVAL

1. The DMMA will send a notice of Medicaid approval.
2. The notice will be sent to the applicant or representative.
3. If the recipient is in an Assisted Living facility a notice of approval will also be sent to the provider.
4. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

DMMA POL-20700.5.G ABI POST ELIGIBILITY BUDGETING

1. DSSM policies 20720 and 20995.1 will be followed to calculate patient pay amount.
2. Persons residing in an Assisted Living facility will have a personal needs allowance equal to the current Adult Foster Care Rate.
3. Persons who are in a community based setting will have an income needs allowance equal to 250% of the Federal Benefit Rate.
4. Collection of the patient pay amount is the responsibility of the provider.

DMMA POL-20700.5.H ABI BILLING OF APPROPRIATE DAYS

1. The waiver provider may not bill for any day the individual is absent from the program, excluding case management services. (Case management services are billed monthly, and are still utilized up to 30 days of hospitalization.)
2. The waiver provider may bill for services rendered to the individual.
3. Assisted Living providers may not bill Medicaid for room and board.

DMMA POL-20700.5.I ABI PROGRAM ABSENCES DUE TO HOSPITALIZATION

1. ABI waiver services will terminate upon the 31st day of hospitalization.
2. There are no Medicaid bed hold days for hospitalization.
3. The DMMA will redetermine financial eligibility for continued Medicaid coverage.

DMMA POL-20700.5.J ABI MEDICAID WAIVER PROGRAM SERVICES

1. ABI waiver services will include:
 - Case Management
 - Assisted Living and Enhanced Assisted Living
 - Day Habilitation
 - Cognitive Services
 - Adult Day Services (Level I - Basic & Level II – Enhanced)
 - Personal Care
 - Respite Care
 - Personal Emergency Response System
 2. Residents of an Assisted Living facility will receive services in accordance with the Division of Long Term Care Residents Protection regulation 5.9.
-

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 3703(b) (18 **Del.C.** §3703(b))
18 **DE Admin. Code** 1701

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1701 relating to Credit Life and Credit Health Insurance. The docket number for this proposed amendment is 587.

The purpose of the proposed regulation is to correct an error in the existing Regulation 1701 and to replace the existing mortality table with a more current one. The text of the proposed amendment is reproduced in the December 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday January 5, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

1701 Credit Life and Credit Health Insurance [Formerly Regulation 5]

1.0 50% Loss Ratio Benchmark

1.1 18 **Del.C.** §3707(b) of the Delaware Insurance Laws authorizes the Insurance Commissioner to disapprove any credit life or credit health insurance form "...if the premium rates charged or to be charged are excessive in relation to benefits..... After review of such insurance transactions in the State of Delaware, and after careful analysis of the studies and recommendations of the National Association of Insurance Commissioners, it is hereby ruled that premium rates are not excessive in relation to benefits as provided for in 18 **Del.C.** §3707(b), if an anticipated loss ratio of 50% is developed. NAIC Reporting Forms required to be filed annually will be used to determine if this standard is being met.

2.0 Prima Facie Acceptable Credit Insurance Rates

2.1 It shall be presumed that premium rates charged or to be charged are not excessive in relation to the benefits if the premiums or premium rates as filed with the Commissioner do not exceed the following, or actuarially equivalent, rates:

2.1.1 Credit Life Insurance:

2.1.1.1 For decreasing term credit life insurance, a single premium of 650.65 (65 cents) per annum per \$100 of initial insured indebtedness. A premium payable monthly at the rate of \$1.00 per \$1000 of outstanding unpaid insured indebtedness will be deemed the actuarial equivalent of the foregoing rate.

2.1.1.2 For level term credit life insurance a single premium of \$1.22 per annum per \$100 of initial indebtedness pursuant to 18 **Del.C.** §3704. Note exception in 18 **Del.C.** §3708.

2.1.1.3 The premium rates specified are presumed not excessive only in relation to a plan of death benefits, with or without requirements for evidence of insurability:

2.1.1.3.1 which contains no exclusions, exceptions or limitations on coverage other than for suicide within one year from the effective date of insurance;

2.1.1.3.2 which contains no age restrictions, or only age restrictions making ineligible for the coverage, debtors 65 or over at the time the indebtedness is incurred.

2.1.2 Credit Health Insurance:

2.1.2.1 For credit health insurance the following single premium rates per \$100 initial insured indebtedness:

PROPOSED REGULATIONS

STANDARD SINGLE PREMIUM RATE PER \$100 OF INITIAL AMOUNT OF INDEBTEDNESS

No. of Months in Which in the Indebtedness Is Repayable in Equal Installments	Benefits Not Retroactive Elimination Period			Retroactive Benefits Waiting Period		
	7 Days	14 Days	30 Days	7 Days	14 Days	30 Days
2	.70			1.30		
3	1.00	.60	.30	1.80	1.30	\$.90
6	1.50	1.00	.40	2.50	1.80	1.30
12	2.00	1.40	.80	3.00	2.20	1.70
18	2.50	1.80	1.20	3.50	2.60	2.10
24	3.00	2.20	1.60	4.00	3.00	2.50
30	3.50	2.60	2.00	4.50	3.40	2.90
36	4.00	3.00	2.40	5.00	3.80	3.30
42	4.40	3.30	2.70	5.40	4.10	3.60
48	4.70	3.50	2.90	5.70	4.30	3.80
54	5.00	3.70	3.10	6.00	4.50	4.00
60	5.30	3.90	3.30	6.30	4.70	4.20

2.1.2.2 Rates for policies of credit health insurance on which premiums are paid other than on a single premium basis or for benefits or durations on a basis other than illustrated above shall be actuarially consistent with the rates specified above.

2.1.2.3 The premium rates specified are for policies which contain no exclusion for pre-existing conditions except for those conditions which were manifested requiring medical diagnosis or treatment within the six months preceding the effective date of the insurance and which caused loss within the six months following the effective date of the insurance; provided, however, that disability commencing thereafter resulting from such conditions shall be covered.

2.1.2.4 Any contract to which the foregoing rates apply may contain provisions excluding or restricting coverage in the event of total disability resulting from pregnancy, intentionally self-inflicted injuries, foreign travel or residence, or flight in non-scheduled aircraft. It is not anticipated that military personnel will be sold accident and health insurance except in unusual cases and the company and/or agent shall stand ready to justify any such sale. The policy may contain the same age limitation for eligibility as set forth for credit life policies.

2.1.3 Restricted Coverages:

2.1.3.1 If a credit life or credit health insurance form provides for coverages which are more restrictive than provided for in section 2.1.1.3 or 2.1.2.3 above, the insurer shall demonstrate to the satisfaction of the Commissioner that the schedule of premium rates applicable to such forms will, or can reasonably be expected to, produce a loss ratio of 50% in accordance with the basic test set forth in section 1.0.

2.1.4 Deviation From Prima Facie Acceptable Credit Insurance Rates:

2.1.4.1 An insurer may file and receive approval of a different premium rate or a schedule of premium rates to be used in connection with a particular policy form providing insurance on the debtors of a creditor or a class or classes of debtors, if the insurer demonstrates to the satisfaction of the Commissioner that the prima facie acceptable rates, if used with such forms will or can reasonably be expected to produce a loss ratio of 60% or more. The insurer may use said deviated rates for a period two years. Prior to the expiration of the two-year period the insurer must submit evidence satisfactory to the Commissioner justifying the continued use of said rates for an additional two-year period, provided that a loss ratio of not less than 60% shall not be considered for purposes of an upward deviation.

2.1.5 Downward Rate Adjustments:

2.1.5.1 If the Commissioner has reason to believe that any premium rate or schedule of premium rates theretofore approved by him is producing a loss ratio of less than 50%, the Commissioner may require the insurer to show cause why the premium rate or schedule of premium rates should not be adjusted so as to produce a loss ratio of 50% in accordance with section 1.0

2.1.6 Filing of Experience Information:

2.1.6.1 Insurers doing credit life and/or credit health insurance business in this State shall annually file with the Insurance Department a report of its credit life insurance experience and credit health insurance experience separately on forms prescribed by the Commissioner, and set forth in Appendix A of this regulation. (See Bulletin No. 75-13. Page 1206.)

3.0 Unfair Trade Practices

3.1 The use of compensating balances or special deposits as an inducement to a creditor to place a credit insurance program with the insurer, making or offering to create such compensating balance or special deposit is considered by the Insurance Commissioner to be a prohibited practice within the meaning of the Unfair Trade Practices Act (Sec. 2301-2316) and this section is intended to serve notice as to his determination in this regard.

4.0 Collection and Remittance of Premiums

4.1 A creditor may remit and an insurer may collect premiums on either a single premium basis or on a monthly outstanding balance basis, unless the creditor adds identifiable charges or premium for credit life insurance to the total amount of the indebtedness, and makes any direct or indirect finance, carrying, credit or service charge whatever to the debtor in connection with such insurance charge. Under such circumstances, the creditor has loaned the premium or insurance charge to the debtor and the premium or the insurance charge is deemed collected for the insurer as soon as it is added to the indebtedness, in which event the creditor must remit and an insurer must collect on a single premium basis only. A creditor may remit and an insurer may collect on the monthly outstanding balance basis if no direct or indirect finance, carrying, credit or service charge is made to the debtor in connection with the insurance charge of premium.

5.0 Refunds

5.1 In the event of termination of insurance prior to the scheduled maturity date of indebtedness by any circumstance including death, there shall be a refund or credit to the debtor of the proper portion of any amount paid by the debtor for the insurance.

5.1.1 The amount of the refund in the case of reducing term credit life insurance or of credit health insurance on which such charges to the debtor are payable to the insurance company by other than a single sum and of level term credit life insurance shall not be less than the pro rata gross unearned premium.

5.1.2 The amount of the refund in the case of reducing term credit life insurance or of credit health insurance on which the insurance charges to the debtor are payable to the insurance company in a single sum shall not be less than the amount computed by the "sum of digits" formula, commonly known as the "Rule of 78."

5.1.3 A premium refund or credit need not be made if the amount thereof is less than \$1.00.

6.0 Reserves

6.1 In order to determine that sufficient reserves are available to guarantee performance of all policy obligations, the minimum reserve standards shall be as follows:

6.1.1 The aggregate reserves on credit life insurance shall not be less than the 1958 Commissioner's Extended Mortality Table.

6.1.2 The reserve for credit health insurance should not be less than the gross unearned premium calculated upon a pro rata basis or a proper morbidity table, whichever is applicable.

Section 6.1.1 was amended by an order ~~effective January 1, 1986~~ of February 11, 2007, by substituting the words "the ~~1958 2001~~ Commissioner's ~~Extended Mortality Standard Ordinary~~ Table" for the words "a reserve computed in accordance with the Commissioner's ~~1944 1958~~ Standard Ordinary ~~Mortality~~ Table."

7.0 Separability

7.1 If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be

affected thereby.

8.0 Effective Date

8.1 This regulation shall become effective ~~February 15, 1974~~ February 1, 2008. All credit life and credit health insurance rates and forms, delivered or issued for delivery on or after ~~February 15, 1974~~ February 1, 2008, except as hereinafter provided, shall conform to the provisions of this regulation as of that date. With regard to existing group credit life and health insurance policies, the rates and forms shall be filed with the Commissioner, or be terminated, not later than the anniversary date of the date of issuance of the contract next following the effective date of this regulation. Existing group credit life and health insurance contracts that are renewed, reissued or replaced other than on their normal anniversary date and all group life and health insurance contracts newly issued to replace or supplement a creditor's existing insurance program on or after ~~October 6, 1970~~ February 1, 2008 shall conform to the requirements of the effective date of this regulation. No replacements or amendment of group policies to postpone the effect of this regulation will be recognized for the purpose of this section.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

Office of Child Care Licensing

Statutory Authority: 29 Delaware Code, §9003; 31 Delaware Code, §§341-345

(29 Del.C. §9003; 31 Del.C. §§341-345)

PUBLIC NOTICE

DELACARE: Requirements for Family Child Care Homes and Requirements for Large Family Child Care Day Care Homes

PLEASE TAKE NOTICE, pursuant to 31 Del.C., Chapter 3, Subchapter III, Subsections 341-345, and 29 Del.C., Chapter 90, Subsection 9003 (7), Delaware's Office of Child Care Licensing is proposing to revise the *Delacare: Requirements For Family Child Care Homes* and *Delacare: Requirements for Large Family Child Care Day Care Homes*. Each which were previously adopted in 1994. In June 2007 four focus groups were held, one each in Kent and Sussex Counties and two in New Castle County, consisting of Family Child Care Providers and Large Family Child Care Providers. Participants agreeing to attend were chosen through a random selection basis. The focus groups were conducted by the National Child Care Information Center, which submitted a report on the findings to the Office of Child Care Licensing. In July 2007 a survey was sent to every licensed Family and Large Family Child Care Provider to solicit their input on Regulatory change. Responses were recorded and an analysis was conducted for common themes in responses. From August 2007 to October 2007, a task force of Family Child Care Providers, Large Family Child Care Providers, representatives of the Office of Child Care Licensing, subject experts, parents, representatives of the Executive and Legislative Branches of State Government and those whose interests could be affected by the rule changes met for the purpose of making recommendations for revised Requirements. The task force reviewed the existing *Delacare Requirements for Family Child Care Homes* and *Delacare Requirements for Large Family Child Care Homes*, were provided information from the findings of the focus groups and Provider surveys and trends and issues noted by the Office of Child Care Licensing. Applicable research findings, best practice information and trends in regulations of other States were reviewed. The task force made recommendations that were considered in revising the Rules herein set forth for Public comment. The proposed revisions are a movement toward improving standards that are designed to ensure the health and safety of children in care and enhance the quality of their experience so they will be better prepared to succeed in school and in life.

The proposed changes are available for review on the Office of Child Care Licensing's website at <http://www.state.de.us/kids/occl/occl.shtml>. Each set of Rules are listed in two parts. Also each set (and part) has a

version that contains all edits with proposed deletions in ~~strike through text~~, and proposed additions in underlined text. Also each set (and part) has a version that contains all the edits but the edits are unmarked for ease in reading the proposed versions.

Written comments or emails on the rule changes will be accepted until **January 16, 2008** and should be addressed to the **Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk, Rule Development Manager** or emailed to lynn.jezyk@state.de.us. Comments will also be heard at public hearings scheduled as follows:

Public Hearing Schedule

- **Monday, January 7, 2008** at Stockley Center, All Star Building, 26351 Patriot's Way, Georgetown, DE, 19947, 6:30PM to 8:30PM
- **Tuesday, January 8, 2008** at Bear Library, 101 Governor's Place, Bear, DE 19701, 6:30PM to 8:30PM
- **Wednesday, January 9, 2008** at Department of Natural Resources and Environmental Control (DNREC) Auditorium, 89 Kings Highway, Dover, DE 19901 6:30PM to 8:30PM
- **Thursday, January 10, 2008** at Woodlawn Library, 2020 W. 9th Street, Wilmington, DE 19805, 6:30PM to 8:30PM

For information on cancellations of the Public Hearings due to bad weather or an unforeseen event, please check the Office of Child Care Licensing website, <http://www.state.de.us/kids/occl/occl.shtml> or call the Office of Child Care Licensing in Wilmington, 892-5800 or in Dover, 739-5487 or listen to your local radio station.

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

[http://regulations.delaware.gov/register/december2007/proposed/11 DE Reg 730 12-01-07.htm](http://regulations.delaware.gov/register/december2007/proposed/11%20DE%20Reg%20730%2012-01-07.htm) **103-104 Kids Care Proposed**

An authenticated PDF version of the regulation is available at:

[http://regulations.delaware.gov/register/december2007/proposed/11 DE Reg 730 12-01-07.pdf](http://regulations.delaware.gov/register/december2007/proposed/11%20DE%20Reg%20730%2012-01-07.pdf) **103-104 Kids Care Proposed**

DEPARTMENT OF TRANSPORTATION DIVISION OF TECHNOLOGY AND SUPPORT SERVICES

Statutory Authority: 17 Delaware Code Section 132(e) and 29 Delaware Code Section 8404(8)
(17 Del.C. §132(e); 29 Del.C. §8404(8))

PUBLIC NOTICE

2501 External Equal Employment Opportunity Complaint Procedure

As authorized under 17 Delaware Code Section 132 (e) and 29 Delaware Code Section 8404(8), the Delaware Department of Transportation (DelDOT), is seeking to adopt an external equal employment opportunity complaint procedure for the programs comprising DelDOT's External EEO Programs.

The Department will take written comments on the draft procedure from December 1, 2007 through December 31, 2007.

Questions or comments regarding this document should be directed to:

Carla Elliott
Civil Rights Administrator
Technology and Support Services
DelDOT

P.O. Box 778 For FedEx
Dover, DE 19903 800 Bay Road
Phone (302) 760-2266 Dover, DE 19901
Fax (302) 739-2251
Carla.Elliott@state.de.us

2501 External Equal Employment Opportunity Complaint Procedure

1.0 Purpose

To specify a process to be employed by the Delaware Department of Transportation (DelDOT) to address, investigate and respond to complaints of discrimination on grounds of race, color, religion, sex, age, or national origin, with respect to the programs comprising DelDOT's External EEO Programs.

2.0 Coverage

This procedure covers complaints filed by individuals, organizations or business entities which believe that they have been subjected to discrimination in violation of applicable non-discrimination statutes acting pursuant to a Federal-aid contract with the Department. A complaint may also be filed by a representative for the aggrieved person or party with the aggrieved party's consent.

3.0 Definitions

"Discrimination" involves any act or inaction, whether intentional or unintentional in any program or activity of a Federal-aid recipient, sub-recipient, or contractor, which results in disparate (unfavorable) treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, sex, national origin, age, disability or in the case of disability, failing to make a reasonable accommodation. An action (or inaction) whether intentional or unintentional, through which a person, based on race, color, sex, age, national origin or disability, has been subjected to unequal treatment or denied benefits under any program or activity receiving financial assistance from the FHWA under Title 23 U.S.C.

"Investigator" means an individual or entity assigned to conduct an investigation of a complaint. This may be DelDOT personnel or consultant(s) acting on DelDOT's behalf.

"Investigative report" means a written record which contains various documents and information acquired during the investigation under this procedure, including affidavits of the complainant, the alleged discriminating official, and the witnesses, and copies of, or extracts from, records, policy statements, or regulations of the agency, organized to show their relevance to the complaint or the general environment out of which the complaint arose. This document will be provided to the Federal Highway Administration, as required, and will otherwise be maintained confidentially, except where a lawsuit on the same subject has been filed.

"Respondent" means a person, party, business entity or agency whose action or inaction is complained of by an aggrieved party as being discriminatory or non-compliant with applicable statutes, regulations and policies.

4.0 Timely Filing and Withdrawal of Complaint

4.1 Complaints must be filed in writing and submitted to DelDOT. Complaints shall be signed by the complaining party or their representative and shall include the complainant's name, address, and telephone number. Complaints must clearly state specifically those facts and circumstances surrounding the claimed discrimination covered by this procedure and the applicable regulations. Complainants may receive assistance from DelDOT personnel to reduce to writing the facts and circumstances of the alleged discrimination with specificity to provide for full investigation.

4.2 Allegations received by fax containing such information and signature will be processed. Allegations received by e-mail or by telephone will be reduced to writing or printed and provided to the complainant for confirmation or revision for accuracy and signature before processing.

4.3 Complaints must be filed no later than 180 days after the following:

4.3.1 The date of the alleged act of discrimination; or

4.3.2 The date when the person(s) became aware of the alleged discrimination; or

4.3.3 Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

4.4 Complainants may withdraw their complaint at any time. This action closes the case without prejudice.

4.5 A complaint may be dismissed for any one of the following reasons:

4.5.1 The complaint is not filed in a timely manner, according to the requirement in Section C above.

4.5.2 The complainant does not allege a basis covered by the statutes providing authority for this complaint procedure.

4.5.3 The complaint does not allege any harm with regard to covered programs or statutes.

4.5.4 The complainant fails to respond to repeated requests for additional information needed to process the complaint.

4.5.5 The complainant cannot be located after reasonable attempts.

4.5.6 The complainant has filed a legal action in Federal District Court with the same basis(es) and issue(s) involved in the complaint.

4.5.7 The same complaint allegations have been filed with another Federal, State, or local agency.

5.0 Persons Authorized to Receive Complaints

5.1 The Department's Civil Rights Complaint Procedure is designed to provide for progressively more formal steps that give opportunity for adjustment at several key points.

5.1.1 Civil Rights Administrator - DeIDOT

5.1.2 Contract Services Administrator - DeIDOT

5.1.3 Representative of the Federal Highway Administration (FHWA)

5.2 Complaints received alleging discrimination and/or discriminatory acts or treatment will be retained by or forwarded to DeIDOT's Civil Rights Administrator for processing. Copies of complaints received alleging discrimination and/or discriminatory acts or treatment by DeIDOT or its personnel will also be forwarded to FHWA.

6.0 Complaint Processing

6.1 All complaints will be logged in, upon receipt, by the Civil Rights Administrator. Complainants will be advised in writing of the receipt of their complaint and of the process for handling the complaint. Acknowledgement letters will be sent to the complainant and to the respondent containing this information and information about forwarding of a complaint to the FHWA, when appropriate.

6.2 The Civil Rights Administrator will provide for the prompt formal investigation of the complaint. In instances of alleged Title VI violations, the investigation will include securing necessary information from sub-recipients regarding the project referenced in the complaint. The investigation will include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of similarly-situated individuals or entities, and all other relevant data and information, which will be recorded in the investigative file.

6.3 In the event any person (individually or as an agency), organization representative, or business entity (not including the complainant) fails or refuses to furnish information to an investigator, such failure may result in a finding of non-compliance. The investigator will indicate in the investigative report that the individual or contractor refused to provide pertinent information and outline efforts made to obtain the information.

6.4 The investigation will be completed within 60 days of receipt by the Civil Rights Administrator. Where circumstances exist justifying additional investigative time, the deadline for completion of the investigation may be extended as is deemed necessary. Upon completion of the investigation, an investigative report will be generated outlining the investigative steps taken, information and evidence gathered, analysis of evidence and information, persons contacted and conclusion. The complainant will be given a written summary of the results of the investigation.

6.5 Findings of non-compliance

6.5.1 DeIDOT's Civil Rights Administrator will review the results of any investigation and determine whether any violation or non-compliance exists. The Civil Rights Administrator will render a finding of non-compliance or violation based on the allegations and investigation.

6.5.2 The Civil Rights Administrator will engage in affirmative efforts to conciliate and resolve satisfactorily all violations of applicable statutes or failure to comply with applicable regulations. A corrective action plan will be generated for any respondent, including any sub-recipient of Federal funds, found to be non-compliant. Additionally, DeIDOT's Civil Rights Administrator will establish and monitor a timetable for remedial action for

completion.

6.6 Findings of Compliance

6.6.1 DeIDOT's Civil Rights Administrator will review the results of any investigation and determine whether any violation or non-compliance exists. The Civil Rights Administrator will render a finding of compliance or no violation in those instances where, based on the allegations and investigation, it is determined that the responding party acted in conformity with laws/regulations and/or there was no violation.

6.6.2 Should the complainant disagree the complainant may appeal the determination.

6.7 Notification

6.7.1 Where a finding of non-compliance or violation has been rendered, the complainant will receive written notification of any efforts to conciliate, any corrective action plan established, the timetable for completing the corrective actions, and information regarding all available avenues of appeal.

6.7.2 Where a finding of compliance or no violation has been rendered the complainant will receive written notification of the determination and information regarding all available avenues of appeal.

6.7.3 Respondent will receive written notification upon closure of the investigation and when appropriate notice of all available avenues of appeal.

7.0 Resolution of Complaint and Appeal Process

7.1 It is in the best interest of all parties involved that issues raised in a complaint of discrimination be resolved informally. Every effort will be made to pursue resolution of the complaint, even while the investigation is underway.

7.2 Based on the investigation and the analysis of information and evidence gathered, specific recommendations or a formal corrective action plan may be generated. The respondent has the right to request review of the complaint and the investigation as an appeal where specific recommendations or a formal corrective action plan have been generated.

7.3 In those instances where the complainant continues to be aggrieved, the complainant has the right to request review of the investigation as an appeal.

7.4 Appeals

7.4.1 Appeals will be reviewed by the Director, Technology and Support Services. Any decision reached on appeal will be final.

7.4.2 All appeals must be in writing, outlining the appealing party's issues, concerns, or basis for the appeal.

7.4.3 After review of the investigative file and any additional information submitted, a final determination will be made. Complainants and respondents will be informed in writing of the final decision within ten business days. Complainants dissatisfied with the results of the Complaint Process will be advised of their right to file their grievances with other governmental agencies (such as the Delaware Human Relations Commission) or appropriate Federal agencies.

Attachment A

Acknowledgment Letter To Complainant

Date _____

Complainant/Addressee _____

Address Line 1 _____

Address Line 2 _____

City, ST Zip _____

Dear _____ :

The Delaware Department of Transportation has received your _____ (letter/confirmation/complaint) dated _____, filed against _____ in which you alleged discrimination. We have reviewed your complaint and have determined that the investigation will focus on the following issue:

Insert issue and basis here

PROPOSED REGULATIONS

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Your complaint will be investigated. Further correspondence or additional information should be forwarded to the following address:

Civil Rights Administrator
Technology and Support Services
DeIDOT
800 Bay Road, PO Box 778
Dover, DE 19903

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by civil rights laws. Any individual alleging such harassment or intimidation may file a complaint with DeIDOT or with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the Civil Rights Administrator.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. In the event we receive such a request, we will seek to protect personal information, which if released, could constitute an unwarranted invasion of privacy.

