
Delaware Register of Regulations

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Volume 16 - Issue 12, Pages 1213 - 1299



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Final

Governor:
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Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2013.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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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
July 1	June 17	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 16	4:30 p.m.
November 1	October 15	4:30 p.m.

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Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Judi Abbott**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Executive Secretary; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Yvette W. Smallwood**, Assistant Registrar of Regulations; **Don Sellers**, Printer; **Sarah Wootten**, Joint Sunset Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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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.

ADMINISTRATIVE OFFICES OF THE COURTS**CHILD PLACEMENT REVIEW BOARD**

Statutory Authority: 14 Delaware Code, Section 3445 (14 **Del.C.** §3445)

PUBLIC NOTICE**Regulation Governing the Ivyane Davis Scholarship Fund**

The State of Delaware's Child Placement Review Board is submitting regulations regarding the administration of the Ivyane Davis Scholarship Fund. This Memorial Scholarship Fund was established by the General Assembly in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State. The fund is authorized by Delaware code, Title 14, Chapter 34; it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D.F. Davis, who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board. The administration of this fund includes monitoring the academic progress of all students as well as a yearly interviews and a requirement to report expenditure as part of The Child Placement Review Boards Annual Report. This is the first time regulations for this fund have been submitted and was a recommendation from the Joint Sunset Committee in 2012.

There will be no Public Hearing regarding these regulations but Public Comments can be sent, by mail or email, to:

Shane O'Hare
Child Placement Review Board
820 North French Street, 1st Floor,
Wilmington, DE 19801
Email: Shane.O'Hare@state.de.us
Public Comments will be accepted until July 15th, 2013.

Foreword

Ivyane Davis was a woman who believed in children and was committed to helping them succeed. Mrs. Davis was a charter member of the Child Placement Review Board, serving as a Review Board member from the

founding of the Board in 1979 until her death in 1989.

First and foremost, Mrs. Davis was a mother of five children and a foster parent. In addition, she served as a Court Appointed Special Advocate in the Family Court system and was the chairman of the Fresh Air Program in Delaware.

Ivyane Davis was a woman of impressive accomplishments, but she is best remembered for her advocacy work for the well-being of every child. In the nurturing of individuality, the development of talent, and the daily care of children, Mrs. Davis found her life's work.

The Ivyane D. F. Davis Memorial Scholarship honors a remarkable woman by continuing her heritage of offering opportunity to children.

The Ivyane D. F. Davis Memorial Scholarship fund was established by the General Assembly of the State of Delaware in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State.

This scholarship fund addresses the particular financial needs of many children who have been in foster care and offers them the opportunity for higher education.

The Fund awards several scholarships annually in honor of Mrs. Davis, who had a lifelong interest in the welfare of children.

Ivyane D. F. Davis Scholarships are administered by the State of Delaware and are awarded to recipients selected by the Child Placement Review Board of Delaware. Scholarships are renewable.

Regulation Governing the Ivyane Davis Scholarship Fund

1.0 Legal Base and Purpose

As authorized by Delaware code, 14 Del.C. Ch. 34, it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D.F. Davis, who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board.

2.0 General Provisions

2.1 Definition of Terms

- 2.1.1 The Ivyane D.F. Davis Memorial Scholarship, hence forth referred to in these regulations as the "Scholarship" is established by state law in 14 Del.C. §3445 of the state code.
- 2.1.2 Child Placement Review Board means the citizen review board established under 31 Del.C. Ch. 38 of the Delaware state code and will be referred to as the "Board" in these regulations.
- 2.1.3 The Executive Committee is the oversight body for the Board as established in 31 Del.C. §3808 of the Delaware state code.
- 2.1.4 The Scholarship Committee is established by the Executive Committee to administer the Scholarship and will be referred to as the "Committee" in these regulations.
- 2.1.5 The CPRB Staff are the employees of the Board designated by the Executive Director of the Board to provide administrative support to the Committee.
- 2.1.6 An Institution of Higher Learning is an accredited school that:
 - 2.1.6.1 Awards a bachelor's degree or not less than a 2-year program that provides credit towards a degree; or
 - 2.1.6.2 Provides not less than 1 year of training towards gainful employment; or
 - 2.1.6.3 Is a vocational program that provides training for gainful employment and has been in existence for at least two years.

2.2 Partnerships and Fund Raising

- 2.2.1 The board may accept donations from private individuals and organizations for deposit in the fund.
- 2.2.2 Chaffee Education and Training Vouchers
A portion of the fund, not to exceed one-half of the fund's principle and interest, may be used to assist the Division of Family Services in obtaining Chaffee Educational and Training Vouchers funding; provided, that the board is authorized, by regulation, contract, or memorandum of

understanding with the Division of Family Services, to administer the funding obtained. The portion of the Scholarship used as the state match is subject to the eligibility criteria established under the Chaffee Education and Training Vouchers.

3.0 Provisions for Scholarship Administration

3.1 Scholarship Committee

The membership of the Scholarship Committee will be established by the Executive Committee annually and will not exceed 4 members. Members shall include at least one active board member, but may also include former board members and other members of the community with expertise that would enhance the expertise of the committee.

3.2 Eligibility

Applicants shall meet the following criteria in order to be eligible for award consideration:

3.2.1 Individuals who were at any time under foster care in the State of Delaware; and

3.2.2 Individuals who have been residents of Delaware for at least 1 year immediately preceding the application for funds; and

3.2.3 Individuals who have been accepted at or who are attending an accredited institution of higher learning or trade school; and

3.2.4 Individuals who are not pursuing a degree higher than a Bachelors.

3.3 Award Criteria

The committee has the discretion to set the award amount annually based on the students' financial need, their likelihood of success and the number of applicants to ensure a fair distribution of the available funds.

3.3.1 When determining the award amounts, the Committee will consider the following:

3.3.1.1 Documentation of financial need;

3.3.1.2 Previous academic achievements;

3.3.1.3 Level and involvement in community service; and

3.3.1.4 Anticipated academic success in their educational endeavor.

3.3.2 The amount of an award may not exceed the amount of the applicant's school related expenses such as tuition, required fees, room, board and books at the institution specified.

3.3.3 Adjustments to the award may be made after an award letter has been issued if the student changes their educational plans or enrollment status (i.e. the student enrolls only part-time rather than full time) after the award letter is issued.

3.4 Award Process

3.4.1 Completed Application Packet

All applicants must complete a scholarship application packet which includes forms and documents designated by the Committee. The required forms and instructions will be available to the public via the Board's web page.

3.4.2 Application Due Date

Completed application packets are due June 1st for award consideration beginning the following school year and by October 1st to be considered for a mid-year award if funds are available.

3.4.3 Interview

The Committee conducts personal interview of the applicant in the summer prior to the start of each school year. The preference is to interview all applicants, however, it is only required of the first year applicants. Interviews may also be held at other times as necessary. A face to face interview is standard, although teleconferences and video-conferencing may be utilized.

3.4.4 Award Allocation

There is no fixed award amount. The Committee determines the amounts of the award each year based on the available funds and financial needs of the applicants.

3.5 Award Distribution

PROPOSED REGULATIONS

- 3.5.1 Award letters that reflect the amount of award determined by the Committee are issued to the student by CPRB staff.
- 3.5.2 Awards shall be dispersed directly to the school or institution and not directly to the student.
- 3.5.3 Funds are dispersed based on the type of school or institution in which the student is enrolled. Whenever it is reasonable, the funds are distributed in conjunction with the institutions assessment period (i.e. semesters, terms) so that an assessment of the student's progress may be made prior to subsequent disbursement of the award.
- 3.6 Reporting Requirements
The Board shall report annually to the General Assembly the following:
- 3.6.1 The number of recipients of scholarships;
- 3.6.2 The institutions attended by said recipients;
- 3.6.3 The total of expenditures made under this scholarship fund; and
- 3.6.4 Other information as it deems useful for the members of the General Assembly.
- 3.7 Educational Progress Expectations.
- 3.7.1 To remain eligible for the scholarship, the student must maintain a G.P.A of 2.0 or higher or, earn a "meets expectations" rating or better during job training, required remedial courses (i.e. Basic or Pre-Tech courses) or certificate program established assessment period.
- 3.7.2 The Board will maintain and distribute a policy that outlines the consequences of failure to meet this standard. This policy is an appendix to these regulations; it will be distributed with the student's award letter each year and will be available to the public via the CPRB web page.
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DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)
1 DE Admin. Code 501

PUBLIC NOTICE

501 Regulations of the Delaware Solid Waste Authority

Pursuant to 7 Del.C. §§6403, 6404, 6406 and other pertinent provisions of 7 Del.C. Ch. 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (the "Regulations") to modify the Regulations last amended as of November 1, 2011.

Notice of Hearing: A public hearing will be held July 2, 2013 at 5:30 p.m., in the DSWA board room located in the main administrative offices of the DSWA at 1128 South Bradford St., Dover, DE 19903. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, July 17, 2013. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 Somichaeluth Bradford Street, PO Box 455, Dover, D1230elaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

Summary of Proposed Changes: The proposed amendments are intended to make the Regulations consistent with current practices in solid waste handling and disposal in Delaware and the current operating and contracting policies of the DSWA as these relate to the transportation and disposal of solid waste in Delaware.

Background and Purpose: The Delaware Solid Waste Authority ("DSWA") was established by the Delaware General Assembly in 1975 as a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State created to perform essential public and governmental functions. Pursuant to 7 Del.C. Ch. 64, the DSWA is charged with adopting regulations governing the use and/or operation of facilities under its

jurisdiction and control; moreover, the DSWA is also charged with the development, implementation and supervision of a program requiring all persons who haul, convey or transport solid waste to obtain a license from the DSWA. Accordingly, the DSWA has adopted the Regulations to implement these functions. The proposed amendments to the Regulations would bring the Regulations up to date with the current operating and contracting policies of the DSWA and the current practices for handling solid waste in the Delaware market. Specifically, these amendments would:

- Add or revise certain definitions.
- Remove certain obsolete or unnecessary references (e.g., “Delaware Telephone Directory”).
- Add notice requirements for licensees entering into servicing arrangements.
- Add further exceptions to the requirement for Municipalities to direct their solid waste to DSWA facilities.
- Add to or amend provisions regulating the transportation and handling of recyclable materials.
- Revise the sections addressing review, enforcement and sanctions to bring same into accord with the provisions of Chapter 64 of Title 7.

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

501 Regulations of the Delaware Solid Waste Authority

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)
1 **DE Admin. Code** 502

PUBLIC NOTICE

502 Statewide Solid Waste Management Plan

Pursuant to 7 **Del.C.** §§6403, 6404, 6406 and other pertinent provisions of 7 **Del.C.** Ch. 64; the Delaware Solid Waste Authority (“DSWA”) is proposing an addendum to the Statewide Solid Waste Management Plan (the “Plan”) to modify the Plan adopted April 22, 2010.

Notice of Hearing: A public hearing will be held July 2, 2013 at 5:00 p.m., in the DSWA board room located in the main administrative offices of the DSWA at 1128 South Bradford St., Dover, DE 19903. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, July 1, 2013. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed addendum may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

Summary of Proposed Changes: Pursuant to 7 **Del.C.** Ch. 64, the DSWA is charged with developing the Plan and amending the Plan as necessary. The proposed addendum will address the many functions of the DSWA that benefit the Delaware public and the sources of revenue dedicated to supporting these beneficial functions.

Background and Purpose: The Delaware Solid Waste Authority (“DSWA”) was established by the Delaware General Assembly in 1975 as a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State created to perform essential public and governmental functions. The findings, policies and purposes of the enabling legislation recognized among other things the need for the people of the state to have a clean and wholesome environment through the statewide management of solid waste generated in Delaware. Such statewide management includes the establishment of programs for collection and disposal of solid waste and the recovery of and reuse of discarded materials through recycling and beneficial use. DSWA is expected to monitor, evaluate and police the system of solid waste management in Delaware, including such

issues as proper waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables in the future.

In order to fund the comprehensive activities required of the DSWA by the General Assembly, DSWA has been empowered to establish user fees for the services it provides and to borrow money through bond financing and otherwise. DSWA receives no State or federal funding, and the full faith and credit of the State is not pledged for any of DSWA's debt. In carrying out its broad statewide responsibilities to comprehensively manage solid waste, DSWA has undertaken a multitude of activities detailed in the proposed addendum, many of which must be funded through revenues generated from DSWA's remaining activities. To assure the proper management of solid waste and provide sufficient financial support for its programs, DSWA is authorized to control the collection, transportation, storage and disposal of solid waste throughout the State.

The proposed addendum to the SSWMP better and more completely describes the activities of the DSWA. The proposed addendum also highlights the authority of the DSWA, whether through contractual arrangements or through regulation, to control and manage the collection of solid waste in Delaware to assure the usage of the facilities provided by DSWA. This assures proper solid waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables in the future, and further provides the means of financially supporting the many and diverse activities conducted under the authority and dictates of DSWA's enabling legislation.

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

502 Statewide Solid Waste Management Plan

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)
1 DE Admin. Code 503

PUBLIC NOTICE

503 Differential Disposal Fee Program

Pursuant to 7 Del.C. §§6403 and 6406 and other pertinent provisions of 7 Del.C. Ch. 64; the Delaware Solid Waste Authority ("DSWA") is proposing to remove from the Delaware Administrative Code the provisions relating to the Differential Disposal Fee Program (the "Differential Disposal Fee Program").

Notice of Hearing: A public hearing will be held July 2, 2013 at 6:00 p.m., in the DSWA board room located in the main administrative offices of the DSWA at 1128 South Bradford St., Dover, DE 19903. The hearing is to provide an opportunity for public comment on the proposed action.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, July 1, 2013. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed action may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

Summary of Proposed Changes: The action proposed is to remove from the Delaware Administrative Code obsolete provisions relating to the Differential Disposal Fee Program.

Background and Purpose: On July 1, 2001, the DSWA adopted the Differential Disposal Fee Program which was effective through June 30, 2005. The Differential Disposal Fee Program as set forth in Section 503 is no longer effective and has not been so for many years. It is being removed from the Delaware Administrative Code as a housekeeping matter.

503-Differential-Disposal-Fee-Program

Statutory Authority: 7 Delaware Code,
Section 6403 (7 ~~Del.C.~~ §6403)

1.0 Except as provided in Paragraph 2.0 below, the rate for disposal of solid waste and dry waste shall be \$58.50 per ton.

2.0 For those entering into a contract with the Authority to bring all of their solid waste or dry waste which has been collected in the State of Delaware to Authority facilities in accordance with the terms of the contract, the rebates and rates set forth shall be made available by the Authority subject to the following:

- 2.1 The contract term shall be from July 1, 2001 to June 30, 2005; July 1, 2002 to June 30, 2005; July 1, 2003 to June 30, 2005; or July 1, 2004 to June 30, 2005.
- 2.2 A rebate of \$10.00 shall be paid for each ton of solid waste (excluding special and industrial process solid waste) delivered to Authority facilities, other than the Northern Solid Waste Facility located at Cherry Island in Delaware, and for which the base rate disposal fee of \$58.50 per ton has been paid to the Authority. A rebate of \$13.50 shall be paid for each ton of solid waste or dry waste delivered to the Northern Solid Waste Facility located at Cherry Island in Delaware and for which the base rate disposal fee of \$58.50 per ton has been paid to the Authority. The rebate shall be paid for the following periods in which the solid waste (excluding special and industrial process solid waste) has been delivered:
 - 2.2.1 July 1, 2001 through June 30, 2002
 - 2.2.2 July 1, 2002 through June 30, 2003
 - 2.2.3 July 1, 2003 through June 30, 2004
 - 2.2.4 July 1, 2004 through June 30, 2005
- 2.3 The rebate for the periods set forth in Paragraph 2.2 above shall be paid within forty five (45) days after the end of the applicable period or after full payment has been made to the Authority by the person entitled to the rebate, whichever is later, for the solid waste delivered during the applicable period.
- 2.4 The disposal fee for dry waste delivered to designated solid waste facilities shall be \$40.00 per ton. Such designated facilities shall include the Central Solid Waste Facility located at Sandtown in Delaware and the Southern Solid Waste Facility located at Jones Crossroads in Delaware, but shall not include the Northern Solid Waste Facility located at Cherry Island in Delaware. If the Authority establishes a disposal fee for dry waste above \$40.00 per ton at any time during the term of the contract, the \$40.00 per ton disposal fee shall apply for the term of the contract to those entering contracts. If the Authority establishes a disposal fee for dry waste below \$40.00 per ton at any time during the term of the contract, those entering contracts with the Authority shall be entitled to such lower disposal fees while such disposal fees are in effect.
- 2.5 In order to enter into contracts under this Paragraph 2.0, persons having active accounts with the Authority and delivering solid waste or dry waste to an Authority facility that was collected in the State of Delaware shall execute contracts with the Authority (i) on or before September 1, 2001 for the contract term from July 1, 2001 to June 30, 2005, provided however, that for contracts executed after July 1, 2001 but on or before September 1, 2001 the effective date for participating in the Program shall be the effective date of execution of the contract; (ii) on or before June 30, 2002 for the contract term July 1, 2002 to June 30, 2005; (iii) on or before June 30, 2003 for the contract term July 1, 2003 to June 30, 2005; and (iv) on or before June 30, 2004 for the contract term July 1, 2004 to June 30, 2005.

3.0 Those persons not under contract with the Authority shall be entitled to use the Authority facilities for disposal of solid waste and dry waste collected in the State of Delaware, subject to payment of such rate or rates established by the Authority, and subject to compliance with the regulations and requirements of the Authority and other applicable laws and regulations.

~~4.0~~ The contracts utilized to effectuate this Program shall be uniform and shall contain such other terms and conditions deemed desirable and acceptable to the Authority. Municipalities, political subdivisions and governmental instrumentalities and entities which are required to deliver to Authority facilities all their solid waste and dry waste collected in the State of Delaware shall be entitled to the full benefits of this Program. The contracts shall inure to the benefit of and be binding on the persons, including their successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, and all other entities existing or newly formed, controlled directly or indirectly by such persons, through change in ownership or status by transfer of assets or otherwise, and which engage in the collection and/ or transportation of solid waste and dry waste generated in the State of Delaware.

~~5.0~~ The Program established by Paragraph 2.0, above, shall be available to all persons having active accounts with the Authority effective July 1, 2001. For new accounts with the Authority opened after July 1, 2001, persons establishing such accounts shall be entitled to enter contracts with the Authority provided:

- ~~5.1~~ the uniform contract referenced in Paragraph 4.0 herein is executed within sixty (60) days of the date the new account is established;
- ~~5.2~~ the term of the contract extends to June 30, 2005;
- ~~5.3~~ the new account is with a new person, and not a person having an account with the Authority as of July 1, 2001; and
- ~~5.4~~ the persons agree that the Program benefits (rebate or reduced fee) do not come into effect until sixty (60) days after the new account is established.

~~6.0~~ For purposes of this Program the term "person" is defined to mean any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity. The term "person" shall also include successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, and all other entities existing or newly formed, controlled directly or indirectly by the person, through change in ownership or status by transfer of assets or otherwise.

~~7.0~~ For purposes of this Program the term "dry waste" shall have the meaning as defined in the REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY. For purposes of this Program the term "solid waste" shall have the meaning as defined in the REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY but shall not include dry waste, or special or industrial process solid waste.

~~8.0~~ This Program shall become effective on July 1, 2001 and continue until June 30, 2005. For those persons who have (i) prior to the adoption of this Program entered Differential Disposal Fee contracts with the Authority and (ii) who do not enter the Differential Disposal Fee contract under this Program, the provisions of prior Program and prior Differential Disposal Fee contract shall continue in full force and effect.

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Repeal of an Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **July 5, 2013** to Susan Haberstroh, Department of Education, at 35 Commerce Way, Suite 1, 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 being repealed because regulation 106A was promulgated in lieu thereof.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed because regulation 106A was promulgated in lieu thereof.

***Please Note: As a result of the regulation being repealed it is not being published here. A copy of the regulation is available at:**

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

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

The amendments address the following: 1) eliminates provisions that were in place for the 2011-2012 and 2012-2013 school years only; 2) provides that the proposed amended regulation will be in effect beginning with the 2013-2014 school year; 3) defines "Credentialed Observer" and "Evaluator" in order to be specific about which individuals are responsible for certain teacher appraisal activities; 4) provides more specificity on the definition of "summative evaluation"; 5) changes the configuration of announced and unannounced observations for both experienced and novice teachers; 6) provides districts and charter schools flexibility in the appraisal criterion to be used for DPAS II in the first four Appraisal Components; 7) requires Appraisal Criteria observed to be rated on each observation conducted and to be assigned an overall rating in a teacher's Summative Evaluation; 8) modifies when an Improvement Plan must be developed versus may be developed for a teacher if the teacher's overall performance during an observed lesson is unsatisfactory; and 9) eliminates the requirement that professional development completed during the time of an Improvement Plan is in effect to be certified by the Department.

The amendments have been reviewed and comments provided by several stakeholders groups over the last several months. This includes the Department's DPAS II Review Committees and the DPAS Advisory Committee.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **July 5, 2013** to Susan Haberstroh, Department of Education, at 35 Commerce Way, Suite 1, Dover, DE 19904. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? *The amended regulation is intended to improve student achievement as measured against state achievement standards.*

2. Will the amended regulation help ensure that all students receive an equitable education? *The amended regulation is intended to help ensure all students receive an equitable education.*

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? *The amended regulation is intended to help ensure all students' legal rights are respected.*

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? *The amendments do provide additional flexibility at the local board and school level.*

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? *The amendments provide flexibility around the individuals involved in the DPAS II.*

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

9. Is there a less burdensome method for addressing the purpose of the regulation? *At this time, there is not a less burdensome method for addressing the teacher evaluation process.*

10. What is the cost to the State and to the local school boards of compliance with the regulation? *There are no additional costs anticipated by the amendments.*

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

1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2011-12 school year, and shall, at such time, replace the current 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) 2013-14 school year.~~

2.0 Definitions

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

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

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

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

"Credentialed Observer" shall mean an individual, ~~not always the supervisor of the teacher, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a teacher's appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.~~

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

"DCAS Teacher" shall mean any Novice Teacher or Experienced Teacher providing instruction in reading and/or mathematics to a student that meets the following criteria:

(a) The student is enrolled in any grade three (3) through ten(10) for either reading and/or mathematics instruction as verified by the sState's pupil accounting system; and

(b) The student has valid Delaware Comprehensive Assessment System (DCAS) score(s) and the student was not subject to an invalidation or special exemption as provided in 14 **DE Admin. Code** 103.

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

"DSEA" shall mean the Delaware State Education Association.

"Evaluator" shall mean a Credentialed Observer who is responsible for a teacher's Summative Evaluation. A teacher's required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

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

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

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

"Non-DCAS Teacher" shall mean any Novice Teacher or Experienced Teacher that does not meet the definition of DCAS Teacher as defined herein.

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

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

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

"**State Assessment**" shall mean the Delaware Comprehensive Assessment System (DCAS).

"**Student Achievement**" shall mean

(a) For tested grades and subjects:

(1) A student's score on the DCAS; and, as appropriate,

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

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

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

"**Summative Evaluation**" shall be the final evaluation at the conclusion of the appraisal cycle mean the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations and required component-level data. At the discretion of the Evaluator, it may also include additional observation data provided by other Credentialed Observers.

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

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

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

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

3.0 Appraisal Cycles

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

following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.

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

4.0 DPAS II Guide for Teachers

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

5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by ~~a credentialed evaluator~~ the assigned Evaluator. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. Notification of any such waiver shall be provided to all teachers in a school district or charter school and the Department of Education by the last day in August of each year:
- 5.1.1 Planning and Preparation
- 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable. (Optional)
- 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
- 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula. (Optional)
- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.1.5 Designing Student Assessments: Teacher creates and or selects assessments that are congruent with instructional goals, criteria and standards. The teacher plans for the use of formative and summative assessments of the teacher's students.

5.1.2 Classroom Environment

- 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
- 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
- 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect. (Optional)
- 5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students. (Optional)
- 5.1.3 Instruction
 - 5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.
 - 5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data. (Optional)
 - 5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding. (Optional)
 - 5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.
 - 5.1.3.5 Using Assessment in Instruction: Teacher makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
 - 5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns. (Optional)
 - 5.1.4.2 Recording student data in a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.
 - 5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students. (Optional)
 - 5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.
- 5.1.5 Student Improvement
 - 5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.
- 5.2 ~~Notwithstanding 5.1, for the 2011-2012 school year the first four (4) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher~~

~~shall be evaluated by a credentialed evaluator. Appraisal Component 5.1.5 may, however, be used to determine whether a DCAS Teacher shall receive a "Highly Effective" rating.~~

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
- 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a teacher's Summative Evaluation.
- 6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".
- 6.2.1 "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the *DPAS II Revised Guide for Teachers*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.
- ~~6.2.1.1 Notwithstanding 6.2.1, for the 2011-2012 school year, for a Non-DCAS Teacher the Summative Evaluation Rating "Highly Effective" shall not be applicable.~~
- ~~6.2.1.2 Notwithstanding 6.2.1, for the 2011-2012 school year, for a DCAS Teacher "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.~~
- ~~6.2.1.2.1 For the 2011-2012 school year, once the Student Improvement Component calculation for DCAS teachers is complete, the summative rating for DCAS teachers who earn an "Effective" rating and who earn an "Exceeds" rating on the Student Improvement Component shall indicate that the teacher earned an "Effective" summative rating based on the first four Appraisal Components and a "Highly Effective" summative rating based on all five Appraisal Components. The rating for a teacher earning the "Highly Effective" rating as noted herein shall also include the following language: "The Component V rating is based on student performance on DCAS only, during this pilot year. Note that only DCAS subject teachers are eligible for the Highly Effective summative rating during the 2011-12 school year."~~
- 6.2.2 "**Effective**" shall mean that:
- 6.2.2.1 The teacher has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
- 6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.
- ~~6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2, for the 2011-2012 school year, for a Non-DCAS teacher "Effective" shall mean the teacher has earned a Satisfactory Component Rating in three (3) or four (4) of the first four (4) Appraisal Components.~~
- ~~6.2.2.4 Notwithstanding 6.2.2.1 and 6.2.2.2, for the 2011-2012 school year, for a DCAS Teacher "Effective" shall mean that the teacher has earned a Satisfactory Component Rating in three (3) or four (4) of the first four (4) Appraisal Components, and~~
- 6.2.2.5 The DCAS Teacher does not meet the requirements for a "Highly Effective" rating found in ~~6.2.1.2.~~

6.2.3 **"Needs Improvement"** shall mean that:

- 6.2.3.1 The teacher has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or
- 6.2.3.2 The teacher has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has earned an Unsatisfactory rating in the Student Improvement Component.
- 6.2.3.3 ~~Notwithstanding 6.2.3.1 and 6.2.3.2, for the 2011-2012 school year, "Needs Improvement" shall mean the teacher has earned a Satisfactory Component Rating in two (2) of the first four (4) Appraisal Components.~~

6.2.4 **"Ineffective"** shall mean that:

- 6.2.4.1 The teacher has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and
- 6.2.4.2 The teacher earned an Unsatisfactory Component Rating in the Student Improvement Component.
- 6.2.4.3 ~~Notwithstanding 6.2.4.1 and 6.2.4.1, for the 2011-2012 school year, "Ineffective" shall mean the teacher has earned a Satisfactory Component Rating in zero (0) or one (1) of the first four (4) Appraisal Components.~~

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

~~6.3 For the 2011-2012 school year, DCAS teachers shall be given a summative rating based on the first four Appraisal Components prior to completion of the Student Improvement Component calculation. In those instances, the summative rating for teachers earning an "Effective" summative rating based on the first four Appraisal Components shall also indicate that the teacher's summative rating may be expanded to include the outcome of the Student Improvement Component calculation.~~

7.0 Pattern of Ineffective Teaching Defined

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

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

8.0 Improvement Plan

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

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

- ~~8.2 Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5.~~
- 8.32 The Improvement Plan shall contain the following:
- 8.32.1 Identification of the specific deficiencies and recommended area(s) for growth;
 - 8.32.2 Measurable goals for improving the deficiencies to satisfactory levels;
 - 8.32.3 Specific professional development or activities to accomplish the goals;
 - 8.32.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
 - 8.32.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
 - 8.32.6 Timeline for the plan, including intermediate check points to determine progress;
 - 8.32.7 Procedures for determining satisfactory improvement;
 - 8.32.8 Multiple observations and opportunity for feedback provided by a ~~trained evaluator~~ Credentialed Observer, a mentor, a lead teacher, or an instructional coach.
- 8.43 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect ~~must be certified by the Department and~~ must directly relate to areas identified as needing improvement.
- 8.54 The Improvement Plan shall be developed cooperatively by the teacher and ~~e~~Evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.
- 8.65 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.76 Upon completion of the Improvement Plan, the teacher and ~~e~~Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

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

10.0 ~~Evaluator Credentials~~ Credentialing

- 10.1 ~~Evaluators~~ Credentialed Observers shall have successfully completed the DPAS II training as developed by the Department of Education. ~~Evaluators~~ Each shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.
- 10.1.1 The Department of Education shall annually monitor evaluation implementation.