Sincerely,

Name
Civil Rights Administrator

SIGNER INITIALS: _____ (writer/typist initials)
Enclosure OR Attachment (if any)
cc: (if any)

Attachment B
Acknowledgment Letter to Respondent

Date

Respondent/Addressee
Address Line 1
Address Line 2
City, ST Zip

Dear :

A complaint of discrimination has been filed by _____, against _____ . The complaint alleges _____ (Insert issue and basis here) This complaint will be investigated by _____ will contact you at a later date with more detailed information about the investigative process. If you have any questions you may contact _____ at _____ .

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. In the event we receive such a request, we will seek to protect personal information, which if released, could constitute an unwarranted invasion of privacy.

Sincerely,

PROPOSED REGULATIONS

Name
Civil Rights Administrator

SIGNER INITIALS: _____ (writer/typist initials)
Enclosure OR Attachment (if any)
cc: (if any)

Attachment C
Rejection/dismissal Letter to Complainant

Date

Complainant/Addressee
Address Line 1
Address Line 2
City, ST Zip

Dear :

This acknowledges receipt of your complaint of discrimination filed against _____ . After thorough review of your complaint, it has been determined that the matters raised in your complaint will not be investigated for the following reason

(Insert reason for dismissal here – See § IV. E. of the procedure)

Sincerely,

Name
Civil Rights Administrator

SIGNER INITIALS: _____ (writer/typist initials)
Enclosure OR Attachment (if any)
cc: (if any)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 282

REGULATORY IMPLEMENTING ORDER**282 Private Business and Trade Schools****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 282 Private Business and Trade Schools to reflect that the surety bond requirement by the private business or trade school was changed from \$5,000 to \$25,000. This change is based on passage of House Bill 168 from the 144th General Assembly and is reflected in 14 **Del.C.** Chapter 85.

This regulation change is exempt from the APA process because the change is based on a change in **Delaware Code**, Title 14, Chapter 85.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 282 Private Business and Trade Schools in order to align this regulation with State statute .

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 282 Private Business and Trade Schools. Therefore, pursuant to 14 **Del.C.**, Chapter 85, 14 **DE Admin. Code** 282 Private Business and Trade Schools attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision

of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 282 Private Business and Trade School 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** 282 Private Business and Trade School amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 282 Private Business and Trade School 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.** , Chapter 85 on November 16, 2007. 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 16th day of November 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 16th day of November 2007.

State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara B. Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

282 Private Business and Trade Schools

1.0 Definitions. For purposes of this regulation

"**Agent**" has the same meaning as in 14 **Del.C.** §8501(4).

"**Agent Card**" shall mean the pocket card provided for in 14 **Del.C.** §8510.

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

"**Private Business and Trade School**" has the same meaning as in 14 **Del.C.** §8501(1).

2.0 General Provisions

2.1 The distinguishing characteristic of a private business or trade school shall be the potential for wage earning by its graduates.

2.2 Private business and trade schools shall include:

2.2.1 Correspondence school courses offered as post high school courses in trade or business subjects; and

2.2.2 Programs that may also be available as high school introductory courses in trade or business subjects, without regard for the age or the prior educational attainment of the student.

2.3 A private business and trade school which actively seeks enrollees from the State of Delaware, or which sends an agent or agents into the State of Delaware to solicit enrollees, shall ensure that each of its agents maintains a current agent permit issued by the Department.

2.4 The term agent shall include individuals who solicit enrollees in Delaware even though the institution the agent represents does not conduct classes within the State of Delaware.

2.5 All advertising by a private business and trade school shall be in accordance with the statutes, rules and regulations for advertising administered and supervised by the Department of Justice Consumer Protection Division.

2.6 14 DE Admin. Code 225 Prohibition of Discrimination shall apply to all private business and trade schools and agents approved by the Department.

3.0 Certificates of Approval

3.1 Applications for an initial certificate of approval to conduct a private business and trade school, and for annual renewal of such certificates, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.

3.2 A private business and trade school offering more than one program of instruction must have each program approved by the Department.

3.3 The Department may conduct an on site evaluation of any applicant for a certificate of approval or for renewal of a certificate of approval. The Secretary of Education may waive an on site evaluation if the applicant is accredited by a regional or national accrediting association recognized by the Department, or is certified to conduct a similar program or school by the state education agency of another state with comparable standards for such schools.

3.4 If a private business and trade school makes any material change in its operation, such as, but not limited to, corporate structure or financial structure, the school shall notify the Department of the change within thirty days. The school shall also identify the change in its next renewal application.

3.5 The fees charged as filing and renewal fees are not refundable.

3.6 For purposes for this section, the following definitions shall apply: first calendar quarter, January 1st through March 31st; second calendar quarter, April 1st through June 30; third calendar quarter, July 1st through September 30th; and fourth calendar quarter, October 1st through December 31st.

3.6.1 Any current and valid Certificate of Approval with an expiration date of December 31, 2005, shall automatically be extended to the end of the calendar quarter in which the private business and trade school was originally granted its Certificate of Approval, conditioned on the school providing the Department with evidence of continuation of surety bond at least through the extension period.

3.6.2 Beginning with the fourth quarter of 2005, a private business and trade school will be required to renew its certification by the end of the calendar quarter in which the Department originally granted its Certificate of Approval.

3.6.3 Private business and trade schools with multiple campuses may request the Department to renew all campuses on a single renewal date based on initial approval of any one of the campuses.

4.0 Agent Permits

4.1 Applications for an initial agent permit, and for renewal of such permits, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.

4.2 An agent representing more than one private business and trade school must apply for separate permits for each such school.

4.3 Agents shall apply to renew their permit(s) each year at the same time that the school or schools the agent represents make application to renew their respective certificates of approval. In the case of a school not conducting classes in Delaware, but sending agents into Delaware, the application for an agent permit must be accompanied by a notarized verification of employment from the school represented and must be received by the Department on or before the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months.

4.4 No agent shall solicit Delaware enrollees on behalf of the private business and trade school represented until the Department issues the appropriate agent card.

4.5 The lapse, suspension, revocation, or non renewal of a private business and trade school certificate of approval for any cause shall terminate all agent permits for that institution.

4.6 A school shall report the discharge or resignation of any agent to the Department within thirty days.

4.7 The fee for the agent permit will be waived for the owner or chief executive officer of a private business and trade school who also serves as its agent. Each such individual must still apply for and obtain the agent permit. Any additional agents must obtain permits as otherwise described.

4.8 The fees charged as filing and renewal fees are not refundable.

5.0 Complaints

5.1 Each private business and trade school shall adopt a policy and procedures to address complaints by its students. The school catalogue shall contain its complaint policy and procedures or a reference to where the policy and procedures can be obtained.

5.2 In addition to the complaint procedures adopted by a private business and trade school for its students, the Department will investigate complaints by any person alleging facts that, if true, would constitute grounds for refusing or revoking a certificate of approval or an agent permit. In either event, the Department will notify the complainant of its conclusions and provide the complainant with a copy of the school or agent's initial response, if any.

5.2.1 Such complaints must be in writing and verified by the signature of the person making the complaint. Oral, anonymous or unsigned complaints will not be investigated.

5.2.2 A copy of the written complaint will be provided to the affected private business and trade school or agent for their written response. The Department may require that the complainant provide written permission for the Department to forward the complaint to the school or agent.

5.2.2.1 If, after reviewing the school or agent's response, the Department concludes that there is insufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may close the complaint without further investigation. In such case, the Department will notify the complainant and the school or agent of this conclusion and provide the complainant with a copy of the school or agent's response.

5.2.2.2 If, after reviewing the school or agent response, the Department concludes that there is sufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may continue its investigation or begin revocation or other action against the school or agent as the Department determines appropriate. The Department may also continue its investigation or begin revocation or other action if the school or agent fails to respond to a complaint within the time established by the Department.

5.3 The Department may also investigate circumstances that would constitute grounds for refusing or revoking a certificate of approval or an agent permit on its own initiative.

6.0 Denials and Revocations of Certificates and Permits

6.1 In view of an apparent conflict between the statutory statement in 14 **Del.C.** §8516 (for any combination of the following) and 14 **Del.C.** §8517 (for any cause enumerated in §8516), the Department interprets and shall administer §8516 to mean that a certificate of approval or an agent permit may be denied or revoked for any one or combination of the causes identified in that Section.

7.0 Bonds

7.1 Applications for an initial certificate of approval or renewal of certificates shall include evidence that the required surety bond is valid from the date of the complete application through the new certificate of approval expiration date.

7.2 The amount of the surety bond required of a school shall be determined as provided in 14 **Del.C.** §8505(b). In no event shall a bond be for less than ~~\$5,000~~ \$25,000 per calendar year.

7.3 The Department interprets and shall administer the phrase fail to provide the services called for in a contract or agreement with a student, as used in 14 **Del.C.** §8523 to mean failure to substantially provide the essential services."

7.4 Forfeiture

7.4.1 In the event a surety bond is forfeited, the Department shall notify the students identified on the last available school roster of their right to submit a claim for reimbursement. Such students shall have thirty days from the date they are notified by the Department to submit a claim for reimbursement. Claims received more than thirty days after the Departments notification shall not be considered.

7.4.2 Other students wishing to submit a claim for reimbursement must contact the Department within thirty days of the schools closing to submit their claim for reimbursement. Claims received more than thirty days after the schools closing shall not be considered.

7.4.3 Claims for reimbursement shall be submitted and documented as directed by the Department. The Department shall consider only appropriately documented claims in distributing the proceeds of any surety bond.

4 DE Reg. 986 (12/1/00)

9 DE Reg. 967 (12/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 601

REGULATORY IMPLEMENTING ORDER

601 School Police Relations

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, October 16 2007, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The primary comments related to the persons conducting the training of school staff and the types of incidents of misconduct that are required to be reported by school staff. The Department made changes to address the issue of training and also added clarifying language to assist the reader in the list of incidents of misconduct.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies by adding definitions, a training component for school administrators involved in reporting school crimes, and specific incidents of misconduct. In addition, a compliance component was added in Section 7.0 that if a school fails to comply with the reporting mandates it shall be subject to identification as a "Persistently Dangerous School" 14 **DE Admin. Code** 608.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies 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** 601 Schools and Law Enforcement Agencies amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies 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 November 16, 2007. 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 16th day of November 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 16th day of November 2007.

State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara B. Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

601 School Police Relations

1.0 Policy on School Police Relations

All local school districts, charter schools and alternative schools or consortia shall establish a policy on school police relations. Each school district, charter school and alternative school or consortium shall develop a Memorandum of Agreement (MOA) with each police department which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

2.0 School Employees Responsibilities for Reporting Crimes

Each school district, charter school and alternative school or consortium shall, at the time of hiring and at the beginning of each school year thereafter, advise each school employee (as that term is defined in 14 ~~Del.C.~~ §4112) of his/her duty to report school crimes and the penalty for failure to so report.

3.0 Reporting of Crimes to the Delaware Department of Education

The Superintendent of each school district and program administrator for each charter school and alternative school, or his/her designee, shall report to the Department of Education all school crimes required to be reported pursuant to 14 ~~Del.C.~~ §4112, and any subsequent amendment thereto. Such reports shall be made on forms as designated by the Department of Education and filed with the Department of Education within the time prescribed by statute.

4.0 Reporting Specific Incidents of Misconduct

In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district and program administrator for each charter school and alternative school or consortia shall report to the Department of Education incidents of misconduct 4.1 through 4.7. Such reports shall be made on forms as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

- 4.1 Pornography, possession and production
- 4.2 Bomb threats
- 4.3 Criminal mischief (vandalism)
- 4.4 Tampering with public records
- 4.5 Alcohol, possession and use
- 4.6 Felony theft (\$1,000 or more)
- 4.7 Bullying

5.0 Definition

For purposes of the reporting required pursuant to 4.7 of this regulation, "**Bullying**" is defined as when one person, or a group of persons, targets another person with repeated direct or indirect negative actions over a

~~period of time which are harmful to the victim either emotionally or physically. A negative action occurs when a person knowingly inflicts, or attempts to inflict, physical or emotional injury or discomfort upon another person.~~

~~1 DE Reg. 511 (11/1/97)~~

~~6 DE Reg. 775 (12/1/02)~~

601 Schools and Law Enforcement Agencies

1.0 Purpose

The purpose of this regulation is to ensure that effective communication and working relationships exist between public schools and law enforcement agencies.

2.0 Definitions

"**Alternative Program**" mean a program established pursuant to 14 **Del.C.**, Chapter 16.

"**School Employee**" for purposes of this regulation shall mean all persons 18 years of age or older hired by a school district, attendance zone, or charter school; subcontractors such as bus drivers or security guards; employees of an Alternative Program provider; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property. This definition shall be consistent with 14 **Del.C.** §4112.

3.0 Written Policy and Memorandum of Agreement (MOA)

3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a Memorandum of Agreement (MOA) with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

[3.2 The Department shall review the Model MOA and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.]

4.0 Training Component

4.1 Any school administrator responsible for reporting school crimes or reporting school conduct incidents to law enforcement and to the Department of Education; or any school administrator responsible for reporting suspension and expulsion data to the Department; or any school administrator responsible for any disciplinary process involving staff or students shall complete Department of Education approved training and any such additional training the Department of Education may prescribe from time to time.

4.2 The approved training shall be primarily provided by staff at the Department of Education. The training may be provided by a school administrator at the district, charter school, or Alternative Program who is qualified to provide such training by having completed the Department of Education approved training [**within the last twenty-four (24) months**]. The district, charter school, or Alternative Program shall provide the name(s) of the trainer(s) conducting the training and the name(s) of those school administrator(s) attending the training if such training was provided by the district, charter school, or Alternative Program.

4.3 Each school district, charter school, and Alternative Program shall, at the time of hiring and at the beginning of each school year thereafter, advise each School Employee of his/her duty to report school crimes and the penalty for failure to so report as prescribed in 14 **Del.C.** §4112 (e).

5.0 Reporting of Crimes to the Delaware Department of Education

5.1 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 **Del.C.** §4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

6.0 Reporting Specific Incidents of Misconduct

6.1 In addition to those school crimes required to be reported [**to law enforcement**] pursuant to ~~statute~~ 14 **Del.C.** §4112], the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1

through 6.1.12. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

- 6.1.1 Pornography, possession and production
- 6.1.2 Criminal mischief (vandalism)
- 6.1.3 Tampering with public records
- 6.1.4 Alcohol, possession and use
- 6.1.5 Felony theft (\$1,000 or more)
- 6.1.6 Bullying
- 6.1.7 Offensive Touching (student victim)
- 6.1.8 Terroristic Threatening (student victim)
- 6.1.9 Sexual Harassment
- 6.1.10 Fighting/Disorderly Conduct
- 6.1.11 Inhalants
- 6.1.12 Drug Paraphernalia

7.0 Compliance Component

7.1 A school that fails to comply with the reporting mandates as set forth herein shall be subject to identification as a "Persistently Dangerous School" as this term is defined in 14 DE Admin. Code 608. A school identified as Persistently Dangerous will retain that designation for the entire fiscal year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 734

REGULATORY IMPLEMENTING ORDER

734 District School Board and Charter School Board Member Financial Responsibility Training

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code by adding a new regulation 734 District School Board and Charter School Board Member Financial Responsibility Training. This regulation is required by passage of Senate Bill 308 from the 143rd General Assembly. This regulation outlines the financial responsibility training required for district and charter school board members.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 17, 2007, in the form hereto attached as *Exhibit "A"*. No comments were received on this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code by adding a new regulation 734 District School Board and Charter School Board Member Financial Responsibility Training because of a change to Delaware State Law.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 734 District School Board and Charter School Board Member Financial Responsibility Training. Therefore, pursuant to 14 Del.C. §1803, 14 DE Admin. Code 734 District School Board and Charter School Board Member Financial Responsibility Training attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 734 District School Board and Charter School Board Member Financial Responsibility Training 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** 734 District School Board and Charter School Board Member Financial Responsibility Training amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 734 District School Board and Charter School Board Member Financial Responsibility Training 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.** §1803 on November 16, 2007. 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 16th day of November 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 16th day of November 2007.

State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara B. Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 402 (11 DE Reg. 402). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[http://regulations.delaware.gov/register/december2007/final/11 DE Reg 744 12-01-07.htm](http://regulations.delaware.gov/register/december2007/final/11%20DE%20Reg%20744%2012-01-07.htm)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1522

REGULATORY IMPLEMENTING ORDER**1522 Elementary School Counselor****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1522 Elementary School Counselor. It is necessary to amend this regulation given that the existing regulation reverted to **DE Admin. Code** 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for an Elementary School Counselor.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Some of their suggested comments were incorporated within the regulation.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1522 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

1522 Elementary School Counselor

1-0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Counselor Elementary School (Required in grades 1 to 6 and valid in a middle level school, grades 5 to 8).~~

~~7-DE-Reg-775 (12/1/03)~~

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:

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

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

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

~~7-DE-Reg. 775 (12/1/03)~~

3.0 Standard Certificate

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

3.1 Master's degree from a regionally accredited college or university in an approved program in Elementary School Counseling and;

3.2 A minimum of three years' professional experience in an elementary school setting; or three years of appropriate experience as approved by the Department of Education; or a supervised school counseling internship of one full year in an elementary school setting which is part of a graduate degree program in elementary school counseling, or arranged by the Department of Education. The internship may be completed over a two year period on a half time basis or;

3.3 A Master's degree from a regionally accredited college in any field and;

3.4 A minimum of 27 semester hours of graduate course work in the areas of: Principles and Practices of the Guidance Program, Individual Counseling Skills, Group Counseling Skills, Human Development, Developmental Group Guidance, Individual and Group Testing for Counselors, Supervised Practicum in Elementary School Counseling, Counseling Theory, Consultation, and

3.5 Experience as in 3.2.

~~7-DE-Reg. 775 (12/1/03)~~

4.0 Effective Date

This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Counselor-Elementary School after that date must comply with the requirements set forth in ~~14 DE Admin. Code 1505~~.

~~7-DE-Reg. 775 (12/1/03)~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Elementary School Counselor. This certification is required for grades 1 to 6, and is valid in grades 5 to 8 in a Middle Level school. [A Middle Level School Counselor must have either an Elementary or Secondary School Counselor certificate.]

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.

3.0 Standard Certificate

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

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

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

4.0 Additional Requirements

An educator must also meet the following:

- 4.1 Has satisfied at least one of the following additional education requirements:
- 4.1.1 Graduated from 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, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or
- 4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and ~~[satisfactory completion of~~ satisfactorily completed] 27 semester hours of graduate course work in the areas of:
- 4.1.2.1 Principles and Practices of the School Counseling Program
 - 4.1.2.2 Individual Counseling Skills
 - 4.1.2.3 Group Counseling Skills
 - 4.1.2.4 Human Development
 - 4.1.2.5 Developmental Group Guidance
 - 4.1.2.6 Individual and Group Testing for Counselors
 - 4.1.2.7 Supervised Practicum in Elementary Counseling
 - 4.1.2.8 Counseling Theory
 - 4.1.2.9 Consultation; and
- 4.2 Has met at least one of the following experience requirements:
- 4.2.1 A minimum of three years professional experience in an elementary school setting; or,
- 4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,
- 4.2.3 A supervised school counseling internship of one full year in an elementary school setting which is part of a graduate degree program in Elementary School Counseling or arranged by the Department of Education. The internship may be completed over a two year period on a half-time basis.

7 DE Reg. 775 (12/1/03)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1530

REGULATORY IMPLEMENTING ORDER

1530 Middle Level Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 1530 Middle Level Teacher. It is necessary to repeal this regulation, as each of four Middle Level core academic subject areas are regulated by individual certification regulations.

Notice of the proposed repeal of the regulation was published in the *News Journal* and *Delaware State News* on Monday October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. (No written comment has been received.)

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal the regulation as each of four Middle Level core academic subject areas will regulated by individual certification regulations.

III. Decision to Repeal the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 **Del.C.** §1203 and § 1205(b)., the regulation attached hereto as Exhibit "B" is hereby repealed.

IV. Text and Citation

The text of the **DE Admin. Code** 1530 Middle Level Teacher, attached hereto as Exhibit "B" is repealed, and said regulation shall be deleted from the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

~~1530 Middle Level Teacher~~**1-0 Content**

~~1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Middle Level Teacher (Grades 6 to 8).~~

~~7 DE Reg. 775 (12/1/03)~~

~~7 DE Reg. 1749 (6/1/04)~~

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:

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Major or Its Equivalent” means a minimum of thirty (30) credits in the content area to be taught.

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

~~7-DE-Reg. 775 (12/1/03)~~

~~7-DE-Reg. 1749 (6/1/04)~~

~~3.0 Standard Certificate~~

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

3.1 Degree Requirement

3.1.1 Bachelor's degree from a regionally accredited college or university with a major or its equivalent in the content area to be taught; and

3.1.1.1 Appropriate pedagogical content courses consistent with the NASDTEC or NCATE specialty organization standards for middle school or the content specialization to be taught; or

3.1.2 Bachelor's degree from a regionally accredited college or university in an NCATE specialty organization or state approved program, where the state employed the appropriate NASDTEC or NCATE specialty organization standards in Elementary or Middle School Education.

~~7-DE-Reg. 775 (12/1/03)~~

~~7-DE-Reg. 1749 (6/1/04)~~

~~4.0 Effective Date~~

This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a middle level teacher after that date must comply with the requirements set forth in ~~14 DE Admin. Code 1505~~.

~~7-DE-Reg. 775 (12/1/03)~~

~~7-DE-Reg. 1749 (6/1/04)~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1531

REGULATORY IMPLEMENTING ORDER

1531 Middle Level English Language Arts Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt 14 DE Admin. Code 1531 Middle Level English Language Arts Teacher. It is necessary to adopt this regulation in order to complete the compilation of certification regulations of the Middle Level core academic subjects, and to align the certification with the Delaware English Language Arts Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a teacher of Middle Level English Language Arts.

Notice of the proposed adoption of the regulation was published in the *News Journal* and the *Delaware State News* on Monday October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

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 "B" 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 "B", and said regulation shall be cited as 14 **DE Admin. Code** 1531 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 409 (11 DE Reg. 409). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 750 12-01-07.htm>

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1532

REGULATORY IMPLEMENTING ORDER

1532 Middle Level Mathematics Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. It is necessary to amend this regulation in order to align the certification with the Delaware Mathematics Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a teacher of Middle Level Mathematics.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1532 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 411 (11 DE Reg. 411). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 752 12-01-07.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1533

REGULATORY IMPLEMENTING ORDER**1533 Middle Level Science Teacher****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher. It is necessary to amend this regulation in order to align the certification with the Delaware Science Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a teacher of Middle Level Science.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1533 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 415 (11 DE Reg. 415). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 753 12-01-07.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1534

REGULATORY IMPLEMENTING ORDER

1534 Middle Level Social Studies Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt 14 **DE Admin. Code** 1534 Middle Level

Social Studies Teacher. It is necessary to adopt this regulation in order to complete the compilation of certification regulations of the Middle Level core academic subjects, and to align the certification with the Delaware Social Studies Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a teacher of Middle Level Social Studies.

Notice of the proposed adoption of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

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 "B" 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 "B", and said regulation shall be cited as 14 **DE Admin. Code** 1534 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair	Cathy Cathcart
Joanne Christian	Marilyn Dollard
Sandra Falatek	Karen Gordon
Barbara Grogg	Leslie Holden
Lori Hudson	Dorothy McQuaid
Mary Mirabeau	Wendy Murray
Gretchen Pikus	Karen Schilling-Ross
Michael Thomas	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President	Richard M. Farmer, Jr., Vice President
Mary B. Graham	Jorge Melendez
Barbara Rutt	Dennis J. Savage
Terry Whittaker	

*Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 419 (11 DE Reg. 419). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 754 12-01-07.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1545

REGULATORY IMPLEMENTING ORDER

1545 Secondary School Counselor

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1545 Secondary School Counselor. It is necessary to amend this regulation given that the existing regulation reverted to **DE Admin. Code** 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for a Secondary School Counselor.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, October 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Some of their suggested comments were incorporated within the regulation.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1545 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 1ST DAY OF NOVEMBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 15th day of November, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham
Barbara Rutt
Terry Whittaker

Richard M. Farmer, Jr., Vice President
Jorge Melendez
Dennis J. Savage

1545 Secondary School Counselor

1.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Counselor Secondary School (Required in grades 9 to 12 and valid in a middle level school, grades 5 to 8).~~

~~7-DE Reg. 775 (12/1/03)~~

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:~~

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

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

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

~~7-DE Reg. 775 (12/1/03)~~

3.0 Standard Certificate

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

~~3.1 Master's degree from a regionally accredited college or university in an approved program in Secondary School Counseling and;~~

~~3.2 A minimum of three years' professional experience in a secondary school setting; or three years of appropriate experience as approved by the Department of Education; or a supervised school counseling internship of one full year in a secondary school setting which is part of a graduate degree program in secondary school counseling, or arranged by the Department of Education. The internship may be completed over a two year period on a half time basis or;~~

~~3.3 A Master's degree from a regionally accredited college in any field and;~~

~~3.4 A minimum of 27 semester hours of graduate course work in the areas of: Principles and Practices of the Guidance Program, Individual Counseling Skills, Group Counseling Skills, Career Development, Individual and Group Testing for Counselors, Human Development, Supervised Practicum in Secondary School Counseling, Counseling Theory, Consultation and,~~

~~3.5 Experience as in 3.2.~~

~~7-DE-Reg-775 (12/1/03)~~

4.0 Effective Date

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Counselor Secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.~~

~~7-DE-Reg-775 (12/1/03)~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Secondary School Counselor. This certification is required for grades 9 to 12 and is valid in grades 5 to 8 in a Middle Level school. [A Middle Level School Counselor must have either an Elementary or Secondary School Counselor certificate.]