- 10.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.
- 10.3 The credentialing process shall be conducted by the Department of Education.

11.0 Evaluation of Process

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

~~12.0 Procedures for the Termination of Services of Professional Employees~~

~~For purposes of 14 Del.C., Chapter 14 Procedures for the Termination of Services of Professional Employees only, the Appraisal Component 5.1.5 Student Improvement shall be considered "Satisfactory" for a teacher for the 2011-2012 school year.~~

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Repeal of an Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The regulation is no longer applicable because 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised took effect beginning in the 2011-2012 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **July 5, 2013** to Susan Haberstroh, Department of Education, at 35 Commerce Way, Suite 1, 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 being repealed because regulation 107A was promulgated in lieu thereof.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed because regulation 107A was promulgated in lieu thereof.

***Please Note: As a result of the regulation being repealed it is not being published here. A copy of the regulation is available at:**

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

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.

The amendments address the following: 1) eliminates provisions that were in place for the 2011-2012 and 2012-2013 school years only; 2) provides that the proposed amended regulation will be in effect beginning with the 2013-2014 school year; 3) defines "Credentialed Observer" and "Evaluator" in order to be specific about which individuals are responsible for certain specialist appraisal activities; 4) provides more specificity on the definition of "summative evaluation"; 5) changes the configuration of announced and unannounced observations for both experienced and novice specialists and modifies the number of observations required for novice specialists; 6) provides districts and charter schools flexibility in the appraisal criterion to be used for DPAS II in the first four Appraisal Components; 7) requires Appraisal Criteria observed to be rated on each observation conducted and to be assigned an overall rating in a specialist's Summative Evaluation; 8) modifies when an Improvement Plan must be developed versus may be developed for a specialist if the specialist's overall performance during an observed lesson is unsatisfactory; and 9) eliminates the requirement that professional development completed during the time of an Improvement Plan is in effect to be certified by the Department

The amendments have been reviewed and comments provided by several stakeholders groups over the last several months in relation to 14 **DE Admin. Code** 106A, as 107A has historically been a parallel regulation. This includes the Department's DPAS II Review Committees and the DPAS Advisory Committee.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **July 5, 2013** to Susan Haberstroh, Department of Education, at 35 Commerce Way, Suite 1, Dover, DE 19904. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? *The amended regulation is intended to improve student achievement as measured against state achievement standards.*

2. Will the amended regulation help ensure that all students receive an equitable education? *The amended regulation is intended to help ensure all students receive an equitable education.*

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? *The amended regulation is intended to help ensure all students' legal rights are respected.*

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? *The amendments do provide additional flexibility at the local board and school level.*

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? *The amendments provide flexibility around the individuals involved in the DPAS II.*

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

9. Is there a less burdensome method for addressing the purpose of the regulation? *At this time, there is not a less burdensome method for addressing the teacher evaluation process.*

10. What is the cost to the State and to the local school boards of compliance with the regulation? *There are no additional costs anticipated by the amendments.*

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

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2011-12 school year and shall, at such time, replace the current 14 DE Admin. Code 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) 2013-14 school year.~~

2.0 Definitions

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

"Announced Observation" shall consist of the Pre-observation Form and conference with the ~~evaluator~~ Credentialed Observer, an observation by the ~~evaluator~~ Credentialed Observer at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be

an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

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

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

“**Credentialed Observer**” shall mean an individual, not always the supervisor of the specialist, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a specialist’s appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

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

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

“**DSEA**” shall mean the Delaware State Education Association.

“**Evaluator**” shall mean a Credentialed Observer who is responsible for a specialist’s Summative Evaluation. A specialist’s required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

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

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

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

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

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

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

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

“**State Assessment**” shall mean the Delaware Comprehensive Assessment System (DCAS).

“**Student Achievement**” shall mean

- (a) For tested grades and subjects:
 - (1) A student’s score on the DCAS; and, as appropriate,
 - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the

Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA). “**Student Growth**” shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

“**Summative Evaluation**” shall be the final evaluation at the conclusion of the appraisal cycle mean the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations and required component-level data. At the discretion of the Evaluator, it may also include additional observation data provided by other Credentialed Observers.

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

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

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

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

3.0 Appraisal Cycles

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

4.0 *DPAS II Guide for Specialists*

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

5.0 **Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a ~~credentialed evaluator~~ the assigned Evaluator. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. Notification of any such waiver shall be provided to all specialists in a school district or charter school and the Department of Education by the last day in August of each year:
 - 5.1.1 **Planning and Preparation**
 - 5.1.1.1 **Designing Coherent Programs or Services:** Specialist designs activities and plans for services that support the needs of the students or clients served.
 - 5.1.1.2 **Demonstrating Knowledge of Best Practice and Models of Delivery:** Specialist uses practices and models of delivery that are aligned with local and national standards. (Optional)
 - 5.1.1.3 **Demonstrating Knowledge of Students or Clients:** Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.
 - 5.1.1.4 **Demonstrating Knowledge of Resources:** Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
 - 5.1.1.5 **Demonstrating Knowledge of How to Design or Use Student Assessments:** Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.
 - 5.1.2 **Professional Practice and Delivery of Services**
 - 5.1.2.1 **Creating an Environment to Support Student or Client Needs:** Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
 - 5.1.2.2 **Demonstrating Flexibility and Responsiveness:** Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients. (Optional)
 - 5.1.2.3 **Communicating Clearly and Accurately:** Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding. (Optional)
 - 5.1.2.4 **Delivering Services to Students or Clients:** Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.
 - 5.1.3 **Professional Collaboration and Consultation**
 - 5.1.3.1 **Collaborating with Others:** Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs. (Optional)

- 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns. (Optional)
- 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
- 5.1.3.4 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.
- 5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
 - 5.1.4.1 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.
 - 5.1.4.2 Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel. (Optional)
 - 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students. (Optional)
 - 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
- 5.1.5 Student Improvement
 - 5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.
- 5.2 ~~Notwithstanding 5.1 for the 2011-2012 school year, the first four (4) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator.~~

6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
 - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist has no more than one unacceptable rating on the Appraisal Criteria specified in each of the ~~five (5)~~ components set forth in 5.1. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a specialist's Summative Evaluation.
 - 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.
 - 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate

high rates of student growth, as defined in the *DPAS II Revised Guide for Specialists*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

~~6.2.1.1 Notwithstanding 6.2.1 for the 2011-2012 school year, for a specialist the Summative Evaluation Rating "Highly Effective" shall not be applicable.~~

6.2.2 Effective shall mean that:

6.2.2.1 The specialist has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and

6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.

~~6.2.2.3 Notwithstanding 6.2.2.1 and 6.2.2.2 for the 2011-2012 school year, "Effective" shall mean the specialist has earned a Satisfactory Component Rating three (3) or four (4) of the first four (4) Appraisal Components.~~

6.2.3 Needs Improvement shall mean that:

6.2.3.1 The specialist has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or

6.2.3.2 The specialist has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has earned an Unsatisfactory rating in the Student Improvement Component.

~~6.2.3.3 Notwithstanding 6.2.3.1 and 6.2.3.2 for the 2011-2012 school year, "Needs Improvement" shall mean the specialist has earned a Satisfactory Component Rating in two (2) of the first four (4) Appraisal Components.~~

6.2.4 Ineffective shall mean that:

6.2.4.1 The specialist has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and

6.2.4.2 The specialist has earned an Unsatisfactory Component Rating in the School Improvement Component.

~~6.2.4.3 Notwithstanding 6.2.4.1 and 6.2.4.1 for the 2011-2012 school year, "Ineffective" shall mean the specialist has earned a Satisfactory Component Rating in zero (0) or one (1) of the first four (4) Appraisal Components.~~

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

7.0 Pattern of Ineffective Practice Defined

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

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

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.1.1 An Improvement Plan ~~shall also~~ may be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance ~~shall~~ may be noted by the ~~evaluator on the Formative Feedback form~~ Evaluator on the required forms by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.
- 8.2 The Improvement Plan shall contain the following:
- 8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;
- 8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;
- 8.2.3 Specific professional development or activities to accomplish the goals;
- 8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
- 8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;
- 8.2.6 Timeline for the plan, including intermediate check points to determine progress;
- 8.2.7 Procedures for determining satisfactory improvement.
- 8.2.8 Multiple observations and opportunity for feedback provided by a ~~trained evaluator~~ Credentialed Observer, a mentor, or lead specialist, or an instructional coach.
- 8.3 Any state or federally funded professional development that is completed during the time that the Improvement Plan is in effect must directly relate to areas identified as needing improvement.
- 8.34 The Improvement Plan shall be developed cooperatively by the specialist and ~~e~~Evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.21 above.
- 8.45 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- 8.56 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

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

10.0 ~~Evaluator Credentials Credentialing~~

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

11.0 Evaluation of Process

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

~~12.0 Procedures for the Termination of Services of Professional Employees~~

~~For purposes of 14 Del.C., Chapter 14 Procedures for the Termination of Services of Professional Employees only, the Appraisal Component 5.1.5 Student Improvement shall be considered "Satisfactory" for a specialist for the 2011-2012 school year.~~

OFFICE OF THE SECRETARY

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

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

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

A. Type of Regulatory Action Required

Repeal of an Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The regulation is no longer applicable because 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised took effect beginning in the 2011-2012 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **July 5, 2013** to Susan Haberstroh, Department of Education, at 35 Commerce Way, Suite 1, 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 being repealed because regulation 108A was promulgated in lieu thereof.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed because regulation 108A was promulgated in lieu thereof.

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 **Delaware Code**, Section 122(3)a and 11(8) (16 **Del.C.** §122(3)a & 11(8))
16 **DE Admin. Code** 4104

PUBLIC NOTICE

4104 Delaware Conrad State 30/J-1 Visa Waiver Program

The Bureau of Health Planning and Resource Management, Division of Public Health, Department of Health and Social Services, is proposing amendments to the 4104 Conrad State 30/J-1 Visa Waiver Program regulations. Originally adopted on January 11, 2000, these regulations set forth requirements and procedures for an international medical graduate (IMG) requesting State support for a waiver of the J-1 visa home residency requirement.

On June 1, 2013, DHSS plans to publish as proposed regulations governing the Conrad State 30/J-1 Visa Waiver Program and hold them out for public comment per Delaware law. Copies of the proposed regulations are available for review in the June 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Bureau of Health Planning and Resource Management at (302) 744-4776.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Tuesday, July 2, 2013 at:

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

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

4104 Delaware Conrad State 30/J-1 Visa Waiver Program

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 **Delaware Code**, Section 122(3)a (16 **Del.C.** §122(3))
16 **DE Admin. Code** 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

The Bureau of Epidemiology, Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations for the Control of Communicable and Other Disease Conditions in response to legislation created by HB 403.

House Bill 403, signed into law on July 20, 2012, broadens the purpose of the Hospital Acquired Infections Advisory Committee to include prevention and control of hospital acquired infections in addition to disclosing such infections to the Department of Health and Social Services. It also extends the scope of the Hospital Infections Disclosure Act to long-term care facilities, freestanding surgical centers, dialysis centers, and psychiatric facilities. These facilities would not be required to report healthcare associated infections unless required by DHSS with the concurrence of the Advisory Committee. The bill requires all physicians to report a healthcare associated infection, not just those physicians who performed the procedure that led to the infection. It also changes the required content of quarterly and annual reports. Finally, the legislation clarifies that reports of infections by Correctional facilities are infections that result from health care provided in the facility.