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.

3.0 Standard Certificate

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

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

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

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also meet the following:

4.1 Has satisfied at least one of the following additional education requirements:

4.1.1 Graduated from 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, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or

4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and [satisfactory completion satisfactorily completed] of 27 semester hours of graduate course work in the areas of: ~~4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactory completion of 27 semester hours of graduate course work in the areas of:~~

4.1.2.1 Principles and Practices of the School Counseling Program

4.1.2.2 Individual Counseling Skills

4.1.2.3 Group Counseling Skills

4.1.2.4 Human Development

4.1.2.5 Career Development

4.1.2.6 Individual and Group Testing for Counselors

4.1.2.7 Supervised Practicum in [Elementary Secondary] Counseling

4.1.2.8 Counseling Theory

4.1.2.9 Consultation; and

4.2 Has met at least one of the following experience requirements:

4.2.1 A minimum of three years professional experience in a secondary school setting; or,

4.2.2 A minimum of three years of equivalent experience as approved by the Department of

Education; or,

4.2.3 A supervised school counseling internship of one full year in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. The internship may be completed over a two year period on a half-time basis.

7 DE Reg. 775 (12/1/03)

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

Statutory Authority: 16 Delaware Code, Section 122 (3)(t) (16 **Del.C.** §122 (3)(t))
16 **DE Admin. Code** 4459

ORDER**4459 Lead Based Paint Hazards****Nature of the Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Regulations Governing Lead Based Paint Hazards. The DHSS proceedings to amend the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122.

On September 1, 2007 (Volume 11, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 4, 2007, or be presented at a public hearing on October 4, 2007, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Lead Based Paint Hazards were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Although no verbal comments were received at the October 4 public hearing, written comments were received on the proposed regulations during the public comment period (September 1, 2007 through October 4, 2007). Entities offering written comments included:

- Delaware Developmental Disabilities Council
- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)

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

- **Sections 2.6.4.1, 2.6.4.2, and 4.5.4.1:** The regulations are inferably derived from Federal or model standards which contain multiple references to "Tribal" authorities. The Division may wish to consider deletion of some of these references since Delaware lacks Indian reservations.

Agency Response: After careful review of these sections, the Agency agrees with this suggestion and has made appropriate changes to the final regulation.

- **Section 1.4:** There is a "disconnect" between the regulation's standards for "play areas" and both actual practice and standards issued by other governmental agencies. The definition of "play area" in §1.4 limits "play areas" to those with a soil base. Moreover, the abatement standards for play areas are limited to soil sampling. We did not identify any standards contemplating assessment of play areas for lead-based paint, dust, or other non-soil based surfaces or substrate. In contrast the State day care regulations contemplate "no soil" play areas. Apart from the State day care regulations, the federal Architectural and Transportation Access Compliance Board has issued ADA regulations contemplating non-soil based substrate in play areas. The Division should consider the risks of lead in play area surfaces and substrate other than soil and adapt standards which are not limited to soil assessment in play areas.

Agency Response: The Agency consulted with the Environmental Protection Agency (EPA) and contends that Section 1.4 regarding "play areas" reflects the standards of the EPA. When the EPA promulgated its standards for soil lead hazards, it did not consider the potential lead exposure risk associated with other play area media such as: mulch, wood chips, pea gravel, etc. After careful review, the Agency has determined that the regulatory definition is congruent with EPA standards. The Agency will advise the EPA to consider Lead Based Paint Hazards standards for non-soil play area substrates.

The public comment period was open from September 1 - October 4, 2007.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

Findings of Fact:

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Lead Based Paint Hazards are adopted and shall become effective December 10, 2007, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, November 14, 2007

4459 Lead Based Paints Hazards

1.0 General Provisions

1.1 Preamble. These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to the Authority invested in the Secretary by 16 **Del.C.** §122(3)(t). These regulations, excluding homeowners working about the site of their residence under proper state, county and local requirements, establish standards for regulation of lead-based paint hazard control activities, including the training and certification of companies and workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control, the accreditation of lead-based paint hazard training programs and the establishment of procedures for their enforcement.

1.2 Purpose. These regulations shall be construed and applied to promote their underlying purpose of protecting the public health. They establish standards by which certified public or private organizations, firms, companies and individuals engaged in lead-based paint abatement activities in target housing and child occupied facilities shall adhere. Individuals and firms are encouraged to choose to require more stringent requirements.

1.3 Severability. If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect other provisions or applications of these regulations.

1.4 Definitions

"**Abatement**" means any measure or set of measures designed to permanently eliminate lead based paint hazards. Abatement includes, but is not limited to:

1.4.1 The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

1.4.2 All preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures.

1.4.3 Specifically, abatement includes, but is not limited to:

1.4.3.1 Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or a child-occupied facility that:

1.4.3.1.1 Shall result in the creation of or the permanent elimination of lead based paint hazards; or

1.4.3.1.2 Are designed to permanently eliminate lead-based paint hazards and are described in (1.4.1) and (1.4.2) of this definition.

1.4.3.2 Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with Delaware Health and Social Services regulations for accreditation.

1.4.3.3 Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by these regulations unless such projects are covered by 1.4.4 of this definition; or

1.4.3.4 Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

1.4.4 Abatement does not include renovation, remodeling, landscaping or other activities when such activities are not designed to permanently eliminate lead-based paint hazards, but instead, are designed to repair, restore or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operation and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

“Accessible Surface” means any interior or exterior surface, such as an interior window sill, that a young child can mouth or chew.

“Accredited Training Program” means a training program that has been accredited by the Secretary, Delaware Health and Social Services to provide lead-based paint activities training.

“Adequate Quality Control” means a plan or design which ensures the authenticity, integrity and accuracy of samples, including dust, soil and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

“Certified Abatement Firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the Secretary, Delaware Health and Social Services has issued a certificate of approval.

“Certified Inspector” means an individual who has been trained by an accredited training program, to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purpose of abatement clearance testing.

“Certified Abatement Worker” means an individual who has been trained by an accredited training program, to perform abatements.

“Certified Project Designer” means an individual who has been trained by an accredited training program, to prepare abatement project designs, occupant protection plans, and abatement reports.

“Certified Risk Assessor” means an individual who has been trained by an accredited training program, to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purpose of abatement clearance testing.

“Certified Supervisor” means an individual who has been trained by an accredited training program, to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

“Child-occupied Facility” means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours, and the combined weekly visits lasts

at least 6 hours and the combined annual visits lasts at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

“Clearance Levels” are values that indicates the maximum amount of lead permitted in dust or on a surface following completion of an abatement activity.

“Common Area” means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

“Component or Building Component” means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators, and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, windows heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and down spouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, sliding handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes, and wells and air conditioners.

“Containment” means a process to protect workers, building occupants and the environment by controlling exposure to the lead-contaminated dust and debris created during an abatement.

“Course Agenda” means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

“Course Test” means ~~an third party evaluation selected by the Secretary~~ that measures the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

“Course Test Blue Print” means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

“Department” means the Department of Health & Social Services as defined in 29 Del.C. 7904(a).

“Deteriorated Paint” means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

“Discipline” means one of the specific types of categories of lead-based paint activities identified in these regulations for which individuals may receive training from accredited programs and become certified by the Secretary, Delaware Health and Social Services. For example, “abatement worker” is a discipline.

“Distinct Painting History” means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings, to a component or room.

“Documented Methodologies” are methods or protocols used to sample for the presence of lead in paint, dust or soil.

“Dripline” means the area within 3 feet surrounding the perimeter of a building.

“Elevated Blood Level (EBL)” means an excessive absorption of lead that is a concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter of whole blood) for a single venous test, or, of 15 - 19 ug/dl in two consecutive fingerstick blood level tests taken 3 to 4 months apart.

“Encapsulant” means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

“Encapsulation” means the application of an encapsulant.

“Enclosure” means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

“EPA” means US Environmental Protection Agency.

“Firm” means any business company, whether or not incorporated.

“Friction Surface” means any interior or exterior surface such as a window or stair tread, that is subject to abrasion or friction.

“Guest Instructor” means an individual designated by the training program or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

“Hands-on Skills Assessment” means an evaluation which tests the trainees’ ability to satisfactorily perform the work practices and procedures identified in these regulations as well as any other skill taught in a training course.

“Hazardous Waste” means any waste subject to Delaware Department of Natural Resources and Environmental Control regulation as required in 7 **Del.C.** Ch. 63.

“HUD” means U.S. Department of Housing and Urban Development.

“Impact Surface” means any interior or exterior surface such as surfaces on doors that is subject to damage by repeated impact or contact.

“Inspection” means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a written report explaining the results of the investigation.

“Interim Controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based hazards or potential hazards, and the establishment and operation of management and resident education programs.

“Lead-based Paint” means a paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

“Lead-based Paint Activities” means, in the case of target housing and child-occupied facilities, inspection, risk assessment and abatement, as defined in these regulations.

“Lead-based Paint Hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

“Lead-contaminated Dust” means surface dust in residential dwellings, or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by both the State and the EPA

“Lead-contaminated Soil” means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified by both the State and the EPA.

“Lead Hazard Screen” means a limited risk assessment activity that involves limited paint and dust sampling.

“Living Area” means any area of residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children’s bedrooms.

“Multi-family Dwelling” means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Paint in Poor Condition” means 10 square feet or more of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g. walls, ceilings, floors, doors); or more than 10 percent of the total surface areas of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

“Permanently Covered Soil” means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch and other landscaping materials are not considered permanent covering.

“Person” means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal, state or local government.

“Play area” means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children’s possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

“Principal Instructor” means the individual who has the primary responsibility for organizing and teaching a particular course.

“Proficiency Test” means an extensive written examination designed to validate a person’s level of competence regarding Lead Abatement techniques and safety, to include: his/her knowledge of health hazards related to human exposure to lead dust and lead painted surfaces; construction safety; application of lead safe work practices; and, containments designed to reduce/minimize worker and building occupant exposure to lead

hazards, specialized equipment designed to reduce lead exposure/hazards for workers and residence occupants, specialized lead-based paint removal using chemicals, hazardous waste management and specialized work practices.

“Recognized Laboratory” means an environmental laboratory recognized by the EPA as being capable of performing an analysis for lead compounds in paint, soil, and dust.

“Reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

“Residential Dwelling” means a detached single family dwelling unit, including attached structures such as porches and stoops; or, a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Risk Assessment” means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a written report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

“Room” means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

“Secretary” means the Administrator of the Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

“Soil sample” means a sample collected in a representative location using ASTM E1727, “Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques.” or equivalent method.

“Start date” means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

“Start date provided to the Secretary” means the start date included in the original notification or the most recent start date provided to the Secretary in an updated notification.

“Target Housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

“Training Curriculum” means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

“Training Hour” means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and, if applicable, hands-on experience.

“Training Manager” means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

“Training Program” means lead training curriculum accredited by the Secretary, Delaware Health and Social Services, and offered to the public by a training provider.

“Training Provider” means an individual or firm which has been approved by the Delaware Department of Education to provide training in Delaware and accredited by the Secretary, Delaware Health and Social Services to conduct accredited lead-based paint activities training program(s) to individuals engaged in lead-based paint activities.

“Visual Inspection for Clearance Testing” means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

“Visual Inspection for Risk Assessment” means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

“Wipe sample” means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, “Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, “Standard Specification for Wipe Sampling Materials for Lead in Surface Dust.”

2.0 Application and Renewal Requirements

2.1 Accreditation of training programs. After the implementation date of these regulations, January 1, 1999, it shall be unlawful for any person, to provide training or offer to provide training for any discipline of lead-based paint activity without first possessing an approval from the Secretary as an accredited training program.

2.1.1 Accredited training programs shall offer and provide only training for the disciplines for which they are approved.

2.1.2 The Secretary shall approve an accredited training program for any firm or business which applies and meets the qualifications specified in these regulations.

2.1.3 A training program may seek accreditation to offer lead-based paint activities courses in any of the following disciplines; Inspector, Risk Assessor, Supervisor, Project Designer, and Abatement Worker. A training provider may also seek accreditation to offer refresher courses for each of the above listed disciplines.

2.1.4 A training provider shall not provide, offer, or claim to provide accredited lead-based paint activities courses without applying for and receiving accreditation from the Secretary as required in these regulations.

2.2 Application process. The following are procedures a training provider shall follow to receive accreditation to offer lead-based paint activities courses:

2.2.1 A training provider seeking accreditation shall submit a written application to the Secretary containing the following information:

2.2.1.1 The training provider’s business name, address, and telephone number.

2.2.1.2 Written evidence that the applicant has been approved by the Delaware Department of Education as a training provider

2.2.1.3 A list of courses for which it is applying for accreditation.

2.2.1.4 A statement signed by the training ~~provider~~ program manager certifying that the training program meets the requirements established in these regulations. If a training ~~provider~~ program uses EPA recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA, the training program manager shall include ~~written evidence of these certifications a~~ statement certifying that as well.

2.2.1.5 If a training provider does not use EPA recommended model training materials or training materials approved by an ~~EPA authorized State or Indian Tribe~~ the State, its application for accreditation shall also include:

2.2.1.5.1 A copy of the student and instructor manuals, or other materials to be used for each course.

2.2.1.5.2 A copy of the course agenda for each course.

2.2.1.6 All training providers shall include in their application for accreditation the following:

2.2.1.6.1 A description of the facilities and equipment to be used for lecture and hands-on training.

2.2.1.6.2 The name, address and location of the training facility.

2.2.1.6.3 A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

2.2.1.6.4 A copy of the quality control plan [as described in 2.3.9]

2.2.1.6.5 A certified check or a check written on a business account in the appropriate amount made payable to the Division of Public Health.

2.2.1.6.6 A course test blue print for the course test.

2.2.2 If a training program meets the requirements in 2.3, then the Secretary shall approve the application for accreditation no more than 90 days after receiving a complete application from the training provider. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the Secretary may,

at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Secretary within the 90 day period may also request additional materials retained by the training provider under section 2.9. If the Secretary requests additional materials, the time period for approval may extend beyond 90 days. If a training provider's application is disapproved, the program may reapply for accreditation at any time. Application fees for disapproved training programs will not be refunded.

2.2.3 A training provider may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training provider may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

2.3 Requirements for the accreditation of training programs. For a training provider to obtain accreditation from the Secretary to offer lead-based paint activities courses, the program shall meet the following requirements:

2.3.1 The training provider shall employ a training manager who has demonstrated experience, education, or training in the construction industry in the areas of lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health or industrial hygiene, and:

2.3.1.1 At least 2 years of experience, education, or training in teaching workers or adults, that is satisfactory to the Secretary; or

2.3.1.2 A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

2.3.1.3 Two years of experience in managing a training program specializing in environmental hazards.

2.3.2 The training manager shall designate a qualified principal instructor for each course who has:

2.3.2.1 Demonstrated experience, education, or training in teaching workers or adults; and

2.3.2.2 Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specified training; and

2.3.2.3 Demonstrated experience, education, or training in lead abatement, painting, carpentry, renovation remodeling, occupational safety and health, or industrial hygiene.

2.3.3 The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

2.3.4 The following documents shall be accepted as evidence that training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, specifically listed in sections 2.3.1 and 2.3.2. This documentation must be submitted with the accreditation application. Those documents include the following:

2.3.4.1 Official academic transcripts or diploma as evidence of meeting the education requirements.

2.3.4.2 Letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

2.3.4.3 Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

2.3.5 The training provider shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

2.3.6 To become accredited in the following disciplines, the training provider shall provide training courses that meet the following training hour requirements.

2.3.6.1 Inspector course - a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the Inspector course are contained in section 2.4.1.

2.3.6.2 Risk Assessor course - a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the Risk Assessor course are contained in section 2.4.2.

2.3.6.3 Supervisor course - a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the Supervisor course are contained in section 2.4.3.

2.3.6.4 Project Designer course - a minimum of 8 training hours. The minimum curriculum requirements for the Project Designer course are contained in section 2.4.4.

2.3.6.5 Abatement Worker course - a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the Abatement Worker course are contained in section 2.4.5.

2.3.7 For each course offered, the training provider shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

2.3.7.1 The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work. For quality assurance, there will be periodic revision of the course test.

2.3.7.2 The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics. The course test blue print shall be submitted to the secretary.

2.3.7.3 The course test shall be ~~a third party test selected by the Secretary developed in accordance with the test blue print submitted with the training accreditation application.~~

2.3.8 The training provider shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

2.3.8.1 The name, unique identification numbers, and address of the individual.

2.3.8.2 The business name, address and phone number of the certified training provider and the name of the training manager.

2.3.8.3 The name of the particular course that the individual completed.

2.3.8.4 Dates of course completion/test passage.

2.3.8.5 Expiration date of certification.

2.3.9 The training ~~provider~~ manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

2.3.9.1 Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

2.3.9.2 Procedures for the training manager's annual review of principal instructor competency.

2.3.10 The training provider shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in Section 4.0. These standards shall be taught in the appropriate courses and training environments to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

2.3.11 The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

2.3.12 The training provider and training manager shall allow the Secretary to conduct either announced or unannounced audits of the training program(s) to verify the contents of the application for accreditation.

2.3.13 The training manager shall allow the Secretary to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.

2.3.14 The training manager must provide notification of lead-based paint activities courses offered.

2.3.14.1 The training manager must provide the Secretary with notification of all lead-based paint activities courses offered. The Secretary must receive the original notification at least 7 business days prior to the start date of any lead-based paint activities course.

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2.3.14.2 The training manager must provide the Secretary updated notification when lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

2.3.14.2.1 For lead-based paint activities courses beginning prior to the start date provided to the Secretary, an updated notification must be received by the Secretary at least 7 business days before the new start date.

2.3.14.2.2 For lead-based paint activities courses beginning after the start date provided to the Secretary an updated notification must be received by the Secretary at least 2 business days before the start date provided to the Secretary.

2.3.14.2.3 The training manager must update the Secretary of any change in location of lead-based paint activities courses at least 7 business days prior to the start date provided to the Secretary.

2.3.14.2.4 The training manager must update the Secretary regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the Secretary at least 2 business days prior to the start date provided to the Secretary.

2.3.14.2.5 Each notification, including updates, must include the following:

2.3.14.2.5.1 Notification type (original, update, cancellation).

2.3.14.2.5.2 Training program name, the State accreditation number, address, and telephone number.

2.3.14.2.5.3 Course discipline, type (initial/ refresher), and the language in which instruction will be given.

2.3.14.2.5.4 Date(s) and time(s) of training.

2.3.14.2.5.5 Training location(s) telephone number, and address.

2.3.14.2.5.6 Principal instructor's name.

2.3.14.2.5.7 Training manager's name and signature.

2.3.14.2.6 Notification must be accomplished using any of the following methods: Written notification to the Secretary. Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Schedule" or a similar form containing the information required in 2.3.14.2.5. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the Secretary receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

2.3.14.2.7 Lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

2.3.14.2.8 No training program shall provide lead-based paint activities courses without first notifying the Secretary of such activities in accordance with the requirements of this paragraph.

2.3.15 The training manager must provide notification following completion of lead-based paint activities courses.

2.3.15.1 The training manager must provide the Secretary notification after the completion of any lead-based paint activities course. This notice must be received by the Secretary no later than 10 business days following course completion.

2.3.15.2 The notification must include the following:

2.3.15.2.1 Training program name, the State accreditation number, address, and telephone number.

2.3.15.2.2 Course discipline and type (initial/refresher).

2.3.15.2.3 Date(s) of training.

2.3.15.2.4 The following information for each student who took the course:

(1) Name.

(2) Address.

(3) Date of birth.

(4) Course completion certificate number.

(5) Course test score.

2.3.15.2.5 Training manager's name and signature.

2.3.15.3 Notification must be accomplished using any of the following methods:

Written notification to the Secretary. Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Follow-up" or a similar form containing the information required in 2.3.15.2 of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the Secretary receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

2.4 Minimum training curriculum requirements. To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training providers programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

2.4.1 Inspector.

2.4.1.1 Role and responsibilities of an Inspector.

2.4.1.2 Background information on lead and its adverse health effects.

2.4.1.3 Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

2.4.1.4 Liability and insurance issues relating to lead-based paint abatement.

2.4.1.5 Lead-based paint inspection methods, including selection of rooms, and components for sampling or testing.*

2.4.1.6 Paint, dust and soil sampling methodologies.*

2.4.1.7 Clearance standards and testing, including random sampling.*

2.4.1.8 Preparation of the final written inspection report.*

2.4.1.9 Record keeping.

2.4.2 Risk Assessor.

2.4.2.1 Role and responsibilities of a Risk Assessor.

2.4.2.2 Collection of background information to perform a risk assessment.

2.4.2.3 Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

2.4.2.4 Liability and insurance issues relating to lead-based paint abatement.

2.4.2.5 Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*

2.4.2.6 Lead hazard screen protocol.

2.4.2.7 Sampling for the other sources of lead exposure.*

2.4.2.8 Interpretations of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards.*

2.4.2.9 Development of hazard control options, the role of interim controls and options and operations and maintenance activities to reduce lead-based paint hazards.

2.4.2.10 Preparation of a final written risk assessment report.

2.4.3 Supervisor.

2.4.3.1 Role and responsibilities of a Supervisor.

2.4.3.2 Background information on lead and its adverse health effects.

2.4.3.3 Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

- 2.4.3.4 Liability and insurance issues relating to lead-based paint abatement.
- 2.4.3.5 Risk assessment and inspection report interpretation.*
- 2.4.3.6 Development and implementation of an occupant protection plan and abatement report.
- 2.4.3.7 Lead-based paint hazard recognition and control.*
- 2.4.3.8 Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*
- 2.4.3.9 Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*
- 2.4.3.10 Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*
- 2.4.3.11 Clearance standards and testing.*
- 2.4.3.12 Cleanup and waste disposal.
- 2.4.3.13 Record keeping.
- 2.4.4 Project Designer.
- 2.4.4.1 Role and responsibilities of a Project Designer.
- 2.4.4.2 Liability and insurance issues relating to lead-based paint abatement.
- 2.4.4.3 Development and implementation of an occupant protection plan for large scale abatement projects.
- 2.4.4.4 Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large scale abatement projects.
- 2.4.4.5 Interior dust abatement/cleanup or lead hazard control and reduction methods for large scale abatement projects.
- 2.4.4.6 Clearance standards and testing for large scale abatement projects.
- 2.4.4.7 Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.
- 2.4.5 Abatement Worker.
- 2.4.5.1 Role and responsibilities of an Abatement Worker.
- 2.4.5.2 Background information on lead and its adverse health effects.
- 2.4.5.3 Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.
- 2.4.5.4 Lead-based paint hazard recognition and control.*
- 2.4.5.5 Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*
- 2.4.5.6 Interior dust abatement methods/cleanup or lead-based paint hazard reduction.*
- 2.4.5.7 Soil and exterior dust abatement methods or lead-based paint hazard reduction.*
- 2.5 Requirements for the accreditation of refresher training programs. A training provider may seek accreditation to offer refresher training courses in any of the following disciplines; Inspector, Risk Assessor, Supervisor, Project Designer, and Abatement Worker. To obtain accreditation to offer refresher training, a training provider must meet the following minimum requirements.
- 2.5.1 ~~Each~~ Each Refresher courses shall review the curriculum topics of the full-length course listed under section 2.4, as appropriate. In addition, to become accredited to offer refresher training courses, training providers shall ensure their course of study include, at a minimum, the following:
- 2.5.1.1 An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
- 2.5.1.2 Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
- 2.5.1.3 Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.
- 2.5.2 Each refresher course, except for the project designer course, shall last a minimum of 8 training hours. The Project Designer refresher course shall last a minimum of 4 training hours.
- 2.5.3 For each refresher course offered, the training provider shall conduct both a hands-on

assessment (if applicable), and at the completion of the course, a course test.

2.5.4 A training provider may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in section 2.2. ~~If so, in addition, the minimum requirements contained in section 2.3 [except for requirements in 2.3.6] and 2.5.1, 2.5.2 and 2.5.3 shall also apply. the Department shall use the approval process described in section 2.2 of this section. In addition, the minimum requirements contained in section 2.3 [except for requirements in 2.3.6] and 2.5.1, 2.5.2 and 2.5.3 shall also apply.~~

2.5.5 A training provider seeking accreditation to offer refresher training courses shall submit to the Secretary a written application containing the following information:

2.5.5.1 The refresher course training provider's name, address, and telephone number.

2.5.5.2 A list of courses for which it is applying for accreditation.

2.5.5.3 A statement signed by the training program manager certifying that the refresher training program meets the ~~minimum~~ requirements established in ~~section 2.3, except for the requirements in section 2.3.6~~ these regulations. If a training program uses EPA developed recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA, ~~to develop its refresher course materials,~~ the training provider program manager shall include ~~written evidence of these certifications a statement certifying that,~~ as well.