On June 1, 2013, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the June 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Bureau of Epidemiology, Division of Public Health, at (302) 744-1033.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Tuesday, July 2, 2013 at:

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

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

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1138

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

REGISTER NOTICE

SAN # 2012-22

1. TITLE OF THE REGULATIONS:

Amendment to 7 **DE Admin. Code** 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (HAPs) in the Clean Air Act Amendments of 1990. Congress stipulated that the EPA implement a 2-phase rulemaking process to reduce health risks. In phase one, the EPA was to adopt emission standards based on currently available control technologies; these standards are referred to as maximum achievable control technology (MACT) standards. In phase two, the EPA was to adopt additional standards based on an assessment of the health risks remaining after the implementation of the MACT standards and an assessment of the availability of new control technologies; these standards were referred to as risk and technology review (RTR) standards.

Delaware adopted the federal MACT standard (40 CFR Part 63 Subpart N) applicable to chromium electroplating and chromium anodizing facilities, as Section 6 of 7 **DE Admin. Code** 1138 on November 1, 2001.

In 2010 and 2011, the EPA undertook an extensive assessment and, on September 19, 2012, promulgated the RTR standard applicable to chromium electroplating and chromium anodizing facilities. The notable, more stringent changes to Subpart N included the lowering of the maximum allowable emission rate of chromium to the atmosphere, the prohibition of continued use of certain fume suppressants, and the addition of new housekeeping procedures.

This proposed amendment to Section 6 of 7 **DE Admin. Code** 1138 is being undertaken to incorporate the more stringent changes the EPA made to Subpart N, in order to reduce the public's exposure to chromium and to maintain the consistency of Delaware's air toxics regulatory requirements under Section 6 with national requirements under Subpart N.

In addition, the Department adopted Section 10 into 7 **DE Admin. Code** 1138 on November 1, 2009. That regulatory action was precipitated by the EPA's adoption of a new area source air toxics standard under 40 CFR Part 63 Subpart W (Subpart 6Ws) on June 12, 2008, which was applicable nationally to metal plating and polishing facilities that emit cadmium, chromium, lead, manganese, or nickel compounds.

In 2010, the EPA received numerable questions from individual metal plating and polishing facilities and their industry trade associations seeking clarifications and interpretations on various aspects of their original June 12, 2008 adoption of Subpart 6Ws. Following this dialogue and review, the EPA amended Subpart 6Ws on September 19, 2011. The primary change effected by the EPA's amendment was a clarification that Subpart 6Ws did not apply to any bench scale activities. At the same time, the EPA 1) clarified industries' confusion on applicability of Subpart 6Ws

to various types of metal plating operations, 2) corrected portions of the original text that was prone to misinterpretation, and 3) corrected several technical errors.

This proposed amendment to Section 10 of 7 DE Admin. Code 1138 is being undertaken to incorporate the clarifications and corrections the EPA made to Subpart 6Ws (76 FR 57913, 9/19/11), in order to maintain the consistency of Delaware's air toxics regulatory requirements under Section 10 with national requirements under Subpart 6Ws.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, June 27, 2013 starting at 6:00 PM in the DNREC Richardson & Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

7. PREPARED BY:

James R. Snead (302) 323-4542 jsnead@state.de.us May 2, 2013

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

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Chapter 3 (31 Del.C. Ch. 3)
9 DE Admin. Code 105

105 Residential Child Care Facilities and Day Treatment Programs

PUBLIC NOTICE

Summary

The Office of Child Care Licensing proposes to amend the Delaware Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received in response to Executive Order 36. That process elicited very limited public response. In response to that input the changes to existing regulations address only required staff training hours. A full review is planned in Fall 2013 at which time the normal process for revising regulations will occur. This will include the involvement of a wide cross-section of stakeholders, with all

licensed programs participating. The review will examine best practices, regulations promulgated by other States, research on subjects related to residential and day treatment care and identified issues and services within existing programs within Delaware.

Comments

A copy of the proposed regulations is being published in the June 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on June 30, 2013.

Adoption of Proposed Regulations

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

SUMMARY OF PROPOSED CHANGES

- Throughout the document, the word "requirement" has been changed to "regulation," the terminology used in Administrative Code.
- 3.122 A licensee shall ensure that bathrooms are equipped with ~~openable~~ windows that open or mechanical ventilation systems to the outside.
- 3.27 A licensee shall ensure that each new employee, volunteer, or any current employee or volunteer whose job function changes, and whose primary role or function requires interaction with children, receives at least ~~45~~ 20 hours of planned training preceding the assumption of his or her work assignment on an independent basis. The training shall include instruction in: *[The rest of the regulation remains unchanged.]*
- 3.28 "A licensee shall ensure that each employee and volunteer whose primary role or function requires interaction with children and who works 24 or more hours a week receives at least ~~40~~ 30 hours of training annually, including the ~~45~~ 20 hours of training provided pursuant to rule 3.27. This training shall cover subject matters designed to maintain, improve or enhance the employee's knowledge of or skills in carrying out his or her job responsibilities, including: *[The rest of the regulation remains unchanged.]*
- 11.19 c. Any locks or latches on ~~the dropside of~~ a crib are safe and cribs meet standards that comply with the current standards of the U.S. Consumer Product Safety Commission for crib safety. from accidental release; 11.19 e. Each infant has sheets, ~~blankets~~ and other coverings for his or her exclusive use; use of blankets is prohibited with infants;
- 11.19 h. Cribs and playpens are free of hazards and an ~~excessive number of~~ toys when an infant is sleeping; and

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

105 Residential Child Care Facilities and Day Treatment Programs

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Landscape Architecture

Statutory Authority: 24 Delaware Code, Section 205 (24 **Del.C.**, §205)
24 **DE Admin. Code** 200

PUBLIC NOTICE

200 Board of Landscape Architecture

The Delaware Board of Landscape Architecture proposes to amend its regulations. These changes remove references to paper licensure renewal forms, clarify that license renewal is conducted on-line, make non-substantive verbiage changes to ensure continuity across the Division of Professional Regulation, and clarify that audits are now conducted after renewal, rather than before.

The Board will hold a public hearing on the proposed rule change on August 8, 2013 at 9:15 AM, Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Landscape Architecture, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until August 23, 2013.

(Break in Continuity of Sections)

3.0 Filing of Applications for Certificate of Authorization

A business entity desiring a certificate of authorization pursuant to 24 **Del.C.** §212 shall file with the Board an application, on forms provided by the Board, listing relevant information, including the names and addresses of officers, partners, members, managers or principals of the business entity and also of the individual(s) duly licensed to practice landscaped architecture in this State who shall be in responsible of the landscape architecture in compliance with 24 **Del.C.** §212(b)(1), and any other information required by the Board, accompanied by the appropriate fee. A certificate of authorization shall be renewed biennially in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of ~~a renewal form provided by the Division~~ an on-line renewal application on the Division's website. In the event there should be a change in the information provided in the application for a certificate of authorization, notification of such change shall be provided to the Board in writing within thirty (30) days of the effective date of such change.

(Break in Continuity of Sections)

6.0 Renewal of Licenses

- 6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license ~~renewal~~ expiration date upon payment of a late fee set by the Division. ~~Upon the expiration of 60~~ Sixty days following the license ~~renewal~~ expiration date an unexpired license shall be deemed ~~lapsed~~ terminated and the practitioner must reapply pursuant to the terms of 24 **Del.C.** §210(b).
- 6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: **24 Del.C. §210.**

- 6.3 Renewal may be effected by:

- 6.3.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. ~~Beginning in 2009, License renewal may be~~ is accomplished online at www.dpr.delaware.gov;
- 6.3.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
- 6.3.3 attesting on the renewal application to the completing of continuing education as required by Rule 6.0.
- 6.3.4 payment of fees as determined by the Division of Professional Regulation.

7.0 Continuing Education as a Condition of Biennial Renewal

- 7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.
 - 7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.
 - 7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.
 - 7.1.2 All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed activities for continuing education credit allowed by rule 7.6 must be pre-approved and submitted by the licensee 6 months prior to license renewal.
 - 7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the **Delaware Code** and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.
 - 7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:
 - 7.1.3.1 LA CESTM - Landscape Architecture Continuing Education SystemTM
 - 7.1.3.2 American Society of Landscape Architects (National and local/chapter levels)
 - 7.1.3.3 Council of Landscape Architectural Registration Boards
 - 7.1.3.4 American Planning Association
 - 7.1.3.5 American Institute of Certified Planners
 - 7.1.3.6 Delaware Department of Natural Resources (DNREC) Division of Soil and Water Conservation, seminars or educational programs dealing with sediment erosion and control
 - 7.1.4 Self-directed Activities: The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.
 - 7.1.4.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the

activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

- 7.2 Each licensed landscape architect shall complete, biennially, 20 units of continuing education as a condition of license renewal.
- 7.3 The continuing education period will be from February 1 to January 31 of each biennial licensing period.
- 7.4 Documentation: Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.
- 7.5 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 7.0.
- 7.5.1 Attestation may be completed electronically.
- 7.5.2 Licensees selected for random post renewal audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.9.
- 7.5.3 Each licensed landscape architect shall complete, biennially, 20 units of continuing education as a condition of license renewal.
- 7.6 Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.
- 7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period. Statutory Authority: 24 **Del.C.** §205(12).
- 7.8 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage, determined by the Board, of the licensees to be audited. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 7.9 Documentation and Audit by the Board. When a licensee's ~~whose~~ name or number appears on the audit list ~~applies for renewal~~, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for ~~random~~ audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves the right to request additional information and/or documentation to verify continuing education compliance.
- 7.9.1 The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.

- 7.10 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for disciplinary action pursuant to 24 **Del.C.** §231(a)(6). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 fine.
- 7.11 Non-compliance – Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.
- 7.12 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

8.0 Inactive Status

- 8.1 A licensee may, upon written request to the Board, place his/her license on inactive status for up to ten (10) years.
- 8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a pro-rated renewal fee and proof of completion of twenty (20) hours of continuing education for each biannual period of inactive status.
- 8.3 Licensees on inactive status shall renew their inactive status ~~by notification to the Division of Professional Regulation~~ by completing the online application at www.dpr.delaware.gov and paying the appropriate fee, at the time of biennial license renewal.

Statutory Authority: 24 **Del.C.** §210(c).

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

200 Board of Landscape Architecture

DIVISION OF PROFESSIONAL REGULATION**Board of Veterinary Medicine**

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))
24 **DE Admin. Code** 3300

PUBLIC NOTICE

3300 Board of Veterinary Medicine

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on August 13, 2013 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be August 28, 2013, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on September 10, 2013 at 1:15 p.m., at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes amendments to Rule 11.1.2, addressing licensure of veterinary technicians. The revisions clarify that applicants seeking licensure pursuant to the educational and/or experiential alternatives set forth in Rule 11.1.2 must have their applications approved by October 1, 2013. If an application is not approved by October 1, 2013, the applicant must show graduation from an AVMA approved program. The revisions also If an applicant does not pass the examination set forth in Rule 11.1.4 within one year after the date of approval of the application, in order to pursue licensure, the applicant shall re-apply for licensure and submit the application fee. Any applicant who re-applies after October 1, 2013 shall have received a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA.

3300 Board of Veterinary Medicine

(Break in Continuity of Sections)

11.0 Qualification for Licensure by Examination as a Veterinary Technician (24 Del.C. §3319)

11.1 The applicant shall file the following documents:

- 11.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.
- 11.1.2 Official transcript from an AVMA-accredited veterinary technician program or from a foreign veterinary program approved by the AVMA or documentation of completion of acceptable educational and/or experiential alternatives. ~~For a period of seven years following the effective date of 24 Del.C. §3319(a)(1),~~ The following educational and/or experience qualifications ~~shall be considered acceptable alternatives for the purpose of veterinary technician licensure provided that the Board may shorten this period.~~ The following qualifications shall be considered acceptable alternatives to licensure only if the applicant's application has been approved by the Board no later than October 1, 2013. If an applicant does not pass the examination set forth in Rule 11.1.4 within one year after the date of approval of the application, in order to pursue licensure, the applicant shall re-apply for licensure and submit the application fee. Any applicant who re-applies after October 1, 2013 shall have received a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA.
 - 11.1.2.1 a baccalaureate degree in animal science-related field as approved by the Board and 2625 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s),
 - 11.1.2.2 a degree from a veterinary technician program that is not accredited by the American Veterinary Medical Association, as approved by the Board, and 2625 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian,
 - 11.1.2.3 a baccalaureate degree in biology, chemistry, psychology, physics, or similar scientific field of study as approved by the Board and 3500 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s),
 - 11.1.2.4 completion of 60 credit hours of coursework in biology, chemistry, psychology, physics, or similar scientific field of study at the postsecondary educational level, as approved by the Board, and 5250 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s),

PROPOSED REGULATIONS

- 11.1.2.5 or a period of 7000 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s).
- 11.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed, certified or registered.
- 11.1.4 Veterinary Technician National Examination (VTNE) or its successor.
- 11.1.5 Check or money order for the license fee. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."
- 11.2 Proof of education shall consist of a transcript sent directly from school to the Board.
- 11.3 Proof of practical experience in animal care and handling shall consist of a notarized letter of endorsement from the supervising veterinarian(s).
- 11.4 Only completed application forms will be accepted. Any information provided to the Board is subject to verification.
- 11.5 Applications for any licensure submitted by final year veterinary technician students enrolled in an AVMA-accredited program for the purpose of taking the VTNE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

***Please note that no additional changes were made to the regulation. Therefore, the proposed regulation is not being published here in its entirety. A copy of the proposed regulation is available at:**

3300 Board of Veterinary Medicine

DIVISION OF PROFESSIONAL REGULATION

4100 Board of Home Inspectors

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 **Del.C.** §4106(a)(1))

4100 Board of Home Inspectors

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §4106(a)(1), the Delaware Board of Home Inspectors has proposed adoption of rules and regulations to implement its licensing law, Chapter 41 of Title 24 of the Delaware Code. In particular, the proposed rules and regulations set forth the process whereby applicants may qualify for licensure under the grandfather provision. Standards for continuing education are adopted. The rules and regulations set forth a code of ethics and standards of practice for licensees. The Board has also proposed adoption of a list of crimes substantially related to the practice of home inspection.

A public hearing will be held on June 24, 2013, at 9:30 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the proposed rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Home Inspectors, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 9, 2013, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on July 10, 2013, at 9:30 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make changes due to the public comment.

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

4100 Board of Home Inspectors

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

ORDER

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) issue this Final Order adopting amendments to its existing rule 15.1.3.1.3 to correct a technical error, as contemplated by 29 **Del.C.** §10113(b)(4), to strike in its entirety the sentence "Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules."

This Final Order is effective immediately.

IT IS SO ORDERED THIS 16TH DAY OF MAY, 2013.
W. Duncan Patterson, Jr., Chairman

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

(Break in Continuity Within Section)

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

- 15.1.3.1.1 A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.
- 15.1.3.1.2A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.
- 15.1.3.1.3A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. ~~Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.~~ Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.

***Please note that no additional changes are being made to the regulation. Therefore, the final regulation is not being published here in its entirety. A copy of the final regulation is available at:**

1001 Thoroughbred Racing Rules and Regulations

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
8 DE Admin. Code 401

401 Policies and Procedures Regarding FOIA Requests

ORDER

AND NOW, this 2nd day of May, 2013, in accordance with 29 **Del.C.** §10003(d), for the reasons stated below, this ORDER is adopted repealing the prior policies and procedures and promulgating new Policies and Procedures regarding FOIA requests.

NATURE OF PROCEEDINGS

In accordance with 29 **Del.C.** §10113(b)(1), the Professional Standards Board is updating its prior procedures governing the Policies and Procedures regarding FOIA requests to be consistent with the Department of Education's policies and provide for a uniform process. The purpose of the updated policies is to prescribe procedures relating to the inspection and copying of public records retained by the Professional Standards Board pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act. The procedures establish a reasonable fee structure for copying public records and streamlines procedures used to disseminate this information.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Professional Standards Board has developed new procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Ch. 100, The Freedom of Information Act. These regulations are in substantial compliance with, and necessary to meet the statutory requirements. The regulations reflect these procedures.

2. The Professional Standards Board has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §10003(d).

3. Pursuant to 29 **Del.C.** §10113(b)(1), regulations describing an agency's procedures for obtaining information are exempted from the notice and public comment requirements of 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Professional Standards Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2nd DAY OF MAY, 2013

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

401 Policies and Procedures Regarding FOIA Requests

1.0 Purpose

The purpose of this policy is to set forth the rules and procedures for responding to requests from the public for Public Records under 29 **Del.C.** Ch. 100, the Freedom of Information Act.

Agency employees are reminded that all Public Records requested under FOIA shall be considered open and subject to disclosure to the Requesting Party, and any information therein may be withheld only if a specific exception applies. Exceptions shall be construed in a manner that shall further the accountability of the Agency and to comply with the policy that the public shall have reasonable access to Public Records.

2.0 Definitions

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

"Agency" means the Delaware Professional Standards Board (PSB or Standards Board).

"FOIA" means the Freedom of Information Act as established pursuant to 29 **Del.C.** Ch. 100.

"FOIA Coordinator" shall mean the PSB Executive Director or other person designated by the PSB Chairperson to receive and process FOIA Requests.

"FOIA Request" or "Request" means a request to inspect or copy Public Records pursuant to 29 **Del.C.** §10003 and in accordance with the policy hereunder.

"FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for Public Records may be made.

"Non-Custodial Records" shall have the meaning set forth in section 3.6.

"Public Record" shall have the meaning set forth in 29 **Del.C.** §10002.

"Requesting Party" shall mean the party filing a FOIA Request.

"Standards Board" means the Delaware Professional Standards Board.

3.0 Records Request, Response Procedures and Access

3.1 Form of Request

- 3.1.1 All FOIA Requests shall be made in writing to the Agency in person, by email, by fax, or online in accordance with the provisions hereunder. FOIA Requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General; provided, however, that any FOIA Request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA Request Form may be obtained from the Agency's website, or from the office or website of any state agency.
- 3.1.2 All requests shall adequately describe the records sought in sufficient detail to enable the Agency to locate such records with reasonable effort. The Requesting Party shall be as specific as possible when requesting records. To assist the Agency in locating the requested records, the Agency may request that the Requesting Party provide additional information known to the Requesting Party, such the types of records, dates, parties to correspondence, and subject matter of the requested records.
- 3.2 Method of Filing Request. FOIA Requests may be made by mail or in person to the FOIA Coordinator at the Delaware Professional Standards Board, 401 Federal Street, Suite 2, Dover Delaware 19901, by email to FOIA Coordinator@doe.k12.de.us, by fax at 302-739-5894; or via online request form, which may be found on the Agency's home page at www.doe.k12.de.us/psb.
- 3.3 FOIA Coordinator
- 3.3.1 The PSB Chair Person shall designate a FOIA Coordinator, who shall serve as the point of contact for FOIA Requests and coordinate the Agency's responses thereto. The FOIA Coordinator shall be identified on the Agency's website. The FOIA Coordinator may designate other Agency employees to perform specific duties and functions hereunder and request assistance from the Department of Education's FOIA Coordinator.
- 3.3.2 The FOIA Coordinator and/or his or her designee, working in cooperation with other Agency employees and representatives, shall make every reasonable effort to assist the Requesting Party in identifying the records being sought, and to assist the Agency in locating and providing the requested records. The FOIA Coordinator and/or his or her designee will also work to foster cooperation between the Agency and the Requesting Party. Without limitation, if a Requesting Party initiates a FOIA Request that would more appropriately be directed to another agency, the FOIA Coordinator shall promptly forward such request to the relevant agency and promptly notify the Requesting Party that the request has been forwarded. The Agency may close the initial request upon receipt of a written confirmation from the FOIA Coordinator of the relevant agency that the relevant agency has received such request. The Agency shall provide the Requesting Party with the name and phone number of the FOIA Coordinator of the relevant agency.
- 3.3.3 The FOIA Coordinator shall maintain a document tracking all FOIA Requests for the then-current calendar year. For each FOIA Request, the document shall include, at a minimum: the Requesting Party's contact information; the date the Agency received the Request; the Agency's response deadline pursuant to section 3.4; the date of the Agency's response pursuant to section 3.4 (including the reasons for any extension pursuant to section 3.4.1); the names, contact information and dates of correspondence with individuals contacted in connection with requests pursuant to sections 3.3.2, 3.5 and 3.6; the dates of review by the Agency pursuant to section 3.7 and the names of individuals who conducted such reviews; whether documents were made available; the amount of copying and/or administrative fees assessed; and the date of final disposition.
- 3.4 Agency Response to Requests
- 3.4.1 The Agency shall respond to a FOIA Request as soon as possible, but in any event within fifteen (15) business days after the receipt thereof, either by providing access to the requested records; denying access to the records or parts of them; or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within fifteen (15) business days, the Agency shall cite one of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

- 3.4.2 If the Agency denies a request in whole or in part, the Agency's response shall indicate the reasons for the denial. The Agency shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.
- 3.5 Requests for email records shall be fulfilled by the Agency from its own records, if doing so can be accomplished by the Agency with reasonable effort.
- 3.6 Requests for Other Non-Custodial Records
- 3.6.1 If all or any portion of a FOIA Request seeks records controlled by the Agency but that are either not within its possession or cannot otherwise be fulfilled by the Agency with reasonable effort from records it possesses (collectively, the "Non-Custodial Records"), then the Agency shall promptly request that the relevant public body provide the Non-Custodial Records to the Agency. Prior to disclosure, records may be reviewed in accordance with section 3.7 hereunder by the Agency, the public body fulfilling the request, or both. Without limitation, Non-Custodial Records shall include budget data relating to the Agency.
- 3.6.2 Before requesting any Non-Custodial Records, the Agency shall provide a written cost estimate to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 3.7 Review by Agency. Prior to disclosure, records may be reviewed by the Agency to ensure that those records or portions of records deemed non-public may be removed pursuant to 29 **Del.C.** §10002(g) or any other applicable provision of law. In reviewing the records, all documents shall be considered Public Records unless subject to one of the exceptions set forth in 29 **Del.C.** §10002(g) or any other applicable provision of law. Nothing herein shall prohibit the Agency from disclosing or permitting access to Public Records if the Agency determines to disclose such records, except where such disclosure or access is otherwise prohibited by law or regulation.
- 3.8 Hours of Review. The Agency shall provide reasonable access for reviewing Public Records during regular business hours.

4.0 Fees

- 4.1 Photocopying Fees
- In instances in which paper records are provided to the Requesting Party, photocopying fees shall be as follows:
- 4.1.1 Standard Sized, Black and White Copies: The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white Public Records for copies over and above 20 shall be \$0.10 per sheet (i.e., \$0.10 for a single-sided sheet, \$0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11"; 8.5" x 14"; and 11" x 17".
- 4.1.2 Oversized Copies/Printouts: The charge for copying oversized Public Records shall be as follows:
- | | |
|---------------------------------------|--------------------------|
| <u>18" x 22":</u> | <u>\$2.00 per sheet</u> |
| <u>24" x 36":</u> | <u>\$3.00 per sheet</u> |
| <u>Documents larger than 24"x36":</u> | <u>\$1.00 per sq. ft</u> |
- 4.1.3 Color Copies/Printouts: An additional charge of \$1.00 per sheet will be assessed for all color copies or printouts for standard sized copies (8.5" x 11"; 8.5" x 14"; and 11" x 17"), and \$1.50 per sheet for larger copies.
- 4.2 Administrative Fees
- 4.2.1 Administrative fees shall be levied for requests requiring more than one hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA Requests, including, without limitation, (a) identifying records; (b) monitoring file reviews; and (c) generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the Agency's legal review of whether any portion of the requested records is exempt from FOIA. The Agency shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonably required to process FOIA

FINAL REGULATIONS

Requests. In connection therewith, the Agency shall minimize the use of non-administrative personnel in processing FOIA Requests, to the extent possible.

- 4.2.2 Prior to fulfilling any request that would require a Requesting Party to incur administrative fees, the Agency shall provide a written cost estimate of such fees to the Requesting Party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the Requesting Party may decide whether to proceed with, cancel or modify the request.
- 4.2.3 Administrative fees will be billed to the Requesting Party per quarter hour. These charges will be billed at the current hourly pay grade (pro-rated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this Section 4, including copying fees.
- 4.2.4 When multiple FOIA Requests are submitted by or on behalf of a Requesting Party in an effort to avoid incurring administrative charges, the Agency may in its discretion aggregate staff time for all such requests when computing fees hereunder.
- 4.3 Microfilm and/or Microfiche Printouts: The first 20 pages of standard sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be \$0.15 per sheet.
- 4.4 Electronically Generated Records: Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.
- 4.5 Payment
- 4.5.1 The Agency may require all fees to be paid prior to any service being performed hereunder.
- 4.5.2 The Agency may require pre-payment of all fees prior to fulfillment of any request for records hereunder.
- 4.6 Appointment Rescheduling or Cancellation: Requesting Parties who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the charges incurred by the Agency in preparing the requested records. The Agency shall prepare an itemized invoice of these charges and provide the same to the Requesting Party for payment.

5.0 Applicability

To the extent any provision in this policy conflicts with any other law or regulation, such law or regulation shall control, and the conflicting provision herein is expressly superseded.

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

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

ORDER

Medicaid Coverage for Prescribed Drugs

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding discontinuation of Medicaid coverage of barbiturates and benzodiazepines for dual eligible recipients. An additional amendment is proposed to update the quantity limits for opioid analgesics. 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 April 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the

public concerning the proposed regulations to be produced by April 30, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

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

Summary of Proposal

Description of State Plan Amendment (SPA) and Effective Date

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

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

Therefore, to comply with section 175 of the MIPPA, the Division of Medicaid and Medical Assistance (DMMA) will be submitting a SPA no later than March 31, 2013. This SPA, effective January 1, 2013, will remove (1) barbiturates used in the treatment of epilepsy, cancer, or a chronic mental health disorder, and (2) benzodiazepines as drugs DMMA will cover for people who have both Medicare and Medicaid (dual eligible individuals). DMMA will continue to cover barbiturates for full benefit dual eligibles for diagnoses other than epilepsy, cancer, and chronic mental health disorders. These recipients will need to obtain a prior authorization for barbiturates from their prescribing provider indicating a medical condition other than the three specified in the amended section of the MIPPA.

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

Additionally, DMMA proposes to amend the state plan to update limitations on the quantity of drugs that can be prescribed, as clinically appropriate. To ensure that quantity limits are placed on therapeutic categories that will

allow for coordinated care and improve outcomes, and to reflect current practice, Opioid Analgesics are limited to 720 immediate release doses per 365 days.

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

Fiscal Impact Statement

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The American Cancer Society Cancer Action Network (ACS CAN), the Delaware Cancer Consortium, the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

American Cancer Society Cancer Action Network (ACS CAN)

This letter is written on behalf of the American Cancer Society Cancer Action Network (ACS CAN) concerning the Department of Health and Social Services, Division of Medicaid and Medical Assistance proposed regulation on Medicaid Coverage for Prescribed Drugs published in the April 2013 Delaware Register of Regulations.

ACS CAN is very concerned that the proposed limitation of allowing prescribers to prescribe only 720 immediate release doses of opioid analgesics per 365 days will impede necessary medical care for Delaware's cancer patients.

Cancer is a particularly unique and complex disease. Limiting services for cancer patients and cancer prescriptions can have severe consequences. Adequate treatment of cancer and its side effects often requires frequent outpatient visits and multiple prescriptions. Other programs, such as Medicare, have recognized the unique nature of drugs used to treat cancer and the need to provide them (unimpeded) to beneficiaries.