2.5.5.4 If the refresher training course materials are not based on EPA-developed training materials or training materials approved by an authorized State or Indian Tribe, the training provider's application for accreditation shall include:

2.5.5.4.1 A copy of the student and instructor manuals to be used for each course.

2.5.5.4.2 A copy of the course agenda for each course.

2.5.5.4.3 A copy of a course test blue print for each course in its application.

2.5.5.4.4 The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

2.5.5.4.4.1 Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

2.5.5.4.4.2 Procedures for the training manager's annual review of principal instructor competency.

2.5.5.5 All refresher training providers shall include in their application for accreditation the following:

2.5.5.5.1 A description of the facilities and equipment to be used for lecture and hands-on training.

2.5.5.5.2 The name, address and location of the training facility.

2.5.5.5.3 A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

2.5.5.5.4 A copy of the quality control plan [as described in 2.3.9].

2.5.5.5.5 A certified check or a check written on a business account in the appropriate amount made payable to the Division of Public Health.

2.5.5.5.6 A copy of the course test blue-print for each course.

2.5.5.6 The requirements in 2.3.1 through 2.3.5 and 2.3.7 through 2.3.12 apply to refresher training providers.

2.5.5.7 If a refresher training program meets these requirements, the Secretary shall approve the application for accreditation no more than 90 days after receiving a complete application from the refresher training provider. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the Secretary may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Secretary within the 90 day period may also request additional materials. If the Secretary requests additional materials, the time period for approval may extend beyond 90 days. If a refresher training provider's application is disapproved, the program provider may reapply for accreditation at any time. Application fees for disapproved refresher training programs will not be refunded.

2.6 Re-accreditation of training programs.

2.6.1 Unless re-accredited, a training provider's accreditation (including refresher training accreditation) shall expire two (2) years after the date of issuance. If a training program meets the requirements of this section, the training provider shall be re-accredited.

2.6.2 A training provider seeking re-accreditation shall submit an application no later than 180 days before its accreditation expires.

2.6.3 The training provider's application for re-accreditation shall contain:

2.6.3.1 The training provider's name, address, and telephone number.

2.6.3.2 A list of courses for which it is applying for re-accreditation.

2.6.3.3 A description of any material changes to the training facility, equipment or course materials since its last application was approved.

2.6.3.4 A statement signed by the program manager stating:

2.6.3.4.1 That the training program complies at all times with all requirements in sections 2.3 through 2.5, as applicable; and

2.6.3.4.2 The record keeping and reporting requirements of 2.9 shall be followed.

2.6.4 ~~The training provider and training manager shall allow the Secretary to conduct either announced or unannounced audits of the training program to verify the contents of the application for re-accreditation described in 2.6.3 of this section. The Secretary has the authority to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.~~

2.6.4.1 State [or Tribal] officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities conduct business.

2.6.4.2 For the purposes of enforcing a pre-renovation notification program, State [or Tribal] officials must be able to enter a renovator's place of business.

2.6.4.3 State [or Tribal] officials must have authority to take samples and review records as part of the lead-based paint activities inspection process.

2.7 Suspension, revocation and modification of accredited training programs.

2.7.1 The Secretary may, after notice, and an opportunity for hearing, suspend, revoke, or modify training provider accreditation (including refresher training accreditation) if a training provider, training manager, or other person with supervisory authority over the training program has:

2.7.1.1 Misrepresented the contents of a training course.

2.7.1.2 Failed to submit required information or notifications in a timely manner.

2.7.1.3 Failed to maintain required records.

2.7.1.4 Falsified accreditation records, instructor qualifications, or other accreditation related information or documentation.

2.7.1.5 Failed to comply with the training standards and requirements in this section.

2.7.1.6 Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

2.7.1.7 Made false or misleading statements in its application for accreditation or re-accreditation.

2.7.2 In addition to an administrative or judicial finding or violation in any jurisdiction, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

2.8 Procedures for suspension, revocation, or modification of training program accreditation.

2.8.1 Prior to taking action to suspend, revoke, or modify the accreditation of a training provider, the Secretary shall notify the affected entity in writing of the following:

2.8.1.1 The legal and factual basis for the suspension, revocation, or modification.

2.8.1.2 The anticipated commencement date and duration of suspension, revocation, or modification.

2.8.1.3 Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

- 2.8.1.4 The opportunity and method for requesting a hearing prior to final action to suspend, revoke, or modify accreditation.
- 2.8.1.5 Any additional information which the Secretary may provide.
- 2.8.2 If a hearing is requested by the accredited training provider, the Secretary shall:
- 2.8.2.1 Provide the affected entity an opportunity to offer written statements in response to the Secretary's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.
- 2.8.2.2 Provide the affected entity such other procedural opportunities as the Secretary may deem appropriate to ensure a fair and impartial hearing.
- 2.8.2.3 Appoint an official Hearing Officer. No person shall serve as Hearing Officer if he or she has had any prior involvement with the specific matter.
- 2.8.3 The Hearing Officer appointed pursuant to paragraph 2.8.2 shall:
- 2.8.3.1 Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
- 2.8.3.2 Consider all relevant evidence, explanation, comment, and argument submitted.
- 2.8.3.3 Notify the Secretary in writing within 90 days of completion of the hearing of his or her decision. The Secretary shall either accept or reject the decision. If accepted, the Secretary shall issue a final order. Such an order is a final agency action, which may be subject to judicial review.
- 2.8.4 If the Secretary determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training provider prior to the opportunity for a hearing, it shall:
- 2.8.4.1 Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in 2.7.1. If a suspension, revocation, or modification notice has not previously been issued pursuant to 2.7.1, it shall be issued at the same time the emergency suspension notice is issued.
- 2.8.4.2 Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension revocation or modification hearing.
- 2.8.4.3 Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.
- 2.8.4.4 Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
- 2.8.5 Any notice, decision, or order issued by the Secretary under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training provider in a hearing under this section shall be available to the public. Any such hearing at which oral testimony is presented shall be open to the public, except that the Hearing Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment.
- 2.8.6 The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.
- 2.8.67 The Secretary shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.
- 2.9 Training program record keeping requirements.
- 2.9.1 Accredited training providers shall maintain, and make available to the Secretary, upon request, the following records:
- 2.9.1.1 All documents specified in 2.3.4 that demonstrate the qualifications of the training manager and principal instructors listed in 2.3.1 and 2.3.2.
- 2.9.1.2 Current curriculum/course materials and documents reflecting any changes made to these materials.
- 2.9.1.3 Information regarding how the hands-on assessment is conducted, including, but not limited to:
- Who conducts the assessment.
 - How the skills are graded.
 - What facilities are used.
 - The pass/fail rate.

2.9.1.4 The quality control plan as described in section 2.3.9.

2.9.1.5 Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

2.9.1.6 Any other material not listed above in 2.9.1 that was submitted to the Secretary as part of the program's application for accreditation.

2.9.2 The training provider shall retain these records at the address specified on the training provider accreditation application [or as modified in accordance with 2.9.3 of this section] for a minimum of 3 years and 6 months.

2.9.3 The training provider shall notify the Secretary in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

2.9.4 There will be submittal/record keeping of course test blue print.

3.0 Certification of Individuals and Firms Engaged in Lead-based Paint Activities

3.1 Certification of individuals.

3.1.1 Individuals seeking certification to engage in lead-based paint activities must either:

3.1.1.1 Submit to the Secretary, an application demonstrating that they meet the requirements established in 3.2 and 3.3 for the particular discipline for which certification is sought; or

3.1.1.2 Submit to the Secretary, an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by the EPA.

3.1.2 Individuals may first apply to the Secretary for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

3.1.3 Following the submission of an application demonstrating that all the requirements of this section have been met, the Secretary shall certify an applicant as a Inspector, Risk Assessor, Supervisor, Project Designer, or Abatement Worker, as appropriate.

3.1.4 Upon receiving certification from the Secretary, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in Section 4.0 of these regulations.

3.1.5 It shall be a violation for an individual to conduct any of the lead-based paint activities described in Section 4.0 after August 30, 1999, if that individual has not been certified by the Secretary, pursuant to this section to do so.

3.2 Inspector, Risk Assessor, Supervisor, Abatement worker and Project designer.

3.2.1 To become certified as an Inspector, Risk Assessor, or Supervisor, Abatement Worker or Project Designer an individual must:

3.2.1.1 Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider.

3.2.1.2 Pass the course test in the appropriate discipline; and,

3.2.1.3 Meet or exceed the following experience and education requirements:

3.2.1.3.1 Inspectors.

3.2.1.3.1.1 No experience or education requirements.

3.2.1.3.2 Risk Assessors

3.2.1.3.2.1 Successful completion of an accredited training course

for Inspectors; and

3.2.1.3.2.2 Bachelor's degree and 1 year of experience in a related

field (e.g. lead, asbestos, environmental remediation work, or construction) or an Associates degree with 2 years experience in a related field; or

3.2.1.3.2.3 Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g. safety professional, environmental scientist); or

3.2.1.3.2.4 A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g. lead, asbestos, environmental remediation work or construction).

3.2.1.3.3 Supervisor:

3.2.1.3.3.1 One year of experience as meeting the standards of a

certified lead-based paint Abatement Worker; or

3.2.1.3.3.2 At least 2 years of experience in a related field (e.g. lead, asbestos, or environmental remediation work) or in the building trades.

3.2.1.3.4 Abatement Workers:

3.2.1.3.4.1 Successful completion of an accredited training course in the appropriated discipline and receive a course completion certificate from an accredited training provider.

3.2.1.3.4.2 No additional experience or education requirements.

3.2.1.3.5 Project Designers:

3.2.1.3.5.1 Successful completion of an accredited training course for Supervisors.

3.2.1.3.5.2 Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or,

3.2.1.3.5.3 Four years of experience in building construction and design or a related field.

3.2.2 The following documents shall be recognized by the Secretary as evidence of meeting the requirements listed in 3.2:

3.2.2.1 Official academic transcripts or diploma, as evidence of meeting the education requirements.

3.2.2.2 Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

3.2.2.3 Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

3.2.3 In order to take the course test for a particular discipline an individual must:

3.2.3.1 Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training provider.

3.2.3.2 Meet or exceed the education and experience requirements in 3.2.1.

3.2.4 After passing the appropriate course test (and third party examination for a lead inspector, risk assessor or supervisor) and submitting an application demonstrating that he/she meets the appropriate training, education, and experience prerequisites described in 3.2.1 and paying the associated fee, an individual shall be issued a certificate by the Secretary. To maintain certification, an individual must be re-certified as described in 3.4.

3.2.5 An individual may take the ~~course test~~ third party examination for a lead inspector, risk assessor or supervisor no more than two times within 6 months of the date of the initial ~~certification~~ course test for that discipline.

3.2.6 If an individual does not pass the ~~course test~~ third party examination for a lead inspector, risk assessor or supervisor within 6 months, the individual must retake the appropriate course from an accredited training ~~provider~~ program before reapplying for certification.

3.3 Certification based on prior training.

3.3.1 Any individual who received training in a lead-based paint activity prior to the March 1, 1999 shall be eligible for certification under the alternative procedures in this section. Individuals who have received lead-based paint activities training from an EPA authorized State or Tribal accredited training program, or from a State or Tribe with an EPA authorized program shall also be eligible for certification under the following alternative procedures.

3.3.1.1 Applicants for certification as an Inspector, Risk Assessor, or Supervisor shall:

3.3.1.1.1 Demonstrate that the applicant has successfully completed training or on-the-job training in the conduction of a lead based paint activity, and

3.3.1.1.2 Demonstrate that the applicant meets or exceeds the education and/or experience requirements in 3.2.1.3.1 through 3.2.1.3.3, and

3.3.1.1.3 Successfully completed an accredited refresher training course for the appropriate discipline, and

3.3.1.1.4 Pass a course test and a third party examination administered for the appropriate discipline.

3.3.1.2 Applicants for certification as an Abatement Worker or Project Designer shall:

3.3.1.2.1 Demonstrate that the applicant has successfully completed training or on-the-job training in the conduction of a lead based paint activity, and

3.3.1.2.2 Demonstrate that the applicant meets the education and/or experience requirements in 3.2.1.3.4 and 3.2.1.3.5, and

3.3.1.2.3 Successfully complete an accredited refresher training course for the appropriate discipline.

3.3.2 Individuals who received training in a lead-based paint activity prior to March 1, 1999 shall have until August 30, 1999 to apply for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in 3.1 according to the discipline for which certification is sought.

3.4 Re-certification of Individuals.

3.4.1 To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the Secretary in that discipline either:

3.4.1.1 Every 2 years if the individual completed an approved training course with a course test and hands-on assessment; or

3.4.1.2 Every 5 years if the individual completed an approved training course with a proficiency test provided and that the individual has remained involved in the duties of that discipline as his/her primary means of income.

3.4.1.2.1 An individual desiring to sit for the proficiency test is to have completed three (3) lead abatement projects during the past 12 months without a potential lead license revocation/suspendable discrepancy issued by the Delaware Department of Health and Social Services.

3.4.1.2.2 The proficiency test is an essay type test with five (5) parts; (1) Safe Lead Abatement work practices; plus four (4) selected elements from the following list:

3.4.1.2.2.1 health hazards,

3.4.1.2.2.2 lead safe containment,

3.4.1.2.2.3 specialized equipment designed to minimize human

exposure to lead,

3.4.1.2.2.4 waste disposal regulations and guidelines,

3.4.1.2.2.5 hazardous waste management policies and applications,

3.4.1.2.2.6 construction safety,

3.4.1.2.2.7 scaffold safety,

3.4.1.2.2.8 ladder safety,

3.4.1.2.2.9 electrical safety, or

3.4.1.2.2.10 hand tool safety.

3.4.2 An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course, submits a valid copy of the appropriate refresher course completion certificate and pays the associated fee.

3.4.3 An individual may maintain re-certification for multiple disciplines by successfully completing the appropriate highest discipline accredited refresher training course and meeting the experience and education parameters defined in 3.2 for those disciplines.

3.5 Certification of abatement firms.

3.5.1 All firms which perform or offer to perform any of the lead-based paint activities described in Section 4.0 after August 30, 1999 shall be certified by the Secretary.

3.5.2 A firm seeking certification shall submit to the Secretary, a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in Section 4.0 for conducting lead-based paint activities.

3.5.3 From the date of receiving the firm's letter requesting certification and the associated fee, the Secretary shall have 45 days to approve or disapprove the firm's request for certification. Within that time, the Secretary shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

3.5.4 The firm shall maintain all records pursuant to requirements in Section 4.0.

3.5.5 On March 1, 1999 firms may apply to the Secretary for certification to engage in lead-based paint activities.

3.6 Suspension, revocation, and modification of certifications of individuals engaged in lead-based-paint activities.

3.6.1 The Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

- 3.6.1.1 Obtained training documentation through fraudulent means.
- 3.6.1.2 Gained admission to and completed an accredited training program through misrepresentation of admission requirements.
- 3.6.1.3 Obtained certification through misrepresentation of certification requirements of related documents dealing with education, training, professional registration, or experience.
- 3.6.1.4 Performed work requiring certification at a job site without having proof of certification.
- 3.6.1.5 Permitted the duplication or use of the individual's own certificate by another.
- 3.6.1.6 Performed work for which appropriate certification has not been received.
- 3.6.1.7 Failed to comply with the appropriate work practice standards for lead-based paint activities in Section 4.0.
- 3.6.1.8 Failed to comply with Federal, State or local lead-based paint statutes or regulations.

3.6.2 In addition to an administrative or judicial finding or violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

3.7 Suspension, revocation, and modification of certification of firms engaged in lead-based paint activities.

3.7.1 The Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

- 3.7.1.1 Performed work requiring certification at a job site with individuals who are not certified.
- 3.7.1.2 Failed to comply with the work practice standards established in Section 4.0.
- 3.7.1.3 Misrepresented facts in its letter of application or certification.
- 3.7.1.4 Failed to maintain required records.
- 3.7.1.5 Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

3.7.2 In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

3.8 Procedures for suspension, revocation, or modification of the certification of individuals or firms.

3.8.1 Prior to taking action to suspend, revoke, or modify the certification of any individual or firm, the Secretary shall notify the affected entity in writing of the following:

- 3.8.1.1 The legal and factual basis for the suspension, revocation, or modification.
- 3.8.1.2 The anticipated commencement date and duration of the suspension, revocation or modification.
- 3.8.1.3 Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.
- 3.8.1.4 The opportunity and method for requesting a hearing prior to final action to suspend, revoke, or modify certification.
- 3.8.1.5 Any additional information which the Secretary may provide.

3.8.2 If a hearing is requested by the certified individual or firm, the Secretary shall:

- 3.8.2.1 Provide the affected entity an opportunity to offer written statements in response to the Secretary's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.
 - 3.8.2.2 Provide the affected entity such other procedural opportunities as the Secretary may deem appropriate to ensure a fair and impartial hearing.
 - 3.8.2.3 Appoint an official Hearing Officer. No person shall serve as Hearing Officer if he or she has had any prior involvement with the specific matter.
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- 3.8.3 The Hearing Officer appointed pursuant to paragraph 3.8.2 shall:
- 3.8.3.1 Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
- 3.8.3.2 Consider all relevant evidence, explanation, comment, and argument submitted.
- 3.8.3.3 Notify the Secretary in writing within 90 days of completion of the hearing of his or her decision. The Secretary shall either accept or reject the decision. If accepted, the Secretary shall issue a final order. Such an order is a final agency action, which may be subject to judicial review.
- 3.8.4 If the Secretary determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:
- 3.8.4.1 Notify the affected entity of its intent to immediately suspend certification for the reasons listed in ~~3.8.4~~ 3.6.1 or 3.7.1. If a suspension, revocation, or modification notice has not previously been issued pursuant to 3.8.1, it shall be issued at the same time the immediate suspension notice is issued.
- 3.8.4.2 Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's certification before an ~~opinion~~ opportunity or a hearing to suspend, revoke, or modify the individual's or firm's certification.
- 3.8.4.3 Notify the affected entity of the commencement date and duration of the immediate suspension notice is issued.
- 3.8.4.4 Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
- 3.8.5 Any notice, decision, or order issued by the Secretary under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section shall be available to the public. Any such hearing at which oral testimony is presented shall be open to the public, except that the Hearing Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment.

4.0 Work Practice Standards For Conducting Lead-based Paint Activities: target housing and child-occupied facilities.

- 4.1 Effective date, applicability, and terms.
- 4.1.1 Beginning on ~~March 1, 1999~~ January 5, 2001, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.
- 4.1.2 When performing any lead-based paint activity described by a certified abatement firm or a certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.
- 4.1.3 Documented methodologies that are appropriate for this section are found in the following: The U. S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing; the EPA Guidance on Residential Lead-based Paint, Lead Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 747-R-95-001); 40 CFR Part 745 subpart D - Lead Based Paint Hazards; and other methods and guidelines deemed equivalent by EPA or HUD.
- 4.1.4 Determinations.
- 4.1.4.1 Lead-based paint is present:
- 4.1.4.1.1 On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and
- 4.1.4.1.2 On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.
- 4.1.4.2 A paint-lead hazard is present:
- 4.1.4.2.1 On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) is equal to or greater than the dust hazard levels identified in 4.2.
- 4.1.4.2.2 On any chewable lead-based paint surface on which there is evidence of teeth marks;
- 4.1.4.2.3 Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob

that knocks into a wall or a door that knocks against its door frame; and

4.1.4.2.4 If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

4.1.4.3 A dust-lead hazard is present in a residential dwelling or child occupied facility:

4.1.4.3.1 In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 $\mu\text{g}/\text{ft}^2$ for floors and 250 $\mu\text{g}/\text{ft}^2$ for interior window sills, respectively;

4.1.4.3.2 On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

4.1.4.3.3 On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

4.1.4.4 A soil-lead hazard is present:

4.1.4.4.1 In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

4.1.4.4.2 In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

4.1.5 Record keeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services

4.1.46 Clearance levels that are appropriate for the purposes of this section may be found listed in 4.5.8.8; in the EPA Guidance on Residential Lead-based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other methods and guidelines deemed equivalent by the EPA or HUD.

4.2 Inspection.

4.2.1 An inspection shall be conducted only by a person certified by the Secretary as an Inspector or Risk Assessor and, if conducted, must be conducted according to the procedures in this section.

4.2.2 When conducting an inspection, the following locations shall be selected according to documented methodologies listed in 4.1 and tested for the presence of lead-based paint:

4.2.2.1 In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the Inspector or Risk Assessor determines to have been replaced after 1978, or not to contain lead-based paint; and

4.2.2.2 In a multi-family dwelling and in a child-occupied facility each component, in addition to the requirements of 4.2.1, every common area with a distinct painting history, except those components that the Inspector or Risk Assessor determines to have been replaced after 1978, or to not contain lead-based paint.

4.2.3 Paint shall be sampled in the following manner:

4.2.3.1 The analysis of paint to determine the presence of lead shall be conducted using documented methodologies listed in 4.1 which incorporate adequate quality control procedures; and/or

4.2.3.2 All collected paint chip samples shall be analyzed according to 4.6, to determine if they contain detectable levels of lead that can be quantified numerically.

4.2.4 The certified Inspector or Risk Assessor shall prepare an inspection report which shall include the following information:

4.2.4.1 Date of each inspection.

4.2.4.2 Address of building.

4.2.4.3 Date of construction.

4.2.4.4 Apartment numbers (if applicable).

4.2.4.5 Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

- 4.2.4.6 Name, signature, and certification number of each certified Inspector and/or Risk Assessor conducting testing.
- 4.2.4.7 Name, address and telephone number of the certified abatement firm employing each Inspector and/or Risk Assessor, if applicable.
- 4.2.4.8 Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.
- 4.2.4.9 Specific locations of each painted component tested for the presence of lead-based paint.
- 4.2.4.10 The results of the inspection expressed in terms appropriate to the sampling method used.
- 4.3 Lead hazard screen.
- 4.3.1 A lead hazard screen shall be conducted only by a person certified by the Secretary as a Risk Assessor.
- 4.3.2 If conducted, a lead hazard screen shall be conducted as follows:
- 4.3.2.1 Background information regarding the physical characteristics of the residential dwelling or a child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.
- 4.3.2.2 A visual inspection of ~~the a~~ residential dwelling ~~that is a child-occupied facility~~ or a child-occupied facility shall be conducted to:
- 4.3.2.2.1 Determine if any deteriorated paint is present, and
- 4.3.2.2.2 Locate at least two dust sampling locations.
- 4.3.2.3 If deteriorated paint is present, each surface with ~~deteriorated~~ paint that is determined to be deteriorated, using documented methodologies listed in 4.1, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.
- 4.3.2.4 In residential dwellings and child-occupied facilities, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age 6 and under, are most likely to come in contact with dust.
- 4.3.2.5 In multi-family dwellings and in child-occupied facilities, in addition to the floor and window samples required in 4.3.2.4, the Risk Assessor shall collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.
- 4.3.3 Dust samples shall be collected and analyzed in the following manner:
- 4.3.3.1 All dust samples shall be taken using documented methodologies listed in 4.1 that incorporate adequate quality control procedures.
- 4.3.3.2 All collected dust samples shall be analyzed according to 4.6 and 4.7 of this section to determine if they contain detectable levels of lead that can be quantified numerically.
- 4.3.4 Paint shall be sampled in the following manner:
- 4.3.4.1 The analysis of paint to determine the presence of lead shall be conducted using documented methodologies listed in 4.1 that incorporate adequate quality control procedures; and/or
- 4.3.4.2 All collected paint chip samples shall be analyzed according to 4.6 of this section to determine if they contain detectable levels of lead that can be quantified numerically.
- 4.3.5 The Risk Assessor shall prepare a lead hazard screen report, which shall include the following information:
- 4.3.5.1 The information required in a risk assessment report as specified in 4.4, including 4.4.11.1 through 4.4.11.14, and excluding 4.4.11.15 through 4.4.11.18. Additionally, any background information collected pursuant to 4.3.2.1 shall be included in the risk assessment report; and
- 4.3.5.2 Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.
- 4.4 Risk assessment.
- 4.4.1 A risk assessment shall be conducted only by a person certified by the Secretary as a Risk Assessor and, if conducted, must be conducted according to the procedures in this paragraph.
- 4.4.2 A visual inspection of risk assessment of the residential dwelling or a child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

4.4.3 Background information regarding the physical characteristics of the residential dwelling or the child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

4.4.4 ~~Each surface with deteriorated paint, that is determined, using documented methodologies listed in 4.1, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using documented methodologies listed in 4.1, to be a potential lead-based paint hazard and having a distinct painting history, shall also be tested for the presence of lead. The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:~~

4.4.4.1 Each friction surface or impact surface with visibly deteriorated paint and

4.4.4.2 All other surfaces with visibly deteriorated paint.

4.4.5 In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sills and floor shall be collected and analyzed in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

4.4.6 For multi-family dwellings and child-occupied facilities, the samples required in 4.4.5 of this section shall be taken. ~~In addition, i.e. interior window sills and floor dust samples (either composite or single-surface samples) shall be collected~~ and analyzed in the following locations:

4.4.6.1 Common areas adjacent to the sampled residential dwelling and child-occupied facility; and

4.4.6.2 Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

4.4.7 For child-occupied facilities, interior window sills and floor dust samples (either composite or single-surface samples) or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the Risk Assessor determines one or more children, age 6 and under, are likely to come into contact with dust.

4.4.8 Soil samples shall be collected and analyzed for lead concentrations in the following locations:

4.4.8.1 Exterior play areas where bare soil is present; and

4.4.8.2 Dripline/foundation areas where bare soil is present.

4.4.8.3 Non-play areas where bare soil is present.

4.4.9 Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies listed in 4.1 and 4.6 that incorporate adequate quality control procedures.

4.4.10 Any collected paint chip, dust or soil samples shall be analyzed according to 4.6 to determine if they contain detectable levels of lead that can be quantified numerically.