Limiting quantities of opioids creates an additional administrative barrier that can discourage physicians from prescribing opioids, even if they're the most appropriate option for the patient, and can deter beneficiaries from seeking the recommended care. For cancer patients, such delays could be detrimental to their treatment success and quality of life.

We ask that you do not move forward with the proposed regulation and instead continue to provide cancer patients access to medically appropriate opioid analgesics that can improve health outcomes and quality of life.

Delaware Cancer Consortium

As stated in Delaware Register of Regulations, Vol. 16, Issue 10, dated Monday, April 10, 2013 as it relates to the proposed dosage limits of opioid analgesics from the current limit of 200 doses per 30 days to 720 immediate release doses per 365 days. The proposed regulation dosage limit would equate to just two doses per day, however in most cases cancer patients are prescribed and frequently require dosing every three to four hours of immediate release opioids for control of chronic cancer pain and acute cancer pain.

The DMMA's goal of regulations as it relates to quantity limits on opioid analgesics is appreciated; however, the Delaware Cancer Consortium requests that patients being diagnosed with cancer be exempt from this change. Including cancer patients in this requirement will be detrimental to the management of the chronic pain they suffer from. I would like to address key points as to why cancer patients should be exempt from the proposed regulation:

1. As quoted by the National Cancer Institute as it relates to opioids specifically it has been written "Opioids are very effective for the relief of moderate to severe pain. Many patients with cancer pain however become tolerant to opioids during long-term therapy. Therefore, increasing doses may be needed to continue to relieve pain. A patient's tolerance of an opioid or physical dependence on it is not the same as addiction (psychological dependence). Mistaken concerns about addiction can result in undertreating pain." National Cancer Institute. (2013, February 27). *Management with Drugs - Basic Principles to Pain Management*. Retrieved April 24, 2013, from

<http://www.cancer.gov/cancertopics/pdq/supportivecare/pain/patient/page4>

2. As quoted by the Cleveland Clinic as it relates to the use of opioids for cancer pain it has been written "When used for cancer pain, tolerance to oral morphine (morphine taken by mouth) develops slowly. Tolerance to a drug means that as the body gets used to a drug, it needs more of the same drug to get the same effect. Often when cancer patients have more pain, it is not the increased tolerance level that makes them need more pain medication; it is the progression of the cancer that brings more pain, which increases the need for medication." The Cleveland Clinic. (n.d) *Concerns miss-concepts and Facts of Opioids (morphine derivatives) Active Therapy for Pain*. Retrieved April 24, 2013, from <http://www.clevelandclinic.org/myeloma/Pain%20Management.htm>

In both citations above, it is clear that cancer patients requiring opioid analgesics as part of their treatment program will suffer immensely if the proposed regulation does not exclude them. Again, thank you for allowing the Delaware Cancer Consortium to provide comments. Cancer is a particularly unique and complex disease. We strongly believe that if cancer patients are not deemed exempt from this limitation, it will have severe consequences on the patient's quality of life.

GACEC and SCPD

First, for dual eligible (Medicare/Medicaid) individuals, Medicaid coverage for benzodiazepines ends and Medicaid coverage for barbiturates ends unless prescribed for a condition other than epilepsy, cancer, or a chronic mental health disorder. This change is required by federal law. Effective January 1, 2013, Medicare D will cover benzodiazepines and barbiturates prescribed to treat epilepsy, cancer, or a chronic mental health disorder. Therefore, there is no "net" loss of coverage for dual eligibles, i.e., they will be eligible for these drugs under the Medicare-D program rather than Medicaid.

Second, the Division is changing quantity limits on opioid analgesics. At 1033. The current limit is "200 doses per 30 days" which is roughly equivalent to 2,400 doses per year. The new limit will be "720 immediate release doses per 365 days". Lowering the quantity limit from 2,400 to 720 doses annually represents a 70% reduction. The Division indicates that the "720 immediate release doses per 365 days" reflects current practice. At 1030.

Overall, the Medicaid Plan changes are expected to result in \$101,000.00 in savings. At 1030.

GACEC and SCPD endorse the change in benzodiazepines and barbiturates coverage for dual eligibles since required by federal law. However, we request clarification of the following: 1) the rationale for reducing the limits on opioid analgesics by 70%; and 2) the availability of an "override" based on compelling circumstances.

Agency Response: DMMA agrees that certain medical conditions such as cancer, sickle cell anemia, etc., may warrant exception to the established opioid limits when medically necessary. However, we also believe the responsible approach to administering opioids entails constant clinical oversight to achieve optimum results in pain relief as well as protection against inappropriate use of opioids by others not prescribed to receive these drugs.

From a clinical perspective, pain medication should be used in a way that provides a continuum of analgesia (pain relief) to reduce the number of doses a client needs throughout the day. By reviewing and appropriately adjusting the number of short-acting opioid doses administered to a patient each day, a clinician can reduce the number of peaks and troughs that often occur with patients undergoing pain control treatment, thereby assuring a better quality outcome.

DMMA is sensitive to the differentiation of need between cancer and non-cancer patients (and other equivalent medical conditions) and will cover additional quantities of opioids when prior approved through a timely verbal or written request by the treating physician prior to the expiration of the existing prescription. This exception procedure is currently in place and processed in real time. We believe this process will continue to serve the needs of our patient population and the administration of the pharmacy benefit in the most appropriate manner.

There is no change to the regulation as a result of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 1, 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding discontinuation of Medicaid coverage of barbiturates and benzodiazepines for dual eligible recipients and update of quantity limits for opioid analgesics is adopted and shall be final effective June 10, 2013.

Rita M. Landgraf, Secretary, DHSS

*Please note that no changes were made to the regulation as originally proposed and published in the April 2013 issue of the *Register* at page 1028 (16 DE Reg. 1028). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Medicaid Coverage for Prescribed Drugs

DIVISION OF PUBLIC HEALTH

Authority On Radiation Protection

Statutory Authority: 16 Delaware Code, §7405 (16 Del.C. § 7405)

ORDER

4465 Delaware Radiation Control Regulations

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to amend five sets of the State of Delaware Regulations Governing Radiation Control. The DHSS proceedings to amend regulations were initiated pursuant to 29 **Del.C.** §101 and authority as prescribed by 16 **Del.C.** §7405. The five sets amended are shown in the table below.

DE Admin. Code No.	Current Delaware Citation	Title
4482	Part C	Licensing of Radioactive Material
4485	Part F	Use of Diagnostic X-Rays in the Healing Arts
4486	Part G	Use of Radionuclides in the Healing Arts
4490	Part K	Compliance Procedures
4492	Part X	Therapeutic Radiation Machines

On March 1, 2013 (Volume 16, Issue 9), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 8, 2013, or be presented at a public hearing on March 22, 2013, 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 Radiation Control were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Written comments were received on the proposed regulations during the public comment period (March 1, 2013 through April 8, 2013). Entities offering comments included:

Mr. Reed W. Best, Director of Regulatory and Quality Affairs, Aribex, Inc.

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

- Aribex, Inc. (Aribex) supports the efforts of the Authority on Radiation Protection (ARP) to amend the Delaware Radiation Control Regulations (DRCR) and commends the use of the Suggested State Regulations for Control of Radiation (SSRCR) as guidance for updating the Delaware regulations. The SSRCS developed by the Conference of Radiation Control Program Directors (CRCPD) serve as a model for radiation control regulations for the states and promote uniformity and consistency across the

United States. Such uniformity and consistency from state to state is essential for businesses operating across the nation.

Aribex is the developer and manufacturer of hand-held x-ray devices that are sold throughout the United States and in many other nations around the world for use in the dental, veterinarian, and forensic medicine. Currently Aribex distributes these units under the names of the NOMAD, NOMAD Pro, and the NOMAD eXaminer. All of these devices are manufactured at the Aribex facilities in Orem, Utah. As a supplier of these hand-held x-ray units, the repeal of the current Part F and the addition of DE Admin Code No. 4485, Use of Diagnostic X-Rays in the Healing Arts are of direct importance to Aribex.

Aribex feels that the provisions in the proposed regulations are prudent and appropriate for the generic class of hand-held x-ray units. However, in order to reduce the administrative workload on both the staff of the Office of Radiation Control (ORC) and the regulated community, we would suggest that provisions be made either in the regulations or in the policies/procedures of the ORC to allow changes in these requirements based upon a demonstration by the manufacturer of a device that its device(s) are safe and efficacious.

California has issued Exemption to California Code of Regulations dated March 13, 2013, (copy is attached) which uses this approach:

“...exemption is made for users of the Aribex Nomad, Aribex Nomad Pro, and Aribex Nomad eXaminer, based on seven years of exposure data. Users of these portable hand-held X-ray systems are not required to comply with the personnel monitoring requirement found in condition 3. The personnel monitoring requirements may be reevaluated for other units after sufficient historical exposure data has been obtained and submitted, by the manufacturer, to the Department for review.”

Attached is a comparison of the requirements in the proposed regulations and what we suggest are appropriate requirements for the NOMAD devices. Specifically the differences are that the users of the NOMAD devices should not be required to use the device on a stand, should not be required to wear a leaded apron when operating the NOMAD, and should not be required to provide personnel monitoring devices for operators of the NOMAD.

These requirements, which are not required for operators of conventional wall mounted x-ray units, were put in place out of a need for an abundance of caution when the NOMAD was a new and unfamiliar device. Now with over seven years of clinical usage and over 11,000 NOMAD units in use across the United States, the NOMAD is no longer new or unfamiliar, but rather a proven safe and efficacious device. Therefore, Aribex requests that you reconsider these requirements for operators of the NOMAD.

The requirement for personnel monitoring in Delaware regulations applies to persons who may receive 10% or more of the annual radiation dose limit. In the numerous studies of operator doses associated with the use of the NOMAD, no study of radiation doses has ever shown anywhere near this level of exposure for operators of the NOMAD.

I believe that the staff of ORC has been provided with copies of many of these studies, but if you have not I will be happy to see that they are sent to you for your review. I have attached copies of two peer-reviewed studies on radiation doses to operators of the NOMAD published in 2012 in case you have not seen them. The first paper was published in Health Physics in February 2012 and the second was published in the Health Physics Society journal Operational Radiation Safety in August 2012. These studies, like all the previous studies, demonstrate that the radiation doses to operators of the NOMAD are extremely small and well below the 10% limit requiring personnel monitoring.

Aribex shares your concern that while the NOMAD has repeatedly been shown to be a safe and efficacious hand-held x-ray unit, there are other hand-held x-ray units available to users in Delaware that have not been designed and manufactured with the safety and radiation protection features inherent in the NOMAD. To our knowledge these units have not undergone the extensive radiation safety testing

that the NOMAD has undergone.

The Washington radiation control program tested four different hand-held x-ray units including the NOMAD and found markedly different potential radiation exposures between the devices. Attached is a copy of the data from that study. Based on this study the State of Washington has adopted regulations that address the different levels of potential radiation exposure to the operators associated with various devices. A copy of the current Washington regulations that base the level of required additional protective devices based on potential radiation exposure to the operator is also attached. Delaware may want to consider providing similar criteria in its regulations or implementation guidance.

If Aribex can help the State of Delaware in its process of adopting its new regulations, please let me know.

Thank you for your time and consideration of our comments and suggestions.

Agency Response: The Agency appreciates and acknowledges your comment but respectfully will not adopt your recommendation, as the proposed regulation allows permitted facilities to utilize a conditional variance application process if they wish to use hand-held x-ray devices in the healing arts. In Delaware, permitted facilities have standing to request exemption or variance for utilization of any device approved by the FDA that they see as necessary in their practice, and the state inspects such facilities to assess operational safety and health protection regulatory compliance. The state has historically relied upon, and will continue to rely upon the federal Food & Drug Administration (FDA) to approve radiation-emitting manufactured devices for sale and distribution in the United States.

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 public 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 Radiation Control are adopted and shall become effective June 11, 2013, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the March 2013 issue of the *Register* at page 926 (16 DE Reg. 926). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4465 Delaware Radiation Control Regulations

DIVISION OF SOCIAL SERVICES

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

ORDER

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

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically,

Definitions and Explanation of Terms. 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 April 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced April 30, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Definitions and Explanation of Terms.

Statutory Authority

45 CFR Part 98, Child Care and Development Fund

Background

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

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

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

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

Summary of Proposed Changes

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

Specifically:

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

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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

The rationale for the change includes the desire to conform to Office of Child Care Licensing (OCCL) standards. The proposed regulation was published as 16 DE Reg. 1043 in the April 1, 2013 issue of the Register of Regulations. GACEC and SCPD have the following observations and suggest that DSS may wish to consider republication of a corrected proposed regulation.

First, DSS recites as follows in the Summary of Proposed Changes:

- 1) This regulatory action changes the number of children in "Child Care Centers" from 12 or more to 13 or more;..

However, the actual text of the proposed revision is omitted from both the "paper" and electronic version of the regulation. The current regulatory definition of "Child Care Centers" from 16 **DE Admin Code** 11000, §11002.9 is attached for facilitated reference. This is the section DSS intended to amend by substituting "13" for "12".

Agency Response: DSS appreciates the comment. The omission of the definition of "Child Care Centers" on DSS Proposed Regulation #13-11 was a publication error. However, actual text is provided. The complete copy of the proposed regulation is viewable at the link provided where both revised definitions are underscored and stricken, as appropriate.

Second, DSS is amending the definition of "large family child care home" to cover non-residential centers and change the qualifications from caring for 6-12 children to 7-12 children:

A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver. A private residence other than the child's residence or a non-residential site where licensed care is provided for seven to twelve children who are not related to the caregiver....

At 1044. Unfortunately, this definition is at odds with the attached OCCL definition published at 9 DE Reg. 104, §3.0. The OCCL definition, in pertinent part, reads as follows:

The person or entity has in custody or control seven (7) to a maximum of twelve (12) children preschool age or older who live at and/or are present at the Large Family Child Care Home. In addition to the children preschool-age or younger, this person or entity may also have custody or control of one (1) to a maximum of two (2) school-age children who do not live at the Large Family Child Care Home but are present only for before and after school, and/or during school holidays, and/or during the summer....

The DSS definition is not co-terminous with the OCCL definition since: 1) it omits the OCCL age criteria; and 2) it would not permit the presence of 1-2 school-age children in addition to the complement of 7-12 children.

Given the above observations, DSS may wish to consider republication of a corrected proposed regulation.

Agency Response: The definition of "large family child care home" has been revised to mirror the OCCL definition in the final order regulation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Definitions and Explanation of the Terms, Child Care Centers and Large Family Child Care Home*, is adopted and shall be final effective June 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #13-18

REVISION:

11002.9 Definitions and Explanation of Terms

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

**Large Family Child
Care Home**

~~A private residence other than the child's residence, where licensed care is provided for more than six but less than twelve children who are not related to the caregiver. [A private residence other than the child's residence or a non-residential site where licensed care is provided for seven to twelve children who are not related to the caregiver. The site must be in compliance with Municipal, City and State licensing requirements.~~ A licensed child care service provided for part of a twenty-four (24) hour day, offered by any person or entity including but not limited to an owner, association, agency or organization that advertises or holds himself, herself or itself out as conducting such a service. This person or entity has in custody or control seven (7) to a maximum of twelve (12) children preschool-age or older who live at and/or are present at the Large Family Child Care Home. In addition to the children preschool-age or younger, this person or entity may also have custody or control of one (1) to a maximum of two (2) school-age children who do not live at the Large Family Child Care Home but are present only for before and after school, and/or during school holidays, and/or during the summer. All of these children are provided care, education, protection, supervision or guidance in a private home or non-residential setting. This does not include a child care service provided exclusively to relatives as defined by these rules.]

***Please Note:** As the rest of the sections were not amended since the proposal in the April 2013 *Register*, they are not being published here. A complete copy of the final regulation is available at:

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR QUALITY**

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

Secretary's Order No.: 2013-A-0001

7 **DE Admin. Code** 1125, *Requirements for Preconstruction Review*, Section 1.9 ("Definitions")

Date of Issuance: May 9, 2013

Effective Date of the Amendment: June 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review, Section 1.9 ("Definitions"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-18. The Department published its initial proposed Regulation Amendments in the September 1, 2012 Delaware *Register of Regulations*, and held a public hearing on September 27, 2012. It should be noted that the only public comment received by the Department in this matter came from the Delaware Solid Waste Authority at the time of the aforementioned public hearing, and that such comment voiced support for this proposed action.

The proposed amendments to 7 DE Admin. Code 1125 will enable the Department to revise Section 1.9 of Regulation 1125 to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration. This proposed change mirrors the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 22, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will be enabled to incorporate federal rule language contained in the three-year deferral rule (76 FR 43490 – July 20, 2011) to exempt new source review permitting of facilities emitting biogenic sourced carbon dioxide (CO₂).

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on September 27, 2012;
- 3.) The Department held a public hearing on September 27, 2012 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) revise Section 1.9 of Regulation 1125 to include in the definition for "Greenhouse Gases (GHG)" that, prior to July 21, 2014, biogenic carbon dioxide (CO₂) emissions be excluded from consideration; (2) effectively mirror the federal rule at 76 FR 43490 (July 20, 2011), temporarily deferring for a period of three years the application of Prevention of Significant Deterioration (PSD) permitting requirements for CO₂ emissions from bioenergy and other biogenic stationary sources such as landfills; and, lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the September 2012 issue of the *Register* at page 239 (16 DE Reg. 239). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Regulation 1125, Requirements for Preconstruction Review

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d) (7 Del.C. §901(c & d))
7 DE Admin. Code 3511

Secretary's Order No.: 2013-F-0016
Approving Final Regulation Amendments to 7 DE Admin. Code 3511:
Summer Flounder Size Limits; Possession Limit; Seasons

Date of Issuance: May 14, 2013
Effective Date of the Amendment: June 11, 2013

3511 Summer Flounder Size Limits; Possession Limits

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

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 regarding Summer Flounder. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-02. The Department published the proposed amendments in the March 1, 2013 Delaware *Register of Regulations* and held a public hearing on March 21, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 3, 2013 (Report). The Report recommends certain findings and the adoption of the proposed regulation amendment as attached to the Report as Appendix A.

Findings and Discussion

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

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC), and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC approved a coastwide recreational summer flounder harvest limit for 2013, resulting in recreational summer flounder allocation of 78,512 fish to Delaware. Although this was a reduction from the 2012 allocation (87,536 fish), the 2013 quota represents a 104% increase relative to Delaware's 2012 recreational harvest (38,470 fish). As such, Delaware has an opportunity at this time to liberalize its management measures for the 2013 recreational summer flounder fishery, provided the management measures are approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board following established criteria.

As discussed in the aforementioned Report, four options were developed and subsequently approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Technical Committee at their January 2013 meeting. These options, ranging from a proposed minimum size of 16.5 inches to 18.0 inches, served as the basis for the Department's proposed regulatory change. With the exception of the 18.0 inch option (which included with it a closed season from Oct. 24th through Dec. 31st and a zero percent estimated increase in harvest), the options presented by the Department for public comment called for a possession limit of 4 fish per day, no closed season, and an estimated increase in harvest from the prior year. It is appropriately noted that, as the estimated harvest for each option increases, the risk of exceeding the allowable catch so increases, and exceeding the allowable catch will result in a corresponding reduction in the following year's allowable catch.

While each of the options considered by the Department is predicted to achieve the management target under

conditions similar to 2012, the Department remains somewhat concerned that the 2012 recreational landings data reflect an atypical shift in summer flounder distribution, due to the unusually warm weather that presented itself in 2012. This shift appears to have increased stock availability farther north, and reduced availability in Delaware and to the south. Should stock distribution return to a more typical pattern in 2013, the risk of exceeding our total allowable catch may substantially increase. Further exacerbating uncertainty in this matter is a shift to a new recreational sampling methodology that may change summer flounder landings estimates for 2013.

In addition to the concerns noted above, there was a significant amount of public comment received with regard to the four options presented by the Department at the public hearing of March 21, 2013. These comments were given a thorough and exhaustive review by the Division of Fish & Wildlife, and were considered within the context of which of the approved options offered the most reasonable, risk-averse measure to manage Delaware's summer flounder fishery. While it is true that there are several ways to categorize the comment received in this matter, the fact remains that the two most favored options voiced by the public were for Option #3 (minimum size of 17.0 inches and an estimated increase in harvest of 40%) and Option #4 (minimum size of 16.5 inches, and an estimated increase in harvest of 81.8%). Both of these options call for a creel limit of 4, and no closed season, so those factors are not at issue in this particular deliberation. However, when comparing the estimated increase in harvest for each of these options, Option #4 is more than double the projected increase of Option #3. Given the concerns of Delaware potentially exceeding its total allowable catch (which, in turn, may result in a corresponding reduction in the following year's allowable catch), I hereby agree with the Department's recommendation offered for consideration, and believe the most appropriate and reasonable path forward for Delaware in this matter is to (1) liberalize the minimum size for 2013 by one inch, thus setting the summer flounder minimum size for 2013 at 17.0 inches; and (2) allowing the fishery to operate without a seasonal closure.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of summer flounder, to wit: (1) establish the size limit at 17.0 inches; (2) establish the creel limit at four (i.e., four fish per day); and (3) establish a no-closure season for 2013. In support of the selection of this option, the size limit reduction should lead to more chances for anglers to catch a keeper-sized summer flounder, and should also provide some relief for shore-based anglers who do not have access to larger flounder that are often found in deeper water habitats. Additionally, this option provides for a no-closure season for 2013, which will provide additional opportunity for anglers to harvest summer flounder in Delaware waters, yet permit the Department to manage this fishery in a reasonable, risk-averse manner.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed amendments to this regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended amendments to this regulation (as revised to reflect the aforementioned 17.0 inch minimum size limit, 4 fish per day, and no closed season for 2013) satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and do not result in any substantive change from the proposed amendments as originally published in the March 1, 2013, *Delaware Register of Regulations*;
- 6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of summer flounder, as set forth cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC), and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. It will not deprive fishermen of the enjoyment of summer flounder, nor will it cause Delaware

to suffer a marked decrease in tourism (and potential correlating economic downturn) as a result of any fishery closure in 2013. Moreover, this management option will also help to fortify and continue to rebuild the summer flounder stock while simultaneously helping to encourage and teach sound fishing ethics to the next generation of anglers in Delaware.

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

Collin P. O'Mara, Secretary

3511 Summer Flounder Size Limits; Possession Limits; Season

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~[eighteen (18)]~~ **seventeen (17)** inches between the tip of the snout and the furthest tip of the tail.

~~[Note: Size to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"]~~

- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~[eighteen (18)]~~ **seventeen (17)** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

~~[Note: Size to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"]~~

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

- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

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- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.
- 8.0 Notwithstanding section 4.0 of this regulation, it shall be unlawful for any recreational or commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the closed season beginning 12:01 a.m. October 24 and ending 12:00 p.m. December 31 next ensuing.

[Note: Size to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"]

[Table of Management Options

<u>Option</u>	<u>Minimum Size</u>	<u>Possession Limit</u>	<u>Closed Season</u>
1	18.0 inches	4	Oct. 24 – Dec 31 (69 days)
2	17.5 inches	4	None
3	17.0 inches	4	None
4	16.5 inches	4	None

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903(e); (7 Del.C., §§901(b) & 903(e))
7 DE Admin. Code 3521

ORDER

3521 Weakfish Size Limits; Possession Limits; Seasons

Secretary's Order No. 2013-F-0014

Date of Issuance: May 9, 2013

Effective Date: June 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 et seq., 29 Del.C. §§10111 et seq. and 7 Del.C. §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On July 10, 2012, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2012-11 to promulgate amendments to 7 DE Admin. Code 3521, "Weakfish Size Limits; Possession Limits; Seasons". The purpose of this proposed action was to amend the definition of weekends and weekdays as set forth in Section 5.0 of the aforementioned regulation. Under the provision of Amendment III to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish (ISFMP), Delaware was required to implement a 34-day commercial closure (when all fishing gear, except hook & line, were to be removed from the water). Delaware's present regulations include weeklong closures at the beginning of May, the end of June, and all weekends in May and June, in order to meet the ISFMP specifications. Last year, the Department received several requests from the commercial fishing sector to change the weekend closure periods from Friday through Sunday to Saturday through Monday. This requested change was intended to allow Delaware's commercial gill fishery to more adequately supply the recreational bait market with fresh Atlantic menhaden for weekend anglers.

A public hearing was held by the Department on October 31, 2012. No members of the public attended said hearing on the aforementioned proposed action, nor did the Department receive any public comment in support of the proposed measure during the open comment period. However, the Department did receive written comment (prior to the close of the comment period) on behalf of eleven individuals from the commercial fishing industry who were opposed to the proposed change. Opposition to the proposed change was based on the contention that the market quality of more lucrative foodfish species would suffer. For example, weakfish harvested on Fridays would not be shipped to markets by fish haulers until at least Monday. Weakfish do not maintain market quality for extended periods, and therefore prices paid to Delaware dealers and harvesters would be negatively impacted. Thus, if adopted, the proposed measures may negatively impact the broader Delaware gill net fishery.

It should be noted that the Advisory council on Tidal Finfisheries endorsed taking the proposed action to hearing, but based upon the comments received, the Council expressed no objection to the Department seeking other measures to address this issue. Therefore, based upon the comment received, and the fact that the proposed change has no bearing on Delaware's compliance with the ISFMP for Weakfish, its subsequent amendments and addenda, the Department's Division of Fish & Wildlife has determined that the best course of action at this time is to withdraw the proposed action as contained in Register Notice 2012-11.

The aforementioned proposed amendment to Delaware's Tidal Finfish Regulation 3521 regarding Weakfish was published in the October 2012 edition of the *Delaware Register of Regulations*. Subsequently, as noted above, the Department held a formal public hearing regarding the aforementioned proposed amendments regulation on October 31, 2012, and the public comment period was open for written comments through close of business November 15, 2012. Again, as a result of the public comments the Department received during that time period (and the fact that the proposed change has no bearing on Delaware's compliance with the ISFMP for Weakfish, its subsequent amendments and addenda), the Department has decided at this time to withdraw the current proposed regulation amendments previously published in the October 2012 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 **Del C.** §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on October 1, 2012; and

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

Collin P. O'Mara, Secretary

3521 Weakfish Size Limits; Possession Limits; Seasons.

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

- 1.0 It shall be unlawful for any person to possess weakfish, *Cynoscion regalis*, taken with a hook and line, that measure less than thirteen (13) inches, total length.
- 2.0 It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than one (1) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.
- 3.0 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for fishing equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.
 - 3.1 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit to possess more than one hundred pounds (100 lbs) of weakfish per vessel per day (a day being 24 hours) or trip, whichever is the longer period of time.
- 4.0 It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than one (1) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of one (1) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally

FINAL REGULATIONS

- caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.
- 5.0 It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:
Every weekend day (defined as 12:01 AM on ~~Friday~~ Saturday through midnight ~~Sunday~~ Monday) in both May and June, plus contiguous weekdays (defined as 12:01 AM ~~Monday~~ Tuesday through midnight ~~Thursday~~ Friday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.
- 6.0 The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of one (1) weakfish but not more than 100 pounds per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.
- 7.0 It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of one (1) weakfish.