4.4.11 The certified Risk Assessor shall prepare a risk assessment report which shall include the following information:

4.4.11.1 Date of assessment.

4.4.11.2 Address of each building.

4.4.11.3 Date of construction of each building.

4.4.11.4 Apartment number (if applicable).

4.4.11.5 Name, address, and telephone number of each owner of each building.

4.4.11.6 Name, signature, and certification of the certified Risk Assessor

conducting the assessment.

4.4.11.7 Name, address, and telephone number of the certified abatement firm employing each certified risk assessor, if applicable.

4.4.11.8 Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples, if applicable.

4.4.11.9 Results of the visual inspection.

4.4.11.10 Testing method and sampling procedure for paint analysis employed.

4.4.11.11 Specific locations of each painted component tested for the presence of

lead.

4.4.11.12 All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

4.4.11.13 All results of laboratory analysis on collected paint, soil, and dust samples.

4.4.11.14 Any other sampling results.

4.4.11.15 Any background information collected pursuant to 4.4.3 of this section.

4.4.11.16 To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

4.4.11.17 A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

4.4.11.18 A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

4.5 Abatement.

4.5.1 An abatement shall be conducted only by a certified individual and if conducted, shall be conducted according to the procedures in these regulations.

4.5.2 A certified Supervisor is required for each abatement project and shall be on site during all abatement work.

4.5.3 The certified Supervisor and the certified abatement firm employing that supervisor, if any, shall ensure that all abatement activities are conducted according to the requirements of these regulations and all other Federal, State and local requirements.

4.5.4 Written notification of the commencement of lead-based paint abatement activities in a residential dwelling or as a result of a Federal, State, or local order shall be given to the Secretary five (5) government working days prior to the commencement of abatement activities.

4.5.4.1 Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, ~~Tribal~~ or local emergency abatement order should be received by the Secretary as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the Secretary change, an updated notification must be received by the Secretary on or before the start date provided to the Secretary. Documentation showing evidence of an EBL determination or a copy of the Federal/State/~~Tribal~~ local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.

4.5.4.2 Except as provided in section 4.5.4, updated notification must be provided the Secretary for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

4.5.4.2.1 For lead-based paint abatement activities beginning prior to the start date provided to the Secretary an updated notification must be received by the Secretary at least 5 business days before the new start date included in the notification.

4.5.4.2.2 For lead-based paint abatement activities beginning after the start date provided to the Secretary an updated notification must be received by the Secretary on or before the start date provided to the Secretary.

4.5.4.3 Except as provided in section 4.5.4, updated notification must be provided to the Secretary for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the Secretary.

4.5.4.4 Updated notification must be provided to the Secretary when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Secretary on or before the start date provided to the Secretary, or if work has already begun, within 24 hours of the change.

4.5.4.5 The following must be included in each notification:

4.5.4.5.1 Notification type (original, updated, cancellation).

4.5.4.5.2 Date when lead-based paint abatement activities will start.

4.5.4.5.3 Date when lead-based paint abatement activities will end

(approximation using best professional judgement).

- 4.5.4.5.4 Firm's name, State certification number, address, telephone number.
- 4.5.4.5.5 Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.
- 4.5.4.5.6 Property name (if applicable).
- 4.5.4.5.7 Property address including apartment or unit number(s) (if applicable) for abatement work.
- 4.5.4.5.8 Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in section 4.5.4.
- 4.5.4.5.9 Name and State certification number of the project supervisor.
- 4.5.4.5.10 Approximate square footage/acreage to be abated.
- 4.5.4.5.11 Brief description of abatement activities to be performed.
- 4.5.4.5.12 Name, title, and signature of the representative of the certified firm who prepared the notification.

4.5.4.6 Notification must be accomplished using any of the following methods: Written notification can be accomplished using either the sample form titled "Notification of Lead-Based Paint Abatement Activities" or similar form containing the information required in paragraph 4.5.4.5. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the Secretary receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

4.5.4.7 Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.

4.5.4.8 No firm or individual shall engage in lead-based paint abatement activities, as defined in section 1.4, prior to notifying the Secretary of such activities according to the requirements of this paragraph.

4.5.5 A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

4.5.5.1 The occupant protection plan shall be unique to each residential dwelling or a or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

4.5.5.2 A certified Supervisor or Project Designer shall prepare the occupant protection plan.

4.5.6 The work practices listed below shall be restricted during an abatement as follows:

4.5.6.1 Open-flame burning or torching of lead-based paint is prohibited;

4.5.6.2 Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

4.5.6.3 Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots total no more than 2 square feet in any one room, hallway or stairwell or total no more than 20 square feet on exterior surfaces; and,

4.5.6.4 Operating a heat gun on lead-based paint is permitted only at temperatures below 1,100 degrees Fahrenheit.

4.5.7 If conducted, soil abatement shall be conducted in one of the following ways:

4.5.7.1 If soil is removed, the lead-contaminated soil shall be replaced with soil ~~that is not lead-contaminated;~~ or with a lead concentration as close to local background as practical but no >400 PPM.

4.5.7.2 If soil is not removed, the lead-contaminated soil shall be permanently covered, as defined in "Permanently covered soil".

4.5.7.3 Lead contaminated soil that is removed should not be used as top soil at other residential property or child-occupied facility.

4.5.8 The following post-abatement clearance procedures shall be performed only by a certified Inspector or Risk Assessor:

4.5.8.1 Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and visible amounts of dust, debris or residue are present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present these conditions must be eliminated prior to the continuation of the clearance procedures.

4.5.8.2 Following the visual inspection and any post-abatement cleanup required by 4.5.8.1, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

4.5.8.3 Dust samples for clearance purposes shall be taken using documented methodologies listed in 4.1 that incorporate adequate quality control procedures.

4.5.8.4 Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

4.5.8.5 The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to a residential dwelling or a child-occupied facility ~~or a child-occupied facility~~;

4.5.8.5.1 After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and window trough (if available) and one dust sample shall be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

4.5.8.5.2 After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways or stairwells in the residential dwelling or a child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if available) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

4.5.8.5.3 Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.

4.5.8.6 The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies listed in 4.1.

4.5.8.7 The certified Inspector or Risk Assessor shall compare the residual lead levels (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in 4.5.8.8 of this section for lead in dust on floors, interior window sills and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, and interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead levels in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be re-cleaned and retested ~~until~~ clearance levels are met.

4.5.8.8 The clearance levels for lead in dust are 40 µg/ft² for floors, 250 µg/ft² for interior window sills, and 400 µg/ft² for window troughs.

4.5.9 In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

4.5.9.1 The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

4.5.9.2 A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

4.5.9.3 The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in 4.5.8.

4.5.10 An abatement report shall be prepared and signed by a certified supervisor or project designer. The abatement report shall include the following information:

4.5.10.1 Start and completion dates of abatement.

4.5.10.2 The names and address of each certified abatement firm conducting the abatement and the name of each Supervisor assigned to the abatement project.

4.5.10.3 The occupant protection plan prepared pursuant to 4.5.5.

4.5.10.4 The name, address, and signature of each certified Risk Assessor or Inspector conducting a clearance sampling and the date of clearance testing.

4.5.10.5 The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.

4.5.10.6 A detailed written report describing the abatement, including abatement methods used, locations of rooms and components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures. The report shall also detail any deviations, changes or abnormalities from the original scope of work.

4.6 Collection and laboratory analysis of samples.

4.6.1 Any paint, chip, dust or soil samples collected pursuant to the work practice standards contained in this section shall be:

4.6.1.1 Collected by persons certified as an inspector or risk assessor; and,

4.6.1.2 Analyzed by a recognized laboratory that is accredited and proficient to perform analyses for lead compounds in paint chip, dust, and soil samples.

4.7 Composite dust sampling.

4.7.1 Composite dust sampling may only be conducted in the situations specified in sections 4.3 through 4.5. If such sampling is conducted, the following conditions shall apply:

4.7.1.1 Composite dust samples shall consist of at least two sub-samples;

4.7.1.2 Every component that is being tested shall be included in the sampling; and

4.7.1.3 Composite dust samples shall not consist of sub-samples from more than one type of component.

4.8 Record keeping.

4.8.1 All reports or plans required in this section shall be maintained by the certified individual and firm, if any, who prepared the report for no fewer than 3 years and six months. The certified individual or firm also shall provide a copy of these reports to the building owner who contracted for its services.

4.9 Inspections.

4.9.1 The Secretary ~~may~~ shall have the authority to enter premises or facilities where those engaged in training for lead based paint activities conduct business to execute reasonable inspections ~~of work sites~~ to ensure compliance with these regulations.

4.10 Reporting.

4.10.1 All reports or plans required in this section may become subject to quarterly reporting requirements as deemed necessary and appropriate by the Secretary after lawful notification.

5.0 Certification, Fees And Reciprocity

5.1 Certification of Occupations and Accreditation of Other Training Programs

5.1.1 Lead-based paint activities as defined by these regulations shall only be conducted according to the procedures and work practice standards contained in these regulations.

5.1.2 No individual or firm shall make offer to perform or perform any lead-based paint activity as defined by these regulations unless certified to perform that activity according to the procedures.

5.2 Fees

5.2.1 Fees shall be remitted by certified check or money order and made payable to the Division of Public Health. Fees are not refundable.

5.2.2 The fee for an initial or a renewal of a certified Abatement Worker shall be \$25.00.

5.2.3 The fee for an initial or a renewal of a Certified Abatement Firm, Contractor, Supervisor, Project Designer, Lead Inspector and Risk Assessor shall be \$50.00.

5.2.4 The fee for an initial or a renewal of a accredited training program shall be \$200.00 for each type of course for which training will be provided.

5.2.5 Applicants who submit a dishonored check will be charged a service fee in addition to the required application fee that is in accordance with department policy.

5.3 Reciprocity

5.3.1 The Secretary may enter into reciprocal agreements with other states and jurisdictions that have ~~established accreditation and certification requirements similar to those set forth in these regulations~~ been authorized by the EPA.

6.0 Compliance And Enforcement Procedures

6.1 General

6.1.1 The failure or refusal to comply with any requirement of these regulations is a prohibited act.

6.1.2 The failure or refusal to establish, maintain, provide copy or permit access to records or reports as required in these regulations is a prohibited act.

6.1.3 The failure or refusal to permit entry or inspection as required by these regulations is a prohibited act.

6.1.4 In addition to the above, any individual or certified abatement firm that performs any of the following acts shall be deemed to have committed a prohibited act. These include but are limited to the following:

6.1.4.1 Obtaining certification through fraudulent representation.

6.1.4.2 Failing to obtain certification from the Secretary and performing work at a job site.

6.1.4.3 Fraudulently obtaining certification and engaging in any lead based paint activity requiring certification.

6.1.4.4 The State will fund at least one Environmental Health Specialist I to conduct compliance and enforcement procedures.

6.2 Penalty

6.2.1 Violators are subject to sanctions pursuant to 16 **Del.C.** 107 for each violation of the requirements established in these regulations.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver Application

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance submitted an Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services (HCBS) Waiver application to the Centers for Medicare and Medicaid Services (CMS). 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 October 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal**Statutory Authority**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in accordance with §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

Summary of Proposal

This waiver will provide services for individuals aged 18 and above who have sustained an acquired brain injury (ABI) and who would otherwise require care in a nursing facility.

The goal of the waiver is to provide services to persons with ABI in a manner which responds to each consumer's abilities, assessed needs, and preferences, and which ensures maximum consumer self-sufficiency, independent functioning, and safety. This goal will be accomplished through the delivery of a range of home and community-based long-term cares services.

Services to be provided through the waiver include:

- Case Management
- Personal Care
- Adult Day Services
- Respite
- Cognitive Services
- Day Habilitation
- Personal Emergency Response System
- Assisted Living

The waiver will be administered by the Division of Medicaid and Medical Assistance (DMMA), the State Medicaid agency, and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The waiver period is December 1, 2007 through November 30, 2010.

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

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. DMMA has considered each comment and responds as follows.

As background, SCPD has been very involved in development of an ABI waiver. In the past, DHSS had secured CMS approval of an ABI waiver which it later abandoned based on an inability to secure providers. DHSS then attempted to have existing waivers amended to address the specific needs of persons with ABI. This initiative was abandoned in the Spring based on CMS lack of receptivity. Since then, DHSS has worked on development of a new ABI waiver. The SCPD has offered technical assistance to support renewed development of the waiver which will be effective December 1, 2007. The Councils have the following observations.

First, the overall program is "provider-based" and adopts a commercial-provider services model. Unlike the attendant services program, participant direction of services is not an option. [Application: 5; Appendix E-1:1] Since the services are more varied than attendant services, there may be some justification for adopting this

approach in the initial 3-year waiver period.

Agency Response: Yes, because of the more varied service complement under the ABI Waiver, it was decided that the provider model would be used for the initial 3-year period.

Second, some positive aspects of the waiver include consumer choice of providers [Application: 8; Appendix B-7:1] and an individual service plan which covers wrap-around services, not simply those under the waiver program [Application: 7; Appendix D-1:4].

Agency Response: Comment noted.

Third, there is an MOU between DSAAPD and DMMA, signed in July of 2007, which describes agency collaboration in implementing the waiver. [Appendix A: 1; Appendix H: 3]. SCPD and GACEC respectfully request a copy of the MOU.

Agency Response: Both Councils will be provided with a copy of the MOU.

Fourth, the quality assurance system is relatively strong in the context of number of cases reviewed. A DSAAPD nurse will review 100% of initial case plans. [Appendix A: 4; Appendix D-1:7]. DMMA will conduct retrospective review of 25% of ABI care plans. [Appendix A: 2; Appendix D-1:7]. The latter review will be a "desk audit to ensure completion in accordance with all applicable ABI policies and procedures." Nurses will meet participants and review records of participants in AL facilities 3-4 times/year. [Appendix G-3:2] The weakness with this system is its lack of consumer surveys akin to the attendant services program. Reviewing paperwork will not result in identification of some deficiencies and diminishes the importance of consumer views of the responsiveness of the program to their needs.

Agency Response: The process described above is only one aspect of the comprehensive quality assurance system built into this waiver program. Case managers, who will have monthly, in-person contact with participants, will play a primary role in identifying deficiencies and discussing participant needs on an ongoing basis. Case managers will communicate these issues to DSAAPD through quarterly reports.

Fifth, although there is a minimum age limit (age 18), there is no maximum age limit. [Appendix B-1:1. The Councils endorse this provision since many of the individuals in the [Elderly & Disabled] E&D waiver will be elderly.

Agency Response: Thank you for the endorsement.

Sixth, there is a problematic statement at Appendix B-1:2. DMMA recites as follows:

The ABI Care Plan for participants in the waiver must demonstrate that the ABI waiver participant would benefit from ABI case management and at least one other ABI waiver services...that are not available in another waiver.

[emphasis supplied]. This may be an unnecessary restriction. It means that a person living outside an assisted living setting who seeks only personal care, respite, and a personal emergency response system would not qualify for the ABI waiver.

Agency Response: It is correct that the person described in your example would not qualify for the ABI Waiver. Because of the limited number of slots available, this waiver is designed to serve persons who would most benefit from its additional supports. The person described in your example would be encouraged to apply for services under the Elderly and Disabled (E & D) Waiver.

Seventh, apart from the requirement that a waiver participant meet a nursing level of care [Application: 2; Appendix B-6:2], DMMA imposes a severity test. A participant must "have a rating of at least 5 but not greater than 8 on the Rancho Los Amigos Level of Cognitive Functioning Scale. Attached is a copy of the Scale. One could argue that a person at Level IX could still benefit from waiver services.

Agency Response: Again, because of the limited space available in the waiver program, decisions were made to target those persons who could most benefit from the services provided.

Eighth, an aggregate rather than an individual cost cap is used in this waiver. [Appendix B-2:1; Appendix C-4:1]. The Councils endorse this provision.

Agency Response: Thank you for the endorsement.

Ninth, in the first year, up to 50 individuals may participate in the waiver. This would increase to 60 individuals in Year 2 and to 70 individuals in Year 3. [Appendix B-3:1] There is no prioritization based on current institutionalization, applicants in crisis, or geographical location. [Appendix B-3:2] If the waiver reaches capacity (50 persons in Year 1), a waiting list would be developed. First priority for the waiting list would be given to E&D and AL waiver participants. Second priority for the waiting list would be given to non-participants in the E&D and AL waivers. There is obviously a "cost" aspect to this prioritization since the State will spend less by transferring persons in an existing waiver to a new waiver. However, DHSS could consider whether some variation of this prioritization would be preferable. For example, if an individual with TBI is homeless and "in crisis", it may make sense to prioritize such an individual over someone receiving supports under an existing waiver. Alternatively, this population could be identified as a priority under the "second priority" criteria which is provided to non-participants in the E&D and AL waivers.

Agency Response: Given the fact that the demand for the waiver program is expected to exceed available slots, decisions were made with respect to service priority. It was decided to give preference to those persons on existing waivers who have been awaiting the ABI services. The ABI waiver is a long-term care program and is not designed for crisis alleviation. It is expected that, in such cases, efforts will be made to find appropriate placement for persons with immediate need for services.

Tenth, financial eligibility is limited to individuals with countable income under 250% of the federal benefit rate (FBR). [Appendix B-4:2] Consistent with the attachment, the FBR for an individual in 2007 is \$623 and 250% of the FBR would be \$1,557.50. The Councils recommend that DMMA adopt a 300% of FBR standard which would equate to \$1,869/month in countable income.

Agency Response: The income limit will stand at 250% of FBR.

Eleventh, DMMA requires a participant to require at least 1 waiver service apart from case management on a monthly basis. DMMA did not adopt the option of "monthly monitoring of the individual when services are furnished on a less than monthly basis". The problem with this approach has been debated in the context of the DD waiver. Under that waiver, individuals who are very elderly (80), recovering post-hospitalization, or diagnosed with cancer with 4 months to live still must attend a day program or lose waiver eligibility. If an ABI waiver participant cannot attend Enhanced Level II day services or day habilitation due to illness or other cause, DMMA unnecessarily restricts its discretion to maintain the person's waiver eligibility.

Agency Response: Persons who do not meet the criteria for the ABI Waiver may be provided with services under another funding source, such as the Elderly & Disabled Waiver or the Assisted Living Waiver.

Twelfth, the menu of services is as follows: 1) case management; 2) personal care; 3) adult day health; 4) day habilitation; 5) respite; 6) day treatment (cognitive treatment); 7) personal emergency response system; and 8) assisted living. [Appendix C-1:1] The scope of some of these services is not intuitive. For example, the waiver does not cover room and board for assisted living. [Appendix C-2:3] Rather, it covers only the cost (approximately \$37.17 to 64.76 daily) of some enhanced services. [Appendix I-2:1; Appendix J-2:2; Appendix J-2:7] As a practical matter, this may exclude participation in the waiver by many assisted living residents. Query how many individuals will be financially able to pay approximately \$36,000 for assisted living base costs when they can only have countable income of 250% of the FBL (\$1,557.50)? Moreover, many AL facilities already provide the contemplated enhanced services, including "prompting". [Appendix C-3:3]. See, e.g., attached rate levels for sample AL facility (Somerset). Forty percent (40%) of waiver participants are expected to receive AL services. [Appendix J-2: 2] DMMA suggests that State funds might be used for room and board, but it is unclear if such funds are included in the DHSS budget. [Appendix I-5:1]

Agency Response: First, room and board costs in assisted living cannot be paid for under a waiver program. Because of income restrictions for eligibility in a waiver program, participants are not expected to have incomes sufficient to cover these costs. Most participants in a waiver program are also eligible for SSI and/or the SSI State Supplement, which are used to pay for room and board. With regard to additional costs for providing "prompting" and other services, this enhanced rate is available because of the increased staff attention needed by some persons with acquired brain injuries.

Thirteenth, DMMA had the option of allowing relatives to provide waiver services. However, it did not exercise this option for any service. [Appendix C-2:4; Appendix C-3:3; Appendix C-3:7; Appendix C-3: 11;

Appendix C-3:13; and Appendix C-3:15]. This is objectionable. At least in the contexts of respite and personal care services, relatives should be authorized providers. Compare attached DDDS respite policy, which recites as follows:

- O. Natural families may identify a family member or other individual (at least 18 years of age) whom they feel is appropriate to provide private respite for their family member. It shall be the responsibility of the family to insure that the said private provider is competent to provide adequate support to ensure the individual's health and safety.

Moreover, DHSS recently amended its attendant services program policy to authorize payment of relatives. See attached email which resulted in policy change during summer.

Agency Response: As noted in the response to comment #1, the decision was made for the initial 3-year period of this waiver to operate the program using a provider model. It is recognized, however, that consumer direction, including the use of family members to provide care, has clearly demonstrated merit as a service delivery model.

Fourteenth, case management can only be provided by an RN or LCSW. [Appendix C-3:1] This should enhance the quality of services plans. Many organizations use case managers with only a bachelor's degree.

Agency Response: These credentials are important because of the complex nature of the issues and service needs of the ABI population.

Fifteenth, the waiver includes utilization limits. Some of these limits are odd. For example, the limit for both adult day services and day habilitation is 4 days per week. [Appendix C-3:5; Appendix C-3:7] It is inferable that most individuals attending day programs attend 5 days/week. Exceptions are allowed based on case manager requests. Id. In this sense, the limits are more akin to "guidelines". However, it would make sense to establish a guideline of participation in day services and day habilitation of 5 days/week. In the context of "cognitive services" [Appendix C-3:9], DMMA may similarly wish to upgrade the 20 visits/year limit. This equates to only 1.66 counseling visits per month. Other questionable limits apply to personal care services (14 hours/week)[Appendix C-3:11]; and respite (80 hours/year)[Appendix C-3:13]. Parenthetically, the limits may have been set somewhat low to reduce projected costs.

Agency Response: These limits were based on an analysis of utilization patterns of participants in existing waiver programs. The limits were also established to maintain costs based on the need for cost neutrality and on the availability of State funds in support of the program.

Sixteenth, DMMA recites that the aggregate cost cap is based on "both waiver services and other services." [Appendix C-4:1]. This may not be 100% accurate. Services which are "private pay" or derived from non-Medicaid sources should not be included in the aggregate cap. The expected per participant cost in Year 1 is expected to be \$6,901. [Appendix C-4:2]

Agency Response: In this context, "other services" refers to services paid for under the Medicaid State Plan.

Seventeenth, DMMA limits case management to agencies which do not provide services under the individual client plan. [Appendix D-1:1] This reduces the prospects for conflicts of interest in which the case manager "loads up" the plan with its own services. On the other hand, it limits the potential role of a TBI specialty provider which could otherwise offer both an LCSW case manager and counselor.

Agency Response: This limitation was established to reduce the possibility of conflict of interest among case management providers.

Eighteenth, the ABI care plan must include back-up plans in the event the regular provider becomes unavailable. [Appendix D-1:6]. The Councils endorse this provision.

Agency Response: Thank you for the endorsement.

Nineteenth, case managers must meet "in-person" with participants at least monthly. [Appendix D-2:1; Appendix D-2:2] The Councils endorse this provision, but also recommends that meetings be at the location where

services are being provided.

Agency Response: Case managers will have the discretion to meet at locations which are agreed upon by both the participant and the case manager.

Twentieth, DSAAPD will refer persons who request a fair hearing to the Community Legal Aid Society, Inc. for assistance. [Appendix F=1:1] The Councils endorse this provision.

Agency Response: Thank you for the endorsement.

Twenty-first, the use of seclusion or restraint is expressly prohibited. [Appendix G-2:1] The Councils endorse this provision.

Agency Response: Thank you for the endorsement.

Twenty-second, DMMA incorrectly recites that administration of medication is limited to medical personnel or personnel who have completed Board of Nursing training. [Appendix G-3:3]. This ignores a participant's right to self-administer medications; the participant's right to delegate administration to others consistent with Title 24 **Del.C.** §1921(a)19); and the right of relatives, friends, housekeepers, and servants to administer medications consistent within Title 24 **Del.C.** §1921(a)(4). See also Title 24 **Del.C.** §1921(a)(18)[Nurse Practice Act not applicable to attendants acting pursuant to Attendant Services Act].

Agency Response: You are correct that there are exceptions to the Nurse Practice Act which allow non-medical personnel to administer medications. The response provided in this section of the application refers to the requirements under the Act as they apply to providers of services available through the waiver.

Twenty-third, estimated costs of the waiver services are compiled at Appendix I-2 and Appendix J-2. Reimbursement rates for some services are actually somewhat high, i.e., respite is \$26.68/hour and personal care is 30.32/hour. This may be a function of the commercial provider bias inherent in the waiver. Note that rate increases may be deferred if State appropriations are insufficient. [Appendix I-2:1]

Agency Response: Cost estimates were based on reimbursement levels in existing waiver programs along with projected costs for providing comparable services to the ABI population.

Twenty-fourth, DMMA recites that the "State does not make supplemental or enhanced payments for waiver services." [Appendix I-3:2] This appears inconsistent with references to payments for supplemental services or additional reimbursement throughout the application. [Appendix C-3:3; Appendix C-3:5]

Agency Response: It appears that there is some confusion surrounding the terms "supplemental" and "enhanced." In Appendix I, it is correctly stated that Delaware will not make supplemental or enhanced payments. This means, essentially, that the State will not pay additional amounts above the agreed-upon rates. (An example of such a payment is a performance incentive.) Some of the services, such as assisted living, have built-in "enhanced" (or Level 2) rates, meaning that there is an agreed-upon higher level of reimbursement for this level of service. This is a fixed rate, not an add-on as defined in Appendix I.

Finally, the Division anticipates negligible turnover in waiver participants. This is ostensibly a realistic prediction. [Appendix J-2: 1]

Agency Response: Comment noted.

Findings of Fact

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation related to the Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver application is adopted and shall be final effective December 10, 2007.

Vincent P. Meconi, Secretary, DHSS, November 14, 2007

An authenticated PDF version of the Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver Application is available here:

<http://regulations.delaware.gov/register/december2007/final/waiver.pdf> Waiver

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX Medicaid State Plan Attachment 4.19-D Reimbursement Methodology for Nursing Facilities

Nature of the Proceedings

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities. 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 October 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendment

Statutory Authority

- 42 CFR Part 447, Subpart B – *Payment Methods- General Provisions*;
- 42 CFR Part 447, Subpart C – *Payment for Inpatient Hospital and Long-Term Care Facility Services*; and,
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*.

Summary of Proposed State Plan Amendment

The purpose of this amendment is to update the Prospective Reimbursement System for Long Term Care Facilities to be consistent with the policies of the Division of Medicaid and Medical Assistance (DMMA). DMMA is not changing existing policies or procedures, but clarifying the Medicaid State Plan to reflect current practices, as follows:

- To clarify the designations of Peer Groups consistently throughout Attachment 4.19-D.
- To allow public facilities to be included in Peer Groups A or B at the discretion of the Medicaid Director. This allows a public facility to be established as an individual per diem rate in Peer Groups A or B.
- To clarify existing regulatory language referring to Peer Group C’s rate methodology.
- To provide language explaining the Medicaid Director’s right to waive any provision of Attachment 4.19-D if it is necessary to ensure the health and safety of nursing facility residents.

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

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendation summarized below. DMMA has considered each comment and responds as follows.

First, the Division establishes its discretionary authority for creating rates for public facilities. The regulation

provides DMMA with the option of either: 1) including public facilities with private facilities when compiling cost information to arrive at a base rate; or 2) simply using public facility costs to arrive to at a base rate. At 428-429. This discretion would ostensibly benefit the State which could then adopt the approach most financially beneficial to public facilities. SCPD endorses this discretion.

Agency Response: DMMA thanks you for the endorsement.

Second, the DMMA Director is granted the authority to waive State Plan reimbursement limits “if a circumstance exists that could negatively affect the health, safety and welfare of residents in Delaware if the provision is not waived.” At page 439. This concept is similar to one endorsed by the Council authorizing the State to provide additional reimbursement to pediatric nursing homes to assure that a child’s health status is not jeopardized.” See commentary at 11 DE Reg. 314 (September 1, 2007). My only concern with the proposed language is that it is literally limited to “residents in Delaware”. Sections VII (p. 441) and IX (p. 442) contemplate reimbursement to out-of-state facilities (e.g. Vorhees). To ensure that the DMMA Director’s authority to waive standards could extend to out-of-state facilities, it would be preferable to substitute “facility residents” for “residents in Delaware”. This would achieve consistency with Section IX which grants DMMA the option of providing additional reimbursement to both in-state and out-of-state facilities.

Agency Response: The creation of a “waiver” process to enable DMMA to waive specific provisions of the rate setting process for long term care facilities is intended to allow the Medicaid Director to take into account circumstances where the application of existing reimbursement rules could have an unintended negative impact on the health and safety of Delaware’s Medicaid recipients. Our intent was that the provision applies to Delaware Medicaid recipients, including individuals who are receiving services in other states. We will take your comment under consideration when the State Plan Amendment is submitted to CMS.

Findings of Fact

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities is adopted and shall be final effective December 10, 2007.

Vincent P. Meconi, Secretary, DHSS, November 14, 2007

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 427 (11 DE Reg. 427). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[http://regulations.delaware.gov/register/december2007/final/11 DE Reg 792 12-01-07.htm](http://regulations.delaware.gov/register/december2007/final/11%20DE%20Reg%20792%2012-01-07.htm)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pharmaceutical Services Program – Tamper-Resistant Prescription Pads

Nature of the Proceedings

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance. The Department’s proceedings to amend the Delaware Medical Assistance Program (DMAP) Provider Manuals to bring Medicaid policies into compliance with the new Federal law regarding tamper-resistant prescription pads 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 October 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

Statutory Authority

Public Law 110-28, *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007*, signed into law on May 25, 2007

Background

The federal U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 provides that effective October 1, 2007, federal Medicaid funding shall not be available for any amounts expended for prescription drugs for which the prescription was executed in written and non-electronic form unless the prescription was executed on a tamper-resistant pad.

To be in compliance with the federal mandate, for prescription drug claims with dates of service on or after October 1, 2007, Delaware Medicaid must be in compliance with this section of the Social Security Act by requiring the use of tamper proof prescription pads: §1903(i) – Payment under the preceding provisions of this section shall not be made: “(23) with respect to amounts expended for medical assistance for covered outpatient drugs (as defined in section 1927(k)(2) for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad.”

On August 17, 2007, the Centers for Medicare and Medicaid Services (CMS), issued a letter to State Medicaid Directors with guidance on implementing the new requirement. CMS has outlined three baseline characteristics of tamper-resistant prescription pads, but each State will define which features it will require to meet those characteristics in order to be considered tamper-resistant. The baseline characteristics are one or more industry-recognized features that: (1) prevent unauthorized copying of a completed or blank prescription form; (2) prevent the erasure or modification of information written on the prescription by the prescriber; (3) and prevent the use of counterfeit prescription forms. On October 1, 2007, States must require at least one of these baseline requirements. Then, no later than October 1, 2008, States must require all three characteristics on prescription pads in order to be considered tamper-resistant.

The letter to State Medicaid Directors outlines situations where the new requirement does and does not apply. The requirement does not apply: when the prescription is electronic, faxed, or verbal; when a managed care entity pays for the prescription; or in most situations when drugs are provided in certain institutional and clinical facilities. The letter also allows emergency fills as long as a prescriber provides a verbal, faxed, electronic, or compliant prescription within 72 hours. This restriction applies to all outpatient drugs, including over-the-counter drugs in States that reimburse for prescriptions for such items.

Summary of Proposed Regulation

The Delaware Medical Assistance Program (DMAP) provider policies are revised to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 requiring prescriptions in written form to be executed on tamper-resistant prescription pads in order to qualify for reimbursement by the DMAP. Currently, there is no rule in place to require that written prescriptions be printed on certain types of paper, which cannot be copied. The requirement does not apply to prescriptions transmitted by telephone, facsimile, or electronic prescribing.

A. Beginning October 1, 2007, DMAP will require that a tamper-resistant prescription pad must contain at least one of the following three CMS defined characteristics:

1. One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
2. One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber;

3. One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

B. Appropriate DMAP Provider Manuals will be updated to provide additional detail including examples of features, which comply with the above requirements.

Delaware Medical Assistance Program (DMAP) provider manuals and official notices are available for downloading from the DMAP website: www.dmap.state.de.us or EDS Pharmacy Services may be contacted at (800) 999-3371- Select #0, then #1.

This proposed regulation was also published concurrently under "Emergency Regulations".

Summary of Comments Received with Agency Response

No public comments were received.

Findings of Fact

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding tamper-resistant prescription pads is adopted and shall be final effective December 10, 2007.

Vincent P. Meconi, Secretary, DHSS, November 14, 2007

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 425 (11 DE Reg. 425). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[http://regulations.delaware.gov/register/december2007/final/11 DE Reg 793 12-01-07.htm](http://regulations.delaware.gov/register/december2007/final/11%20DE%20Reg%20793%2012-01-07.htm)

DIVISION OF SOCIAL SERVICES

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

ORDER

Food Stamp Program

9006.3 Exceptions From Notice

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding exemptions from adverse action notices. 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 October 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

Statutory Authority

7 CFR 273.13(b), *Exemptions from Notice*

Summary of Proposed Change

DSSM 9006.3, *Exemptions from Notice*: The policies of the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) states that mail returned as undeliverable for whatever reason requires DSS to send a Request for Contact form to the household to clarify their living arrangement before DSS can close the case for whereabouts unknown. The agency is removing language in the current rule that requires terminating a case without timely notice when the post office returns mail with no forwarding address. This information is incorrect. This rule is also being amended to reflect typographical and rule number corrections.

Summary of Comments Received with Agency Response with Explanation of Change(s)

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Social Services (DSS) has considered your comments and responds as follows.

First, it is difficult to determine the rationale for the revisions. The APA contemplates that agencies will describe the "substance" and "issues" underlying a proposed regulation:

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.

Title 29 **Del.C.** §10115(a)(1).

In contrast, DSS provides no information describing the amendments or rationale for proposal. This undermines the public's ability to comment on the initiative. DSS may wish to prospectively consider including more information about the substance and issues underlying proposed amendments.

Agency Response: Due to a publication error, the text for the "Summary of Proposed Change" was omitted from the Proposed Regulation that appeared in the October 1, 2007 issue of the *Delaware Register*. The correct information was immediately restored on October 2, 2007. DSS regrets this omission and apologizes for the inconvenience this may have caused.

Second, §9006.3 directs that no notice of adverse action be provided to beneficiaries under certain circumstances. DSS proposes to delete the following basis for withholding notice: "DSS mail has been returned by the post office indicating no known forwarding address". The underlying federal regulation [7 C.F.R. 273.13 (attached)] includes the following standard:

- (c) *Optional notice.* The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

The federal Department of Agriculture has provided additional direction through the attached excerpt from a Question and Answer Guidance document on its website. It recites as follows:

Question K-8

Suppose the local office has lost contact with the household. Perhaps the post office returned mail. What should the local office do?

Answer K-8

Until 7 C.F.R. 273.12(c)(3), the Request for Contact, becomes effective, the state agency must issue an

advance or adequate notice of adverse action and terminate the household's participation. However, before doing so, it would be prudent to try to locate the household in another way, since the notice will probably never reach the household.

When 7 C.F.R. 273.12(c)(3) becomes effective, the state agency will have to issue a request for contact and then issue a notice before terminating the household's participation. But again, another attempt, such as a telephone call, would be prudent.

Either way, the state agency has the option of sending an adequate, rather than advance, notice (please see 7 C.F.R. 273.13(c)).

The federal standards ostensibly encourage attempts to notify a household of adverse action and offer DSS the discretion to issue written notice even when prior mail has been returned by the post office with no forwarding address. SCPD endorses the proposed amendment since it favors beneficiaries.

Agency Response: DSS agrees that the agency should attempt to notify a household of pending adverse action when mail has been returned by the post office indicating no forwarding address. For this reason, DSS is removing the sentence in question. DSS is writing operational procedures for staff to follow when mail is returned to the local offices using existing policy under 9085.5 Unclear Information. When information about a change in a household's circumstances is unclear and DSS cannot determine the effect on the household's benefit, DSS will try to clarify the change before taking action to close a case.

Third, DSS proposes to amend a reference in §9006.3(10) to correct a citation by substituting DSSM 7004.1 for DSSM 7000:

Do not provide individual notices of adverse action when:

- (10) Converting a household from cash repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in DSSM ~~7000~~ 7004.1.

Substantively, the concept underlying this provision is unobjectionable since it is based on 7 C.F.R. §273.13(b)(10). Moreover, since there is no discrete §7000 (only a chapter 7000), it makes sense to amend the citation. However, since DSSM 7004.3 addresses failure to comply with a repayment agreement in much more detail than DSSM 7004.1, DSS may wish to consider amending the reference to either refer solely to "DSSM 7004.3" or to both "DSSM 7004.1 and DSSM 7004.3".

Agency Response: DSS will amend the citation from 7004.1 to 7004.3, as recommended, which is the correct citation.

Findings of Fact

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to exceptions from adverse action notices in the Food Stamp Program is adopted and shall be final effective December 10, 2007.

Vincent P. Meconi, Secretary, DHSS, November 14, 2007

DSS FINAL ORDER REGULATION #07-55 REVISIONS:

9006.3 ~~Exceptions~~ Exemptions From Notice

[273.13(b)]

Do not provide individual notices of adverse action when:

- 1) The State initiates a mass change (see DSSM 9086);

2) The Division determines, based on reliable information, that all members of a household have died or that the household has moved from the project area; ~~or DSS mail has been returned by the post office indicating no known forwarding address;~~

3) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the allotment would terminate;

4) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification and the household was so notified at the time of certification;

5) The household jointly applied for TANF/ GA/RCA and food stamp benefits and has been receiving food stamp benefits pending the approval of the TANF/GA/RCA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the TANF\GA grant;

6) A household member is disqualified for intentional Program violation in accordance with DSSM 2023, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in DSSM 2023.

7) DSS has assigned a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the postponed verification and that DSS may act on the verified information without further notice as provided in DSSM 9041.

8) DSS must change the household's benefits back to the original benefit level as required in DSSM 9085.

9) DSS is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from DHSS or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. Residents of group living arrangements applying on their own behalf are still eligible to participate.

10) Converting a household from cash repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in DSSM 7000 ~~[7004.1, 7004.3]~~

11) The household voluntarily requests in writing or in the presence of a case worker, that its participation be terminated. If the household does not provide a written request, send the household a letter confirming the voluntary withdrawal. Written information does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

12) DSS determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. Inform the household of its termination no later than its next scheduled issuance date. Do not delay terminating the household's participation in order to provide advance notice.

If the following conditions are met, dispense with the timely notice requirement in DSSM 9006.2. However, the household must be notified that its benefits will be reduced or terminated no later than the date the household receives, or would have received its allotment:

a) The household reports the information which results in the reduction or termination.

b) The reported information is in writing. Information reported on a TANF monthly report form will satisfy this requirement.

c) Based solely upon the household's written information, DSS can determine the household's allotment or ineligibility.

d) The household retains its right to a fair hearing.

e) The household retains its right to continued benefits by requesting a fair hearing within the time period provided by the notice of adverse action.

f) The Division continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

DIVISION OF SOCIAL SERVICES

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

ORDER

Food Stamp Program

9032.2 Alien Eligibility

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding alien eligibility. 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 October 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

Statutory Authority

7 CFR 273.2(f)(1)(ii), *Mandatory Verification, Alien Eligibility*

Summary of Proposed Change

DSSM 9032.2, *Alien Eligibility*: The deleted paragraph does not belong in this section. The federal regulations do not have this paragraph in this section. For food stamp purposes, citizenship is not verified unless questionable. This language, phrased differently, is actually in another section of policy under DSSM 9033, *Verifications of Questionable Information*.

Summary of Comments Received with Agency Response

No public comments were received.

Findings of Fact

The Department finds that the proposed changes as set forth in the October 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to alien eligibility in the Food Stamp Program is adopted and shall be final effective December 10, 2007.

Vincent P. Meconi, Secretary, DHSS, November 14, 2007

*Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 445 (11 DE Reg. 445). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 799 12-01-07.htm>

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DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741 (18 Del.C. §§314 & 2741)
18 DE Admin. Code 606

ORDER**Docket No. 2007-526****606 Proof of Automobile Insurance [Formerly Regulation 31]**

Proposed amendments to Regulation 606 relating to standardization of insurance identification cards and notification to the Division of Motor Vehicles, of the termination of insurance coverage, were published in the Register of Regulations on October 1, 2007. The comment period remained open until November 5, 2007. There was no public hearing on proposed amendments to Regulation 606. Public notice of the proposed amended Regulation 606 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Public comment was received from numerous sources. Delaware Defensive Driving, Inc. expressed support for the proposed changes. Insurance Services, Inc. suggested replacing the term "personal lines" with the term "private passenger auto". American Insurance Association suggested changes relative to Delaware residents serving out of state in the military. State Farm Mutual Automobile Insurance Company suggested substitute language defining "Final" in determining when cancellation of insurance was to be reported. Property Casualty Insurers Association of America disputed the cutoff of "5 vehicles" in certain policies. Some of the aforementioned organizations and companies as well as Progressive and Allstate Insurance Companies questioned the requirement that identification cards for new policies in effect for six months or less be issued on a monthly basis. The comment redefining "Final" has been accepted and is included in the Final Regulation. The other comments were given careful consideration but are found to run counter to the intent of the proposed Regulation.

Findings of Fact

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

1. It is in the public interest that the Division of Motor Vehicles be promptly informed of motor vehicle insurance policies that have been cancelled.
2. It is in the public interest that policyholders with newly issued policies be issued identification cards reflecting the period for which payment of insurance premiums have been made.
3. It is in the public interest that insurance identification cards continue to be uniform throughout the industry and that they carry a watermark or generic company-specific logo in order to prevent fraud.

Decision and Effective Date

Based on the provisions of 18 Del.C. §§ 311(a) and the record in this docket, I hereby adopt amended Regulation 606 and as may more fully and at large appear in the version attached hereto to be effective on January 1, 2008.

IT IS SO ORDERED this 14th day of November 2007.

Matthew Denn
Insurance Commissioner

606 Proof of Automobile Insurance [Formerly Regulation 31]**1.0 Authority**

1.1 This regulation is adopted under the authority of 18 ~~Del.C. §§314 and 2304~~ 2741; 21 ~~Del.C. §2118~~ as amended by S. B. 212, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 ~~Del.C.~~, Ch.101.

2.0 Background Purpose

~~2.1 In support of the Delaware Motorist Protection Act (No-Fault Law) the Department of Insurance, in coordination with the Division of Motor Vehicles, has been authorized to adopt regulations to remove uninsured drivers from Delaware roads. This regulation is promulgated to carry out the Legislature's direction.~~

2.1 The purpose of this regulation is to

2.1.1 establish requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law;

2.1.2 establish the procedure by which automobile insurers shall notify the Division of Motor Vehicles when automobile insurance coverage is terminated or when insurers pay claims for uninsured motorists; and

2.1.3 provide procedures for the submission of insurance company data to the Division of Motor Vehicles for administrative efficiency.

3.0 Purpose [Reserved] Definitions

"Commercial auto coverage", "commercial vehicle coverage" or "commercial lines policy" is any coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial auto, garage, or truckers coverage form and/or rated from either a commercial manual or rating rule as filed and approved by the Delaware Department of Insurance. Vehicle type and ownership are not necessarily the primary factors in either underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics including but not limited to experience rating, schedule rating, loss rating or deductible rating.

"Fleet" shall mean five or more vehicles under single ownership or lease used for commercial purposes.

"Personal lines auto coverage," "personal lines vehicle coverage" or "personal lines policy" shall apply to any insured or insurance policy that does not fall within commercial lines.

To the extent necessary, the definitions contained in 21 Del.C. § 101 shall apply to all terms not otherwise defined herein.]

~~3.1 The purpose of this regulation is to define for insurers which write auto insurance policies in Delaware the requirements to issue a standardized insurance identification (ID) card for each insured vehicle, to establish the requirement for notification to the Division of Motor Vehicles under certain prescribed conditions when auto insurance coverage is terminated or when insurers pay claims for uninsured motorists and to provide for the submission of computer data to the Division of Motor Vehicles for administrative efficiency.~~

4.0 Insurance Identification Card

4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards. At least one card must be issued for each vehicle for which liability insurance is in effect. ~~21 Del.C. §2118 (n)~~ Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.

4.2 Insurers may use uniform ACORD format or may prepare the ACORD format as described below:

4.2.1 The size, weight, and color of the card shall be as below:

4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"

4.2.1.2 Weight: Optional

4.2.1.3 Color: White

4.2.1.4 ~~After September 1, 1993,~~ Each card shall be printed on paper stock which contains a clearly visible watermark, screened color, reflective ink, or laser-lock which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, ~~Delaware State Seal,~~ or a generic

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insurance-specific logo which clearly identifies the watermark as issued by an insurance company. The ACORD "ghost script" anti-fraud paper with the ACORD watermark shall satisfy the watermark requirement.

4.2.2 The insurance card shall contain the following information:

4.2.2.1 The statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the card.

4.2.2.2 Card shall be identified as "Identification Card."

4.2.2.3 ~~Company Name.~~ The insurer's insurance company name shall be shown printed on the face of the card. ~~Group name may be shown instead if the card will identify the specific company involved. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the insurance.~~

4.2.2.4 Insurer's five digit National Association of Insurance Commissioners ("NAIC") company identification number.

4.2.2.5 Named Insured. This name must be the named insured as carried in the insurer's records.

4.2.2.6 ~~Address. Optional.~~ The insurer may, at its option, include the address of the insured.

4.2.2.7 Policy Number.

4.2.2.8 Effective date **[of the time period the policy shall be in effect.]**

4.2.2.9 Expiration Date. The insurance identification card shall be valid for no more than the term stated in the policy but not to exceed 6 months. ~~The expiration date for ID cards shall be no more than six months from the effective date, except that Notwithstanding the foregoing limitation, an insurance identification card may be issued for a period of 12 months if the premium has been written on an annual basis and the premium is being paid in installments of no more than for a 12 month period.~~ ~~a~~Any insured who has not been continuously insured by a licensed insurance company or a qualified self-insured during the six months preceding the effective date of an ID card under this regulation shall be issued an ID card with an expiration date no longer than the date for which premium has been paid or for six months whichever is shorter; provided, however, that any insured owning five or more vehicles may be issued an ID card which is effective for a six month period. The expiration date shall be stated ~~by day, month and year or month, day and year, as long as in such manner that~~ the exact date of expiration can be clearly identified. For purposes of this section, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six months.

4.2.2.10 Vehicle(s) Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:

4.2.2.10.1 Year, Make, and Vehicle Identification Number ("VIN") of the vehicle(s) insured. Model of the vehicle may be shown as the Make. The Year, and Make of the vehicle may be abbreviated, but the complete VIN must be shown.

~~4.2.2.10.2 "All-Owned Vehicles" (five vehicles or more); or~~

~~4.2.2.10.3 "Fleet" (five vehicles or more).~~

4.2.2.11 Items which are not obvious as to meaning shall be appropriately captioned.

4.2.3 The order of the information to be contained on the ID card may be rearranged at the option of the company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.

4.2.4 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.

4.2.5 If a vehicle is specifically described on the ID card, the company must issue a new card upon either a change of vehicle or the acquisition of any additional one. If a different policy number is assigned upon renewal, a new ID Card must also be issued. The expiration date requirement of section 4.2.2.9 above shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an ~~insurance~~ ID card to the insured for the additional or replacement vehicle.

4.2.6 A letter or notification should accompany every ID card advising the insured that the card is required to register the vehicle, to obtain new tags, have his vehicle inspected, and to serve as evidence of insurance for the law enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID ~~CARD~~ card. Delaware law requires the ID card to be in the vehicle when it is being operated.

4.2.7 The Division of Motor Vehicles will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

4.2.8 Insurance ID cards shall be issued in conformance with section 4.2.2 above. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

4.2.8.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with section 4.2.2.9 above, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.

4.2.8.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of Section ~~4-B.2(i)~~ 4.2.2.9 above, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.

4.2.8.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section 4.2.2.9 above, the insurer shall be fined \$2,000.

4.2.9 "Date of issuance" of an insurance card shall be the effective date of that card.

Amended Section 4 became effective May 12, 1993.

5.0 Violations and Penalties

5.1 If an insurer shall violate the provisions of this regulation, the Commissioner shall give written notice to the insurer of the violation and said notice shall inform the insurer of the right to request a hearing pursuant to 18 Del.C. §323.

5.2 If an insurer shall be determined to be in violation by consent or after a hearing, the Commissioner may impose such penalties as permitted pursuant to the Insurance Code.

56.0 Notice of Cancellation or Termination

~~56.1 Whenever an assigned risk insurance policy is cancelled or terminated for any reason within two years of the original date of issuance, the company must file a Notice of Cancellation with the Division of Motor Vehicles. When a personal lines insurance policy is cancelled or terminated and that cancellation or termination is final under 18 Del.C. §3904 (a) (1) within 6 months of the original date of issuance, the insurer must file a Notice of Cancellation with the Division of Motor Vehicles.~~

~~56.2 The notice shall be filed with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become final. "Final" means the date after which coverage cannot be reinstated without lapse [or except by] the issuance of a new policy.~~

~~56.3 The notice shall be a two-part form with the size, content, and format consistent with the attached forms and specifications as approved by the Division of Motor Vehicles (See Attachment A Specifications for Delaware Notice of Termination, Form FR-4.) The location of the window area for the insured's name and address is prescribed so the Division of Motor Vehicles can use the same window envelope for mailing notices from all companies. The Division of Motor Vehicles will use the same notice for forwarding mailing notices to the terminated policyholder. The notice shall be a form with the size, content, and format consistent with the attached forms or as otherwise approved by the Division of Motor Vehicles.~~

6.0 Compliance Date Use of Old and New Forms

~~6.1 Companies may exhaust their present supply of ID cards by adding the NAIC Code Number. However, the new ID card which complies with the regulation shall be mailed to all Delaware policyholders by no~~

later than October 1, 1990, regardless of whether a prior ID card indicating a later date of expiration has been issued and at least every six months thereafter. (New ID cards shall be issued for replacement vehicles.) In addition, use of the notice of cancellation shall begin no later than October 1, 1990.

6.2 Companies are responsible for providing all forms required under this Regulation.

Amended Section 6 became effective January 1, 1991.

7.0 Furnishing Motor Vehicle Liability Insurance Information to the Division of Motor Vehicles

7.1 An insurer shall furnish within 30 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided ~~on computer tape(s) as prescribed in Attachment B in the form and manner approved by the Division of Motor Vehicles.~~

7.2 ~~Those insurers unable to provide the prescribed information by computer tape must obtain written approval from the Division of Motor Vehicles to provide the information in a prescribed paper listing. This approval must be obtained by January 1, 1991. (See Attachment C.)~~

8.0 Random Selection/Verification

8.1 Pursuant to ~~State Statute, 21 Del.C. §2118~~ the Division of Motor vehicles shall periodically randomly select on an annual basis at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance. ~~at intervals specified in section 8.4 below. This process shall be accomplished by computer tapes except where approved under section 7.2 of this regulation. The prescribed information and format of the data being furnished by the Division of Motor Vehicles to the insurers shall be as prescribed in Attachment D. Responses from the insurers shall be required only for those vehicles determined by the insurers to be not insured.~~

8.2 ~~The prescribed information and format of data furnished to those nonautomated insurers as approved in section 7.2. shall be prescribed in Attachment E. Responses from the insurers who are non-automated shall be required only for those vehicles as determined by the insurer to be not insured.~~

8.3 ~~All responses from the insurers shall be delivered to the Delaware Division of Motor Vehicles within 30 days of the mailing date of the verification request. All responses shall include a completed prescribed transmittal letter to indicate the completion of the specified verification project.~~

8.4 ~~The random selection/verification process shall be done no more than twelve times and no less than four times annually.~~

9.0 Notification of Uninsured Drivers

9.1 Each insurer licensed to write automobile liability insurance in Delaware shall notify the Division of Motor Vehicles on a form approved by the Division of Motor Vehicles ~~(Attachment F)~~ the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

10.0 Additional Required Proofs of Insurance

10.1 Each insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of the Division of Motor Vehicles by use of a form approved by the Division of Motor Vehicles. ~~The forms provided by the insurers to their agents or directly shall conform with the format of Form FR 19 (Attachment G). Forms shall be controlled, and numbered sequentially, by the insurer or its agents. To prevent copying, the sequential numbers must be in red ink and a minimum of seven digits. The words "Delaware Insurance Certificate" must be in dark blue ink. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.~~

11.0 Enforcement

11.1 ~~Failure of an insurer to provide an Insurance Identification Card, or to provide notice of cancellation or termination as provided in section 5.0, shall be deemed a violation of the Commissioner's lawful order and may be found in violation of The Motor Vehicle Code, Title 21. In such instances the insurer shall, after hearing, be subjected to the penalties as prescribed in 18 Del.C. §334.~~

4211.0 Severability

4211.1 If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

4312.0 Effective Date

~~13.1 Except for the conditions specified under section 6.0 this regulation* shall become effective January 1, 1991.~~

~~13.2 Delaware Insurance Department Bulletins 71-21, 71-22 and 74-8 are superseded and are rescinded effective January 1, 1991.~~

12.1 This Regulation shall become effective January 1, 2008.

*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation and April 12, 1993.

Attachments A to G accompanying Regulation No. 31 follow:

ASSIGNED RISK
INSURANCE CERTIFICATION REQUEST
INITIAL TAP PROCESSING
LETTER OF TRANSMITTAL
RANDOM SELECTION TAPE PROCESSING
RANDOM SELECTION MANUAL PROCESSING
DELAWARE UNINSURED VEHICLE REPORT
DELAWARE INSURANCE CERTIFICATION

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 Del.C. §§314 & 3403)
18 DE Admin. Code 702

ORDER**Docket No. 2007-527****702 Required Disclosures For Residential Homeowners Policies**

Proposed changes to Regulation 702 relating to Required Disclosures for Homeowners Policies were published in the *Delaware Register of Regulations* on October 1, 2007. The comment period remained open until November 5, 2007. There was no public hearing on the proposed changes to Regulation 702. Public notice of the proposed changes to Regulation 702 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Public comment was received from the Property Casualty Insurers of America, Allstate Insurance Company and State Farm Mutual Automobile Insurance Company. All three comments raised concern with what was believed by them to be lengthy and, in their words, confusing notification requirements relative to deductibles. Comments also raised the issue of insurers having insufficient time to comply with the Regulation and suggested a later effective date.

Findings of Fact

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

1. The best interest of Delaware homeowners is served by requiring insurers to make homeowners aware of the types of risks or claims not insured under their policies.
2. The best interest of Delaware homeowners is served by informing them of the specific deductibles required by their policies, as well as defining what a deductible is, describing what triggers each deductible and describing how each deductible is calculated.
3. The best interest of the public is served by requiring insurers to provide to the Department, for its approval, the forms that will be used in compliance with Section 5.1.5.
4. Having drafted the deductibles in question for the policies themselves, and having already complied with Regulation 701 governing readability of insurance policies, insurance carriers are capable of preparing statements that comply with Section 5.1.5 and are also clear to their policyholders.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§314) and 3403 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 702 as attached hereto to be effective on December 15, 2007.

IT IS SO ORDERED this 14th day of November 2007.

Matthew Denn, Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 454 (11 DE Reg. 454). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[http://regulations.delaware.gov/register/december2007/final/11 DE Reg 805 12-01-07.htm](http://regulations.delaware.gov/register/december2007/final/11%20DE%20Reg%20805%2012-01-07.htm)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 **Del.C.** §§314 & 3403)
18 **DE Admin. Code** 2201

ORDER

Docket No. 2007-528

2201 Implementation of Medical Malpractice Relief Initiative Pilot Program

Proposed Regulation 2201 relating to the Medical Malpractice Relief Initiative Pilot Program was published in the *Delaware Register of Regulations* on October 1, 2007. The comment period remained open until November 5, 2007. There was no public hearing on the proposed Regulation 2201. Public notice of the proposed Regulation 2201 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed Regulation for comment.

Findings of Fact

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

1. The public interest is best served by the establishment of a medical malpractice relief pilot

program for Delaware-domiciled captive insurance companies and Delaware-domiciled risk retention groups.

2. The public interest is best served by the existence of medical professionals of sufficient quality and quantity needed to provide services to the citizens of Delaware.

3. The public service is best served by providing funding to a pilot program in order to aid medical professionals in the purchasing of medical malpractice insurance through low or no-interest loans.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§314 and 3403 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 2201 to be effective on January 1, 2008.

IT IS SO ORDERED this 15th day of November 2007.

Matthew Denn
Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 456 (11 DE Reg. 456). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[http://regulations.delaware.gov/register/december2007/final/11 DE Reg 806 12-01-07.htm](http://regulations.delaware.gov/register/december2007/final/11%20DE%20Reg%20806%2012-01-07.htm)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.** Chs. 60 and 63)
7 **DE Admin. Code** 1301

Secretary's Order No.: 2007-A-0050

1301 Regulations Governing Solid Waste

Date of Issuance: November 15, 2007

Effective Date of the Amendment: December 21, 2007

I. Background:

A public hearing was held on Monday, October 22, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the *Delaware Regulations Governing Solid Waste* (hereinafter referred to as "DRGSW"). Delaware is proposing these amendments to add consistency and/or clarification to the existing Solid Waste regulations, as well as to improve or enhance the performance of Delaware's solid waste management program.

These proposed amendments to DRGSW were presented to the general public by the Department in a public workshop held on July 25, 2007. Comments were received from the regulated community as a result of this workshop, and those comments were included as part of the Department's exhibits entered into the record in this matter. Additional public comments were also received at the time of the public hearing on October 22, 2007. No comments were received from the public during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment, as reflected in the Hearing Officer's Report of November 12, 2007, which is

attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C.** Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments will add consistency and/or clarification to the existing Solid Waste regulations, and will improve or enhance the performance of Delaware's solid waste management program;
7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
8. The Department's proposed regulation, as published in the October 1, 2007 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;
9. 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 Report dated November 12, 2007 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulations Governing Solid Waste 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 the State of Delaware Regulations Governing Solid Waste will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community. 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 the policy and purposes of 7 **Del. C.**, Chapters 60 and 63.

John A. Hughes, Secretary

Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 459 (11 DE Reg. 459). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 807 12-01-07.htm>

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.** Chs. 60 and 63)
7 **DE Admin. Code** 1302

Secretary's Order No.: 2007-A-0051

1302 Regulations Governing Hazardous Waste

Date of Issuance: November 15, 2007

Effective Date of the Amendment: December 21, 2007

I. Background:

A public hearing was held on Monday, October 22, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the *Delaware Regulations Governing Hazardous Waste* (hereinafter referred to as "DRGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer its own hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

Many of the changes that the Department is proposing to make at this time are already in effect at the federal level. These changes incorporate certain RCRA amendments promulgated by the EPA into Delaware's hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program.

Additionally, the State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

The proposed amendments to DRGHW were presented to the general public by the Department in a public workshop held on August 22, 2007. Comments were received from the regulated community as a result of this workshop, and those comments were included as part of the Department's exhibits entered into the record in this matter. Alan Muller of Green Delaware offered his comments for the record at the time of the public hearing on October 22, 2007. No comments were received from the public during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment, as reflected in the Hearing Officer's Report of November 12, 2007, which is attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C.** Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The proposed amendments to DRGHW incorporate certain RCRA amendments promulgated by the EPA into Delaware's hazardous waste management program. Again, the State is required to adopt these

amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program;

8. The correction of clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;

9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

10. The Department's proposed regulation, as published in the October 1, 2007 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;

11. 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 Report dated November 12, 2007 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulations Governing Hazardous Waste 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 the State of Delaware Regulations Governing Hazardous Waste will incorporate certain RCRA amendments promulgated by the EPA into Delaware's hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to correct clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

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 the policy and purposes of 7 **Del.C.**, Chapters 60 and 63.

John A. Hughes, Secretary

Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 460 (11 DE Reg. 460). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 809 12-01-07.htm>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304(b)(3) (24 **Del.C.** §1304(b)(3))
24 **DE Admin. Code** 1300

ORDER

1300 Board of Examiners of Private Investigators and Private Security Agencies

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Private Investigators

and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing held on October 25, 2007 on the proposed adoption of promulgated rules and regulations 13.0 – Training Requirements, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the rule to require minimum mandatory training requirements for all security guards.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the adoption of the rule. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will require minimum mandatory training requirements for all security guards.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the adoption is well written and describes its intent to adopt the rule to require minimum mandatory training requirements for all security guards.

Conclusion

7. The proposed rule adoption was promulgated by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the adoption of this rule pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be **December 11, 2007**.
13. Attached hereto and incorporated herein this order is the adopted rule marked as exhibit A and executed simultaneously by the Board on the **13th day of November, 2007**.

Colonel Thomas F. MacLeish, Chairman

APPROVED AS TO FORM:

Ralph K. Durstein, III, Esquire
Deputy Attorney General

November 13, 2007

Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 464 (11 DE Reg. 464). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 810 12-01-07.htm>

FINAL REGULATIONS

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION****1400 Board of Electrical Examiners**Statutory Authority: 24 **Del.C.** §1406(a)(1); 24 **DE Admin. Code** 1400**ORDER**

The Board of Electrical Examiners ("Board") was established to protect the general public, specifically those persons who are the direct recipients of services regulated by 24 **Del.C.**, Chapter 14, from unsafe practices and occupational practices which tend to reduce competition or fix the price of services rendered. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §1406(a)(1) to promulgate regulations to effectuate those objectives.

Pursuant to 24 **Del.C.** §1406(a)(1), the Board proposed amendments to its regulation 7.0 relating to licensure renewal. Specifically, the amendments to **7.0 Expiration and Renewal** would require licensees to provide the name of their insurer and their policy number when they attest to maintenance of their required liability insurance during the renewal process. The amendments would also require licensees to provide course names and approval numbers when they attest to completion of their required continuing education during the renewal process. Minor grammatical, typographic, or stylistic changes may also be included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 10, Issue 9, page 998 on March 1, 2007. However, the public hearing could not be conducted on April 4, 2007 as originally scheduled, so it was rescheduled for September 5, 2007. Notice of the rescheduled hearing was published in the Delaware *Register of Regulations*, Volume 11, Issue 1, in the Calendar of Events on July 1, 2007. However, once more, the public hearing could not be conducted on September 5, 2007 as rescheduled, so it was rescheduled again for November 7, 2007. Notice of the rescheduled hearing was published in the Delaware *Register of Regulations*, Volume 11, Issue 4, in the Calendar of Events on October 1, 2007.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments will result in a more efficient license renewal process and will effectuate licensee compliance with the Board's continuing education requirements.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A final, unmarked version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 7th day of November 2007, by the **Board of Electrical Examiners** of the State of Delaware.

Jacob Good, President
Donald Collins, Secretary
Ronald Marks
Robert Sharp

James Anderson
Dess Stokes

Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1407 (10 DE Reg. 1407). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 812 12-01-07.htm>

DIVISION OF PROFESSIONAL REGULATION

2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

ORDER

Pursuant to 24 **Del.C.** § 4006(a)(1), the Council on Real Estate Appraisers has proposed changes to its rules and regulations affecting Rule 2.0, entitled "Appraiser Licensing and Certification" and Rule 4.0, entitled "General Appraisal Practice." The proposed revisions allow for the segmented approach to adopting changes in the licensure requirements in light of changes made by the Appraisal Qualifications Board, which sets the minimum standards for licensure. The proposed changes also allow for online renewal of licenses and online attestation of completion of the required continuing education, and provide for post-renewal audits for compliance with the continuing education requirements. The proposed changes revise the number of hours of continuing education required for licensees who obtain a new license during the two-year license renewal period and correct an error in the regulations. Finally, the proposed changes provide that only certified appraisers in good standing may supervise trainees.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 2 on August 1, 2007.

Summary of the Evidence and Information Submitted

At the public hearing on September 18, 2007, there were several comments regarding the segmented approach.

Earl Loomis stated that it was his recollection that the segmented approach was to take effect in two years, in accordance with the Appraiser Qualifications Board's test result time frame of two years. William Diveley stated that this was his recollection as well. After discussion off the record, Mr. Loomis advised the Council that he saw no necessity for a drop dead date. Richard Foley asked the Council as to whether a drop dead date already existed, and Mr. West advised that it did not.

No written comments were received.

Findings of Fact

The Council finds that adoption of the proposed amendments will facilitate the implementation of changes in licensure requirements. The process of license renewal and the process of submission of continuing education attestations will be simplified by the online system. Finally, the change to the number of hours of continuing education required for new licensees, and the change to supervisor requirements with respect to trainees, will serve to ensure practitioner competence.

Decision and Effective Date

The Council hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto and is formatted to show the amendments.

IT IS SO ORDERED this 20th day of November 2007, by the **Council on Real Estate Appraisers**.

Donald West, Chairperson	Charles Witt, Vice Chairperson
George Fantini	Stephen Huston
Richard Bauermeister	Arthur Cahall
Neal Scott	

Please note that no changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 171 (11 DE Reg. 117). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[http://regulations.delaware.gov/register/december2007/final/11 DE Reg 813 12-01-07.htm](http://regulations.delaware.gov/register/december2007/final/11%20DE%20Reg%20813%2012-01-07.htm)

DIVISION OF PROFESSIONAL REGULATION

3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
Statutory Authority: 24 Del.C. §3706(a)(1)
24 DE Admin. Code 3700

ORDER

The Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers ("Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 Del.C. §3706(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 Del.C. §3706(a)(1), the Board proposed amendments to its regulations in sections 1.0, 3.0, 7.0, and 8.0. Specifically, the proposed amendments to section **1.0 Division of Professional Regulation** are primarily technical: renaming the section, improving the language, and updating a web address. The proposed amendments to section **3.0 Licensure Requirements for Hearing Aid Dispensers** modify the process for licensure as a hearing aid dispenser. Candidates will be required to obtain temporary licensure while completing a six-month training period under the direct supervision of a licensed dispenser. The extent of direct supervision is delineated. The proposed amendments to section **7.0 Electronic equipment** clarify the required frequency for calibration of electronic equipment used to assess hearing and allow for attestation of such calibration during the license renewal process. Minor grammatical, typographic, and stylistic changes were also included.

Pursuant to 29 Del.C. §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 3, at page 294 on September 1, 2007.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments to section 3.0 are necessary to implement the six-month training period mandated by the Delaware General Assembly. The Board finds that adoption of the proposed amendments to section 7.0 will greatly improve the process of reporting electronic equipment calibration.

Finally, the Board finds that adoption of the proposed amendments to section 1.0 appropriately corrects errors and improves readability.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments.

IT IS SO ORDERED this 14th day of November 2007, by the **Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers of the State of Delaware**.

Dr. Michael Michelli, **President**
Carol Guilbert, **Secretary**
Regina Bilton
Mary Ann Connolly Gaskin

Illene Courtright
George Christensen
Dr. Cynthia Parker

Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 294 (11 DE Reg. 294). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/december2007/final/11 DE Reg 814 12-01-07.htm>

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code Sections 131, 146 and 508; Chapters 1 and 5
(17 Del.C. §§131, 146, 508)

ORDER

Standards and Regulations for Subdivision Streets and State Highway Access

Proposed changes to the Delaware Department of Transportation's Standards and Regulations for Subdivision Streets and State Highway Access were previously advertised in the State Register of Regulations, at Vol. 11, page 67 (July 2007). In addition to written public comments on the proposed changes, the Department held a Public Hearing on July 26, 2007 to receive additional input. Legislative briefings were also held in each county, on September 24, 2007 (Kent), September 26, 2007 (Sussex), and October 3, 2007 (New Castle County). A Public Meeting was also held regarding these proposed changes on October 30, 2007.

Summary of the Evidence and Information Submitted

The comments received and the Department's reactions to those comments are summarized in the accompanying table. These comments caused certain changes to be made in the proposed Standards and Regulations. The Department considers none of these changes to be substantive in nature, and thus causing the need for a new comment period. In addition, the Department committed to working on additional changes regarding "grandfathering," which if sought to be adopted would require a new publication and written comment period before adoption.

FINAL REGULATIONS

No.	By:	Associated with Section	Comment	Response / Action
1	Wheatley Ventures Inc.	N/A	Request for a public workshop.	DeIDOT held a public information meeting on 10/30/07.
2	Glenn C. Mandalas, Prickett, Jones & Elliott	N/A	Request for a public workshop.	DeIDOT held a public information meeting on 10/30/07.
3	Representative George Carey	N/A	Request for a public workshop.	DeIDOT held a public information meeting on 10/30/07.
4	Lessard Builders	N/A	Request for a public workshop.	DeIDOT held a public information meeting on 10/30/07.
5	Senator George H. Bunting	N/A	Expression of gratitude for work done on revised regulations and fees.	None Required
6	IPM Equities, Inc.	3.1	Request for grandfathering language.	Provisions will be made with ample time for transition to the new regulations.
		3.1	Observe county regulations for subdivision street design.	DeIDOT agrees, but will also continue to suggest that private subdivision streets be constructed to our higher standard.
		3.1	Request that the proposed regulations be further divided into sections on access to state roads and roads to be dedicated.	DeIDOT does not agree that this is needed.
		3.1	The provisions of inter-connectivity are burdensome and unworkable.	DeIDOT does not agree and believes interconnectivity to be important.
		3.1	The regulations are arbitrary, rigid and completely unworkable.	DeIDOT does not agree and takes exception to this assertion.
		7	Representative Joseph Booth	N/A
8	Representative Gerald Hocker	N/A	Request for another public hearing and publication of notice in local newspapers.	Briefings for legislators were conducted in each county. DeIDOT also held a public information meeting on 10/30/07.
9	Joan Wutka	N/A	When will the regulations be implemented?	After the legislative briefings and the October informational meeting the regulations will be filed with the Registrar.
			Will there be any public workshops?	DeIDOT held a public information meeting on 10/30/07.
10	Ocean Atlantic	N/A	Request for a public workshop.	DeIDOT held a public information meeting on 10/30/07.

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11	Century Engineering	3.6 4.5.2.1 4.5.3.1 3.6.6 3.10.2	Clarify by adding additional language.	DelDOT has made changes where believed to be appropriate.
12	Scott and Shuman LLC	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
13	David Kenton, Coldwell Banker	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
14	C.T. Bochau, Reventus Real Estate	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
15	Jesse Frederick	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
16	Dolores Slatcher, City Manager, Seaford	N/A	Request for web address for proposed regulations.	DelDOT provided the address.
17	Robert Harris, Gulfstream Development Corp.	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
18	Glen Urquhart & Company	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
19	Vance Phillips, Sussex County Council	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
20	Troy Oliver, Mandrin Homes	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
21	John Paradee, Pickett, Jones & Elliott	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
22	Michael Fannin, Country Life Homes	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
23	Harry Miller, Regal Builders	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
24	Maryann Ryan, Royal Acres, Inc.	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
25	A.J. Bierman	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
26	Rich Collins, Positive Growth Alliance	N/A	Will there be grandfathering?	Provisions will be made with ample time for transition to the new regulations
27	Steve Class, Colonial East LP	N/A	Will there be grandfathering?	Provisions will be made with ample time for transition to the new regulations
			Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
28	Maureen Duffy	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
29	Holly Conaway	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
30	Bill Lucks, Delaware Association of Realtors	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
31	Dave Wheatley, Beaver Properties	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.
32	Drew Ward	N/A	Request for a public workshop.	DelDOT held a public information meeting on 10/30/07.

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33	Rich Collins, Positive Growth Alliance	N/A	Request for a public workshop.	DeIDOT held a public information meeting on 10/30/07.
34	Nathan Jovanally, ADS/ Hancor	5.9	Clarify when use of HDPE drainage pipe is acceptable.	DeIDOT agrees with the suggestion. The text has been modified.
35	Tucker Dempsey, Delaware State Fire Chiefs Association	5.5.1	Street widths are of concern.	DeIDOT has established a special committee to address street width concerns. Recommendations are forthcoming which will reflect the committee findings.
36	Sophie Dear, Kent County Volunteer Firemen's Association	5.5.1	Request that regulations require wider paved streets in the interest of public safety.	DeIDOT has established a special committee to address street width concerns. Recommendations are forthcoming which will reflect the committee findings.
37	Jason Hastings, Bridge Design	5.9	Request that checklist for catch basin design and bridge design review be included in regulations as an appendix.	This has been added.
38	Joint Letter from Representatives Ennis, Outten, Lee and Short	5.5.1	Request that regulations require that roads be wide enough to handle the largest fire fighting equipment.	DeIDOT has established a special committee to address street width concerns. Recommendations are forthcoming which will reflect the committee findings.
39	Bill Betts, Kent County Fire Chiefs Association	5.5.1	Request that opportunity for input to discuss street widths be provided.	DeIDOT has established a special committee to address street width concerns. Recommendations are forthcoming which will reflect the committee findings.
40	Paul Davis, Kent County Fire Chiefs Association	5.5.1	Request that opportunity for input to discuss street widths be provided.	DeIDOT has established a special committee to address street width concerns. Recommendations are forthcoming which will reflect the committee findings.
41	Vance Phillips, Sussex County Council	N/A	Request that DeIDOT make a presentation to Council on the new regulations.	This was done in May 2007.
42	Glen Jones	N/A	Request for meetings to explain regulations.	DeIDOT held a public information meeting on 10/30/07.
43	Judy Hudson	N/A	Request that DeIDOT cancel plans for the new regulations	DeIDOT has a clear need to have updated regulations and will continue to move forward through the adoption process.
44	Anthony DePrima Dover/Kent County MPO	Chapter 1	Developer should reimburse DeIDOT for the cost of TIS reviews.	The proposed review fee will address this.
		Chapter 2	LOS standards proposed should be retained.	The LOS standards have been modified in response to the concerns expressed.
		Chapter 5	Flexible sidewalk standards should be used in low density, rural subdivisions.	The regulations provide for sidewalks on one side of the street under certain defined conditions.

45	Derrick Kennedy Orth-Rodgers & Associates	2.5	Request for a more uniform method of defining a study area	The project study area will change for each project and will be defined working with the developer's engineer and the local land use agency
		2.95	Request that the requirement for ATR data to support manual traffic counts be removed	It is not correct that DelDOT will ask for ATR data on every approach at every intersection for every TIS. DelDOT will retain the requirement to supplement manual counts with machine counts.
		Appendix	Request that a checklist for the TIS process be added.	DelDOT agrees and has added the requested checklist.
		N/A	Request for a public workshop	DelDOT held a public information meeting on 10/30/07.
46	10/30/07 Meeting Attendee	2.3.2	Will DelDOT do the area wide study when the \$5/trip fee option is selected?	Yes
		2.3.2	If there is no area wide study or one is in progress but not complete, will the developer have to wait for one to be completed before they can develop?	No, they may pay the fee and proceed with the development review process.
		2.3.2	What is the reason for lowering the threshold?	To account for smaller developments that in the aggregate result in significant traffic impacts requiring mitigation.
		5.5.1	Is there flexibility in the shoulder width in response to site conditions?	Yes, but the burden of proof lies with the developer's engineer.
		5.7.2.3	Changing the allowable spread to half the width will substantially increase the number of inlets?	DelDOT will keep the 8' spread in the old manual until more analysis can be done on the impacts to design.
47	Eric Buckson Levy Court	N/A	Need to find a way to get development and DelDOT to combine their efforts.	DelDOT currently requires developers to make improvements at subdivision entrances, along the property frontage and off-site when it can be demonstrated that traffic increases justify specific road improvements.
		N/A	Come up with a formula that says what you have to do in order to build on a road.	DelDOT has a well-defined process that includes our standards and regulations, which developers must adhere to. This includes the measurement of impacts and the required road improvements.
		N/A	I want the shoulders and project to be connected.	DelDOT strives to create as much continuity in road improvements as possible, recognizing that one developer typically cannot be held responsible for improving the pavement for an entire road's length.
48	Representative Bruce Ennis	N/A	I think the regulations ought to be held up until a decision is made whether DelDOT intends to increase the width.	DelDOT has established a special committee to address street width concerns. Recommendations are forthcoming which will reflect the committee findings.

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49	Bill Chandler Chief, Felton Volunteer Fire Company	N/A	Would like to see the state go to 28-foot wide streets	DeIDOT has established a special committee to address street width concerns. Recommendations are forth com- ing which will reflect the committee findings.
50	Rich Collins Positive Growth Alli- ance	N/A	Website says work- shop. Link says pub- lic hearing. A gentleman who has done 67,000 traffic studies said DeIDOT was the hardest and requires more data.	Ask the "gentleman" to meet with DeIDOT if he wishes and we will discuss what we require, why and how it is in the public interest.
		N/A	Spoke to a person on the school board who was concerned about some of the requirements for new school construction.	Input from schools was received as part of a school dis- trict subcommittee that assisted in developing the legis- lations.
		N/A	Have one public workshop in the near future.	DeIDOT held a public information meeting on 10/30/07.
51	Holly Rybinski, Associate, Stantec	P-2	Suggest explanation of left-turn credit.	DeIDOT does not feel further explanation is required.
		P-3	Typographical errors	The typographical errors have been corrected.

Findings of Fact

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

1. The proposed amendments 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 December 21, 2007.

IT IS SO ORDERED this 14th day of November, 2007.

Carolann Wicks, Secretary
Delaware Department of Transportation

An authenticated PDF version of the Standards and Regulations for Subdivision Streets and State Highway Access is available here:

[http://regulations.delaware.gov/register/december2007/final/DeIDOT Standards .pdf](http://regulations.delaware.gov/register/december2007/final/DeIDOT%20Standards%20Standards%20and%20Regulations%20for%20Subdivision%20Streets%20and%20State%20Highway%20Access.pdf) Standards and
Regulations for Subdivision Streets and State Highway Access

STATE OF DELAWARE
EXECUTIVE DEPARTMENT

**EXECUTIVE ORDER
NUMBER ONE HUNDRED THREE**

RE: Declaring Drought Watch

WHEREAS, in recent months, the State of Delaware and surrounding areas have experienced an extended period of unusually low rainfall and dry conditions; and

WHEREAS, as a consequence of dry conditions within the State, many streams and water sources haven fallen substantially below their normal levels with larger rainfall deficits in Kent and Sussex Counties; and

WHEREAS, recently implemented water supply projects and conservation measures adopted after the droughts of 1999 and 2002 have substantially improved Northern New Castle County's water supply and are working as designed given current demands and low rainfall conditions in the region; and

WHEREAS, the absence of rainfall during this past summer and the lack of rainfall forecasted for the foreseeable future call for increasing public awareness of the need for the adoption of voluntary water conservation measures; and

WHEREAS, the Water Supply Coordinating Council has recommended that I issue a drought watch pursuant to 20 *Del. C. § 3116(a)(5)*, in order to effectuate a drought watch and implement voluntary conservation measures; and

WHEREAS, such measures are necessary to avoid or mitigate the adverse impact of continued drought that may require that a drought warning be declared; and

WHEREAS, the current dry conditions experienced in Delaware are adversely affecting fresh water supplies; and

WHEREAS, instream water needs to protect fish and wildlife and to maintain water quality standards must also be addressed; and

WHEREAS, a high degree of cooperation among various water users of Delaware will be necessary throughout the period of drought and such cooperation can best be implemented with input from persons regulating and/or representing such interests; and

WHEREAS, the Water Supply Coordinating Council has established a phased approach in implementing the State's drought operating plan and will be closely monitoring Delaware's water supply situation in the coming months and updating the Governor and public with additional advice and recommendations,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. This Executive Order shall constitute a drought watch for the State of Delaware, pursuant to 20 *Del. C. § 3116(a)(5)*.
2. All citizens of the State are urged to voluntarily limit their use of water as follows:
 - a. Lawn and Turf Watering (including residential, commercial, institutional, and government uses).
 - (i) Use of potable water for lawns and turf should be minimized and performed in a conservative manner.
 - b. Landscape Plant Watering (including residential, commercial, institutional, and

government uses).

(i) Use of potable water for outdoor landscape plants (including groundcover, flowers, shrubs, and trees) should be minimized and performed in a conservative manner.

c. Golf Courses and Athletic Fields.

(i) Use of potable water for turf and landscape plants should be minimized.

(ii) All outdoor watering should be performed by efficient means in a conservative manner.

(iii) A facility-specific drought management plan should be developed or updated in preparation for a drought emergency.

(iv) Where a source of non-potable water exists at the location of use it should be used in lieu of potable water, in a conservative manner.

d. Miscellaneous Uses.

(i) Water should be served in public establishments only at the customer's request.

Citizens of the State are further urged to voluntarily conserve water through other measures including repairing leaky water fixtures, flushing toilets only when necessary, minimizing splashing from pools, avoiding evaporation by covering pools when not in use, and installing shower flow restrictors, toilet tank dams and faucet aerators.

3.) Delaware water suppliers are encouraged to consider the adoption and implementation of other water conservation measures as may be practicable.

4.) The Department of Natural Resources and Environmental Control shall implement the drought watch directives set forth in the drought operating plan.

5.) The Water Supply Coordinating Council shall consult with municipalities, water suppliers and other public and private agencies and organizations, in carrying out the above-described activities.

Approved: October, 2007.

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

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

PUBLIC NOTICE

1. TITLE OF SIP REVISION:

Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards, State Implementation Plan (SIP) Revision For Ozone, Fine Particulate Matter (PM_{2.5}), and Visibility

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

The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by Clean Air Act (CAA) §110(a)(2). In this SIP revision Delaware addresses those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been specifically addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates how the eight-hour ozone and in some cases the fine particulate (PM_{2.5}) NAAQS are being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation of how Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

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:

The public comment period for this proposed SIP revision will extend through at least December 12, 2007. Interested parties may submit comments in writing during this time frame to Ron Amirikian, Air Quality Management Section, 156 S. State St., 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, December 12, 2007, beginning at 6:00 p.m. in the Priscilla Building Conference Room, 156 South State Street, Dover, DE 19901.

7. PREPARED BY:

Ron Amirikian/(302) 739-9402 November 8, 2007

Email address: ronald.amirikian@state.de.us

Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards ,State Implementation Plan Revision For Ozone, Fine Particulate Matter (PM_{2.5}), and Visibility

1.0 Preamble, Introduction and Background

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("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

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SIP is compiled 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 Clean Air Act ("CAA"), specifically, CAA §110(a)(2). 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 Delaware demonstrates how the eight-hour ozone and in some cases the fine particulate (PM_{2.5}) NAAQS are 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)(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 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 eight-hour ozone and fine particulate (PM_{2.5}) NAAQS are already contained in Delaware's SIP or in SIP revisions which have been submitted to but not yet approved by EPA. The following Table identifies those SIP provisions. The attainment and base year inventory plans and the regulations cited in the following Table have gone through public notice and hearing prior to submittal to EPA. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table - 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or	For the ozone NAAQS, the pertinent emission limitations and schedules are contained in Delaware's submitted Reasonable Further Progress (RFP) and attainment demonstration SIPs that were submitted on June 13, 2007, in recently submitted regulatory revisions listed below and in the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c). <ul style="list-style-type: none"> • Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation, November 21, 2006 • Regulation No. 1113, Open Burning Regulation, May 2, 2007 • Regulation No. 24, Section 46, Crude Oil Lightering, May 2, 2007 • Regulation No. 1148, Combustion Turbine Generator Emissions, September 11, 2007 • Regulation No. 1144, Stationary Generator Emissions, November 1, 2007 • Regulation No. 43, Not To Exceed California Heavy Duty Diesel Engine Standards, November 29, 2001¹ • Regulation No. 45, Excessive Idling Of Heavy Duty Vehicles, August 12, 2005² 	40 CFR 52.420(c)

<p>appropriate to meet the applicable requirements of this Act.</p>	<p>The regulatory revisions listed above and the following regulations listed below that are in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.</p> <ul style="list-style-type: none"> • Regulation No. 1, Definitions And Administrative Principles • Regulation No. 4, Particulate Emissions From Fuel Burning Equipment • Regulation No. 5, Particulate Emissions From Industrial Process Operations • Regulation No. 6, Particulate Emissions From Construction And Materials Handling • Regulation No. 7, Emissions From Incineration Of Noninfectious Waste • Regulation No. 8, Sulfur Dioxide Emissions From Fuel Burning Equipment • Regulation No. 9, Emissions Of Sulfur Compounds From Industrial Operations • Regulation No. 10, Control Of Sulfur Dioxide Emissions Kent And Sussex Counties • Regulation No. 12, Control Of Nitrogen Oxides Emissions • Regulation No. 14, Visible Emissions • Regulation No. 18 , Particulate Emissions From Grain Handling Operations • Regulation No. 22, Restriction On Quality Of Fuel In Fuel Burning Equipment • Regulation No. 24, Control Of Volatile Organic Compound Emissions • Regulation No. 26, Motor Vehicle Emissions Inspection Program • Regulation No. 27, Stack Heights • Regulation No. 29, Emissions From Incineration Of Infectious Waste • Regulation No. 31, Low Enhanced Inspection And Maintenance Program • Regulation No. 32, Transportation Conformity Regulation • Regulation No. 34, Emission Banking And Trading Program • Regulation No. 35, Conformity Of General Federal Actions To The State Implementation Plans • Regulation No. 36, Acid Rain Program • Regulation No. 37, NOx Budget Program • Regulation No. 39, Nitrogen Oxides Budget Trading Program • Regulation No. 40, National Low Emission Vehicle Program • Regulation No. 1141, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products • "Regulation No. 42, Specific Emission Control
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		For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.	
§110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.	Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.	40 CFR 52.420(c)

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<p>§110(a)(2)(C)</p>	<p>Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;</p>	<p>Delaware implements its Construction and Operation Permit Program requirements under Regulation Nos. 1102, and 25³ of the State of Delaware Regulations Governing the Control of Air Pollution.</p> <p>Delaware implements its Prevention of Significant Deterioration (PSD) Program requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution.</p> <p>Delaware implements its Emission Offset Provision (EOP) requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution."</p> <p>Other aspects of Delaware's program for enforcement are found in those provisions of Regulation 25, Regulation 11 and Regulation 17 as well as the source monitoring, source testing and test methods, and, recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.⁴</p> <p>These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.</p> <p>For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.</p>	<p>40 CFR 52.420(c)</p>
<p>§110(a)(2)(E)(ii)</p>	<p>(ii) requirements that the state comply with the requirements respecting state boards under section 128, and</p>	<p>The requirements of §110(a)(2)(E)(ii) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders.</p>	

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<p>§110(a)(2)(E)(iii)</p>	<p>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</p>	<p>The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.</p>	
<p>§110(a)(2)(F)</p>	<p>Require, as may be prescribed by the Administrator-</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary.</p> <p>§110(a)(2)(F)(ii): Specific reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary.</p> <p>Other aspects of Delaware's program for requiring installation and maintenance of monitoring equipment, periodic emissions reporting, is found in the source monitoring, source testing and test methods, and recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP, 40 CFR 52.420(c), as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p> <p>These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.</p> <p>For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(F) will be addressed in future SIP revisions.</p>	<p>40 CFR 52.420(c)</p>

	<p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>		
§110(a)(2)(G)	<p>Provide authority for comparable to that in section 303 and adequate contingency plans to implement such authority;</p>	<p>State of Delaware Regulations Governing the Control of Air Pollution, Regulation 15, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in the SIP, and found at 40 C.F.R. 52.420(c), that fulfill the contingency plan requirement for the ozone NAAQS.</p> <p>For the fine particulate matter NAAQS, the emergency episode plan will be addressed in future SIP revisions.</p>	40 CFR 52.420(c)
§110(a)(2)(I)	<p>In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);</p>	<p>Part D pertains to general requirements for nonattainment areas. All of Delaware is in the Philadelphia-Wilmington-Atlantic City ozone nonattainment area.</p> <p>On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area and submitted the RACT SIP on March 29, 2007 and was updated on May 2, 2007 to cover Crude Oil Lightering operations. Delaware has also submitted those recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p> <p>The pertinent emission limitations and schedules are contained in these submitted plans.</p>	

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		<p>The regulations in Delaware's approved SIP that are listed in 40 CFR Part 52, Subpart I related to nonattainment areas will continue to comply with Subpart D requirements and which could not have been approved if they had not met Subpart D requirements.</p> <p>For the fine particulate matter NAAQS, the applicable Part D requirements have not yet come due and will be addressed in future SIP revisions.</p>	
§110(a)(2)(J) (PSD)	Meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.	
§110(a)(2)(K)	<p>Provide for:</p> <p>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</p> <p>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;</p>	<p>On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area which contained the required modeling.</p> <p>For the fine particulate matter NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.</p>	

1. Now codified under Regulation 1143 in the Title 7 - Natural Resources and Environmental Control of Delaware's Administrative Code.
2. Now codified under Regulation 1145 in the Title 7 - Natural Resources and Environmental Control of Delaware's Administrative Code.
3. Now codified under Regulation 1125 in the Title 7 - Natural Resources and Environmental Control of Delaware's Administrative Code.
4. Regulation Numbers 41 and 42 and now codified under regulations 1141 and 1142 in the Title 7 - Natural

Resources and Environmental Control of Delaware's Administrative Code.

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A–M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) §110(a)(2)(A) Requirement: Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(2)(A) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the **Delaware Code**, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 **Del.C.**, Chapter 60. This authority is applicable to the ozone as well as the fine particulate (PM_{2.5}) NAAQS.

(B) §110(a)(2)(B) Requirement: Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's SIP already contains other elements, namely, Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution addressing §110(a)(A) as discussed in the section 1.0 and the table thereto of this document.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for both the ozone and fine particulate matter NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Seasonal (April – October) ozone monitoring is currently performed at various locations throughout Delaware.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the scheduled prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network DNREC provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a summary table of all the changes to the network. This summary also provides for a description of each change, the reason for each change, and any other information relevant to the change.

GENERAL NOTICES

DNREC submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.

- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

(C) §110(a)(2)(C) Requirement: Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(C) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware as part of its Air Quality Management Section function exercises its programmatic authority to utilize the enforcement powers set out in 7 Del.C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del.C. §6013 entitled "Criminal penalties"; and 7 Del.C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(D) §110(a)(2)(D) Requirement: Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126⁵ and 115⁶ (relating to interstate and international pollution abatement).

Delaware's Plan: The implementation plan for Delaware and recently submitted SIP revisions presently

5. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

contain adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- 110(a)(2)(D)(i)(I): Major stationary sources for 8-hour ozone and PM_{2.5} are currently subject to Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permitting programs under the PSD and EOP provisions of Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.⁷ Delaware sources are subject to the Clean Air Interstate Rule (CAIR) Federal Implementation Plan (FIP) for annual and seasonal ozone, and for sulfur dioxide. In the adoption of CAIR EPA has indicated that compliance with CAIR satisfies a States §110(a)(2)(D)(i) obligations relating to "significant contribution" and "interference with maintenance" requirements, and the State of Delaware currently satisfies the CAIR requirements by relying on the CAIR FIP.⁸ In addition, because Delaware believes that more than CAIR is necessary to mitigate transport, Delaware has promulgated Regulation No. 1146, Electric Generating Unit Multi-Pollutant Regulation, Regulation No. 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, and Regulation No. 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units (i.e., generally, Delaware's CAIR covered units). These regulations have, or are in the process, of being submitted to the EPA as revisions to Delaware's SIP.
- 110(a)(2)(D)(i)(II): PSD requirements under Section 3 of Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution. Major sources are subject to NNSR and PSD permitting programs implemented in accordance with EPA's interim guidance calling for use of PM₁₀ as a surrogate for PM_{2.5} related to the non-attainment and PSD NSR program requirements.
 - The State of Delaware confirms that it is meeting this requirement for the use of PM₁₀ as a surrogate for PM_{2.5} in the PSD and NNSR programs.
 - The EPA's guidance⁹ advises that the section 110(a)(2)(D)(i) requirement related to protection of

6. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

7. Now codified under regulation 1125 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

8. If Delaware later decides to adopt its own program to replace the CAIR FIP, that program will be submitted to the EPA as a SIP revision.

visibility is deferred until such time as Delaware submits its Visibility SIP. Delaware's Visibility SIP will assess whether there is interference with measures required to be included in the applicable implementation plan for any other State to protect visibility.

- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) §110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,¹⁰ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §§110(a)(2)(E)(i) and (ii) are not applicable to Delaware as discussed in section 1.0 and the table thereto of this document.

Delaware's Plan: With respect to the remaining obligations under this section, Delaware assures EPA that it has adequate authority under state law pursuant to 7 **Del.C.** Chapter 60 to carry out its SIP obligations with respect to both the 8-hour ozone and the fine particulate (PM_{2.5}) NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

(F) §110(a)(2)(F) Requirement: Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §§110(a)(F)(i) and (ii) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under

9. William T. Harnett Guidance Memorandum, dated August 15, 2006, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} NAAQS."

10. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

§110(a)(2)(C) will be addressed in future SIP revisions.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of emissions and emissions related-date emissions from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100.

(G) §110(a)(2)(G) Requirement: Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;¹¹

Delaware's SIP contains an emergency episode plan for ozone as discussed in the section 1.0 and the table thereto of this document. For the fine particulate (PM_{2.5}) NAAQS, the emergency episode plan will be addressed in future SIP revisions.

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, 7 **Del. C.**, Chapter 60 provides authority comparable to section 303 in that Delaware may seek permanent, preliminary injunctions and temporary restraining orders (7 **Del.C.** §6005) and issue cease and desist orders for violations (7 **Del. C.** §6018). Under 7 **Del.C.**, §6003, any unpermitted emission which may cause imminent or substantial danger to pubic health, safety, welfare or the environment is a violation of 7 **Del.C.**, Chapter 60.

(H) §110(a)(2)(H) Requirement: Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to

11. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

(I) §110(a)(2)(I) Requirement: In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(I) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM_{2.5}) NAAQS. For fine the particulate matter NAAQS, the remaining applicable requirements under Part D will be addressed in future SIP revisions.

(J) §110(a)(2)(J) Requirement: Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).¹²

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- Regulation No. 1132, Transportation Conformity, of the State of Delaware Regulations Governing the Control of Air Pollution provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide the forum for consultation with local governments.¹³ Delaware's MPOs are: (1) WILMAPCO, Kent County MPO, and the Salisbury-Wicomoco MPO. All SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. Delaware believes the public notice and hearing processes also fulfills the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.
- DNREC makes real-time and historical air quality information available on its Web site. All relevant SIPs and plans to achieve the NAAQS contain public notification provisions related to air monitoring levels such as Ozone Action Days, Air Quality Action Days, and DNREC's website. DNREC provides extended range air quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. DNREC forecasts daily ozone and particle levels and issues e-mails to the public, businesses and the media via AirAlerts. AirAlert e-mail forecasts and notifications are free to the public.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(J) as discussed in the section 1.0 and the table thereto of this document. For the fine particulate (PM_{2.5}) NAAQS, any

12. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

13. Regulation 1132 was submitted as a revision to the Delaware SIP in a separate submittal.

remaining applicable requirements under §110(a)(2)(J) will be addressed in future SIP revisions.

(K) §110(a)(2)(K) Requirement: Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

For the ozone NAAQS, Delaware's SIP or recently submitted SIP revisions contains required modeling as discussed in the section 1.0 and the table thereto of this document. For the fine particulate (PM_{2.5}) NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.

Delaware's Plan: Delaware will continue to perform modeling as required under the CAA to demonstrate attainment), but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit the Air Quality modeling data as part of Delaware's relevant SIP submissions and through federal grant commitments or in other ways that EPA may request.

(L) §110(a)(2)(L) Requirement: Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 **Del.C.** §§ 6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(M) §110(a)(2)(M) Requirement: Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 **Del.C.** §6006 and 6010 and 29 **Del.C.** Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M).

DELAWARE RIVER BASIN COMMISSION
NOTICE OF PUBLIC HEARING AND BUSINESS MEETING

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, December 12, 2007 beginning at 10:15 a.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, December 20, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD**Irrevocable Funeral Arrangements and Burial Trusts**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to irrevocable funeral arrangements and burial trusts.

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 December 31, 2007.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD**Acquired Brain Injury Medicaid Waiver Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Waiver Program (ABIWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver 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) 255-4454 by December 31, 2007.

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 INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1701 relating to Credit Life and Credit Health Insurance. The docket number for this proposed amendment is 587.

The purpose of the proposed regulation is to correct an error in the existing Regulation 1701 and to replace the existing mortality table with a more current one. The text of the proposed amendment is reproduced in the December 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday January 5, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
PUBLIC NOTICE

TITLE OF SIP REVISION:

Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards, State Implementation Plan (SIP) Revision For Ozone, Fine Particulate Matter (PM_{2.5}), and Visibility

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by Clean Air Act (CAA) §110(a)(2). In this SIP revision Delaware addresses those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been specifically addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates how the eight-hour ozone and in some cases the fine particulate (PM_{2.5}) NAAQS are being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation of how Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed SIP revision will extend through at least December 12, 2007. Interested parties may submit comments in writing during this time frame to Ron Amirikian, Air Quality Management Section, 156 S. State St., 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, December 12, 2007, beginning at 6:00 p.m. in the Priscilla Building Conference Room, 156 South State Street, Dover, DE 19901.

PREPARED BY:

Ron Amirikian/(302) 739-9402 November 8, 2007
Email address: ronald.amirikian@state.de.us

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR
FAMILIES****DIVISION OF FAMILY SERVICES****Office of Child Care Licensing****PUBLIC NOTICE****DELACARE: Requirements for Family Child Care Homes and Requirements for Large Family Child Care Day Care Homes**

PLEASE TAKE NOTICE, pursuant to 31 **Del.C.**, Chapter 3, Subchapter III, Subsections 341-345, and 29 **Del.C.**, Chapter 90, Subsection 9003 (7), Delaware's Office of Child Care Licensing is proposing to revise the *Delacare: Requirements For Family Child Care Homes* and *Delacare: Requirements for Large Family Child Care Day Care Homes*. Each which were previously adopted in 1994. In June 2007 four focus groups were held, one each in Kent and Sussex Counties and two in New Castle County, consisting of Family Child Care Providers and Large Family Child Care Providers. Participants agreeing to attend were chosen through a random selection basis. The focus groups were conducted by the National Child Care Information Center, which submitted a report on the findings to the Office of Child Care Licensing. In July 2007 a survey was sent to every licensed Family and Large Family Child Care Provider to solicit their input on Regulatory change. Responses were recorded and an analysis was conducted for common themes in responses. From August 2007 to October 2007, a task force of Family Child Care Providers, Large Family Child Care Providers, representatives of the Office of Child Care Licensing, subject experts, parents, representatives of the Executive and Legislative Branches of State Government and those whose interests could be affected by the rule changes met for the purpose of making recommendations for revised Requirements. The task force reviewed the existing *Delacare Requirements for Family Child Care Homes* and *Delacare Requirements for Large Family Child Care Homes*, were provided information from the findings of the focus groups and Provider surveys and trends and issues noted by the Office of Child Care Licensing. Applicable research findings, best practice information and trends in regulations of other States were reviewed. The task force made recommendations that were considered in revising the Rules herein set forth for Public comment. The proposed revisions are a movement toward improving standards that are designed to ensure the health and safety of children in care and enhance the quality of their experience so they will be better prepared to succeed in school and in life.

Written comments or emails on the rule changes will be accepted until **January 16, 2008** and should be addressed to the **Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk, Rule Development Manager** or emailed to lynn.jezyk@state.de.us. Comments will also be heard at public hearings scheduled as follows:

Public Hearing Schedule

- **Monday, January 7, 2008** at Stockley Center, All Star Building, 26351 Patriot's Way, Georgetown, DE, 19947, 6:30PM to 8:30PM
- **Tuesday, January 8, 2008** at Bear Library, 101 Governor's Place, Bear, DE 19701, 6:30PM to 8:30PM
- **Wednesday, January 9, 2008** at Department of Natural Resources and Environmental Control (DNREC) Auditorium, 89 Kings Highway, Dover, DE 19901 6:30PM to 8:30PM
- **Thursday, January 10, 2008** at Woodlawn Library, 2020 W. 9th Street, Wilmington, DE 19805, 6:30PM to 8:30PM

For information on cancellations of the Public Hearings due to bad weather or an unforeseen event, please check the Office of Child Care Licensing website, <http://www.state.de.us/kids/occl/occl.shtml> or call the Office of Child Care Licensing in Wilmington, 892-5800 or in Dover, 739-5487 or listen to your local radio station.

**DEPARTMENT OF TRANSPORTATION
DIVISION OF TECHNOLOGY AND SUPPORT SERVICES
NOTICE OF PUBLIC COMMENT PERIOD**

2501 External Equal Employment Opportunity Complaint Procedure

As authorized under 17 Delaware Code Section 132 (e) and 29 Delaware Code Section 8404(8), the Delaware Department of Transportation (DelDOT), is seeking to adopt an external equal employment opportunity complaint procedure for the programs comprising DelDOT's External EEO Programs.

The Department will take written comments on the draft procedure from December 1, 2007 through December 31, 2007.

Questions or comments regarding this document should be directed to:

Carla Elliott
Civil Rights Administrator
Technology and Support Services
DelDOT
P.O. Box 778 For FedEx
Dover, DE 19903 800 Bay Road
Phone (302) 760-2266 Dover, DE 19901
Fax (302) 739-2251
Carla.Elliott@state.de.us