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2318, and 2741;

29 Delaware Code Section 10113(a)

(5 Del.C. §§121(b), 2318, & 2741; 29 Del.C. §10113(a))

5 DE Admin. Code 2301, 2303, 2701, and 2702

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

2303 Report of Delaware Volume

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

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

ORDER

IT IS HEREBY ORDERED, this 2nd day of May, 2013 that new Regulation 2303 and amended Regulations 2301, 2701 and 2702 are adopted as regulations of the State Bank Commissioner. A copy of these Regulations is attached hereto and incorporated herein by reference. The effective date of each Regulation is June 11, 2013. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapter 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed new and amended Regulations and their text was published in the April 1, 2013 issue of the Delaware *Register of Regulations*. The notice was also mailed to all persons who had made a timely written request to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notice included, among other things, a summary of the proposed new and amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before May 1, 2013. The notice further stated that the proposed new and amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Lockerman Street, Suite 210; Dover, Delaware 19901 and that copies were also available upon request.

2. No written comments concerning the proposed new and amended Regulations were received on or before May 1, 2013.

3. After review and consideration, the State Bank Commissioner hereby adopts new Regulation 2303 and

amended Regulations 2301, 2701 and 2702 as proposed.

Robert A. Glen, State Bank Commissioner

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

Formerly Regulation No.: 5-2318-0004
Effective Date: November 12, 1999

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

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

The Report is available at:

~~2301.pdf Report of Delaware Sale of Checks, Drafts and Money Orders Volume~~

2301 Operating Regulation

5 Del.C. §2318

Effective Date: June 11, 2013

1.0 Compliance with Applicable Laws

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

2.0 Minimum Required Records

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

information concerning the system to ensure that the requirements of this section are satisfied and that the records will be readily available when requested.

3.0 Expired Identification

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

4.0 Advertising

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

5.0 Examination Fees and Supervisory Assessments

- 5.1 The Commissioner may examine licensees and their agents pursuant to 5 Del.C. §122. The costs of such examinations are assessed in accordance with 5 Del.C. §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 Del.C. §127(b).
- 5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 Del.C. §§127(a) and 127(b).

6.0 Examination Responses

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

2303 Report of Delaware Volume

5 Del.C. Ch. 23

Effective Date: June 11, 2013

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

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

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

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

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

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

5. List the **Delaware** business conducted in each of the following categories:

A. Travelers Checks/Cheques

Number sold: _____

Total dollar value: _____

B. Money Orders

Number sold: _____

Total dollar value: _____

C. Transmission of Funds in any form

Number of transmissions: _____

Total dollar value: _____

6. Reporting Period: _____ to _____

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

Date Signature Title

Printed Name Phone Number

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

Formerly Regulation No.: 5.2741.0001

Effective Date: November 12, 1998

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

4.1 All licensees shall conduct business in compliance with Chapter 27, Title 5, ~~Delaware Code~~, and any regulations issued thereunder. Each office licensed under Chapter 27, Title 5, ~~Delaware Code~~, shall possess copies of all applicable regulations. These regulations include:

4.1.1 Regulation 2701 (formerly 5.2741.0001) — Licensed Cashier of Checks, Drafts, or Money Orders Operating Regulations

4.1.2 Regulation 2702 (formerly 5.2743.0002) — Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records

4.1.3 Regulation 101 (formerly 5.141.0001.NC) — Retention of Financial Institution Records

4.2 The manager and staff of each office shall familiarize themselves with said regulations. Loss or misplacement of regulation shall be made known to the Office of the State Bank Commissioner and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both ~~5 Del.C. §2743~~ and this regulation.

2.0 Examination and Supervisory Assessment Fees

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

2701 Operating Regulation

5 Del.C. §2741

Effective Date: June 11, 2013

1.0 Compliance with Applicable Laws

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

2.0 Display of License and Fee Schedule

Each licensed office, including all mobile units, shall prominently display in clear view of all customers:

- 2.1 its license issued under 5 Del.C. Ch. 27, and
- 2.2 the fee schedule set forth in 5 Del.C. §2742.

3.0 Expired Identification

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

4.0 Advertising

- 4.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 4.2 When a licensee advertises with respect to its services under 5 Del.C. Ch. 27, the advertisement shall clearly and conspicuously state that the licensee is licensed to engage in business in this State under that chapter and specify the license number and expiration date of its license.

5.0 Examination Fees and Supervisory Assessments

- 5.1 The Commissioner may examine licensees pursuant to 5 Del.C. §122. The costs of such examinations are assessed in accordance with 5 Del.C. §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 5.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 Del.C. §127(b).
- 5.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 Del.C. §§127(a) and 127(b).

6.0 Examination Responses

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

~~**2702 Licensed Cashier of Checks, Drafts, or Money Orders Posting of the Fee Schedule and Minimum Requirements for Content of Books and Records**~~
~~**5 Del.C. §2743**~~

Formerly Regulation No.: 5.2743.0002
Effective Date: November 12, 1998

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

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

- ~~2.1~~ Transactions Journal — All transactions involving the cashing of checks, drafts, or money orders shall be entered into this journal. All entries in this journal shall contain the following details:
 - ~~2.1.1~~ Date of transaction;
 - ~~2.1.2~~ Customer's name;
 - ~~2.1.3~~ Customer's address;
 - ~~2.1.4~~ Type of identification;
 - ~~2.1.5~~ Check, Draft, or Money Order and Item Number;
 - ~~2.1.6~~ Amount of item;
 - ~~2.1.7~~ Fee paid;
 - ~~2.1.8~~ Employee's initials.
- ~~2.2~~ Written approval may be granted for the recording of items 2.1.2, 2.1.3, and 2.1.4 in a card file which assigns an identification number to each customer. The identification number may then be recorded in the Transactions Journal in lieu of the customer's name, address, and form of identification.
- ~~2.3~~ Record of Deposits — A copy of each day's deposit made of the checks, drafts, and money orders cashed shall be maintained.
- ~~2.4~~ Summary of Business — A record of daily and monthly totals shall be maintained, to include:
 - ~~2.4.1~~ The number of checks, drafts, and money orders cashed;
 - ~~2.4.2~~ The aggregate fees received.
- ~~2.5~~ Any licensee operating two or more locations may maintain a consolidated or combined set of books and records, provided such books and records reflect separate figures for each location.

~~2 DE Reg. 781 (11/1/98)~~

2702 Minimum Records

5 Del.C. §§2741 and 2743

Effective Date: June 11, 2013

1.0 Minimum Required Records

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

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

1.3.2 the aggregate fees received.

2.0 Location, Format and Retention of Records

- 2.1 All records shall be made available to the Commissioner's staff when requested.
- 2.2 Records may be maintained at the licensed office or mobile unit itself or at any other suitable location if they can be available within a reasonable period of time upon request.
- 2.3 The licensee may maintain a separate record for repeat customers containing the information required by §§1.1.2, 1.1.3, and 1.1.4 of this regulation if the journal entry for each transaction clearly identifies the customer. Customer information maintained as a separate record must be updated annually, or sooner if the form of identification or record has expired since the last transaction.
- 2.4 Any licensee operating two or more office locations or mobile units may maintain consolidated or combined records, provided the records reflect separate figures for each location or unit.
- 2.5 All records may be maintained by paper copy or in an electronic format.
- 2.6 All records shall be retained in accordance with the time periods specified in Regulation 101 Retention of Financial Institution Records.

3.0 Variations

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

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER THIRTY-EIGHT**

**TO: HEADS OF ALL STATE DEPARTMENT AND AGENCIES
RE: PROMULGATION OF THE DELAWARE EMERGENCY OPERATIONS PLAN**

May 3, 2013

WHEREAS, the State of Delaware is vulnerable to a wide range of emergencies, including natural and technological disasters and disasters caused by weapons of mass destruction, all of which threaten the life, health, and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development; and

WHEREAS, this vulnerability is exacerbated by the State's growing population, especially the number of persons residing in coastal areas, in the elderly and at-risk populations, and in the number of seasonal vacationers; and

WHEREAS, the State must take all prudent actions to reduce the vulnerability of the people and property of this State; to prepare for the efficient evacuation and shelter of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the restoration of services and property; and to provide for the coordination of activities related to emergency preparedness, response, recovery, and mitigation among agencies and officials of this State, with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with the private sector; and

WHEREAS, the Governor is responsible for addressing the dangers to life, health, environment, property or public peace within the State presented by emergencies or disasters, and the Department of Safety and Homeland Security, through the Delaware Emergency Management Agency, has principal responsibility for coordinating responses to such dangers by preparing and maintaining a comprehensive plan pursuant to the Delaware Code, Title 20, Chapter 31; and,

WHEREAS, pursuant to 20 DEL.C. §3 J 06, the Director of the Delaware Emergency Management Agency (the "Director") shall be subject to the direction and control of the Governor and responsible to the Secretary of the Department of Safety and Homeland Security (the "Secretary") for carrying out the program for emergency management of this State; and,

WHEREAS, during an emergency or disaster, the Governor may delegate such powers as the Governor may see fit to the Secretary or to the Director to coordinate the activities of the State that serve to prevent or alleviate the ill effects of an imminent or actual emergency or disaster and to maintain liaison with emergency support agencies and organizations of other states and of the federal government; and,

WHEREAS, pursuant to Executive Order Number Thirteen, that certain Delaware Emergency Operations Plan dated November 2, 2009 (the "Plan") was adopted by the Governor as the "comprehensive plan and program for emergency management of the State" as required by 20 DEL. C. § 3107(1); and,

WHEREAS, in accordance with paragraph 9 of Executive Order Number 13, the Director, in consultation with and under the direction of the Secretary, is authorized to amend the Plan as necessary in order to achieve preparedness goals and objectives of the nation and the State of Delaware in accordance with state or federal law;

WHEREAS, the Director, in consultation with and under the direction of the Secretary, has amended the Plan consistent with federal guidelines, including those set forth in Version 2.0 of the Comprehensive Preparedness Guide 101, issued by the Federal Emergency Management Agency in November 2010; and

WHEREAS, the amended Delaware Emergency Operations Plan, developed pursuant to the requirements of 20 DEL. C. § 3107, has been reviewed by the various departments and agencies tasked therein as establishing the policies and procedures to be followed by the State of Delaware in executing all emergency or disaster operations;

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

GOVERNOR'S EXECUTIVE ORDERS

1. The Delaware Emergency Operations Plan (the "Plan") is hereby adopted and shall be considered the "comprehensive plan and program for emergency management of the State" as required in 20 DEL. C. § 3107(1).
2. That each executive department or agency of the State shall be responsible for emergency services as assigned in the Delaware Emergency Operations Plan.
3. That each executive department or agency assigned a responsibility in the Plan shall maintain, as directed by the Delaware Emergency Management Agency, in consultation with the Secretary, comprehensive standard operating procedures for executing its assigned emergency responsibilities.
4. That each executive department or agency assigned a responsibility in the Plan shall maintain, as directed by the Delaware Emergency Management Agency, in consultation with the Secretary, comprehensive standard operating procedures for executing its assigned emergency responsibilities.
5. That each executive department or agency shall execute, without delay, the emergency functions so designated in the Plan or further ordered by the Governor or the Director, in consultation with, and under the direction of, the Secretary, in preparation for or during response to and recovery from any emergency or disaster through the initial use of existing agency appropriations and all necessary agency personnel, regardless of normal duty assignment.
6. That each executive department or agency shall develop plans to ensure continuity of operations during times of emergency, consistent with the requirements in the Plan or as may be promulgated by the Secretary through the Delaware Emergency Management Agency to ensure its ability to carry out essential government functions in the aftermath of a disaster or emergency.
7. That all other executive boards, departments, agencies, associations, institutions, and authorities not assigned a specific role in the Delaware Emergency Operations Plan will, in an emergency, carry out whatever duties or services as may be specified or directed by the Governor or the Director, in consultation with and under the direction of the Secretary, consistent with their capabilities and limitations.
8. That the Director or his or her designee, in consultation with and under the direction of the Secretary, is hereby authorized to implement the Delaware Emergency Operations Plan and activate the State Emergency Operations Center in order to provide necessary state government services in the event of a declared emergency. Activation of the State Emergency Operations Center shall constitute implementation of this Plan.
9. That the Director of the Delaware Emergency Management Agency, in consultation with and under the direction of the Secretary, is authorized to amend the Plan as necessary in order to achieve preparedness goals and objectives of the nation and the State of Delaware in accordance with state or federal law. The Director is further responsible for maintaining and updating this plan, as required, in coordination with the appropriate agencies. This Plan supersedes the Delaware Emergency Operations Plan, dated November 2, 2009, in its entirety. Effective immediately, Executive Order Number Thirteen is hereby rescinded.

APPROVED this 3rd day of May, 2013

Jack A. Markell,
Governor

ADMINISTRATIVE OFFICES OF THE COURTS**CHILD PLACEMENT REVIEW BOARD****Regulation Governing the Ivyane Davis Scholarship Fund****PUBLIC NOTICE**

The State of Delaware's Child Placement Review Board is submitting regulations regarding the administration of the Ivyane Davis Scholarship Fund. This Memorial Scholarship Fund was established by the General Assembly in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State. The fund is authorized by Delaware code, Title 14, Chapter 34; it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D.F. Davis, who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board. The administration of this fund includes monitoring the academic progress of all students as well as a yearly interviews and a requirement to report expenditure as part of The Child Placement Review Boards Annual Report. This is the first time regulations for this fund have been submitted and was a recommendation from the Joint Sunset Committee in 2012.

There will be no Public Hearing regarding these regulations but Public Comments can be sent, by mail or email, to:

Shane O'Hare
Child Placement Review Board
820 North French Street, 1st Floor,
Wilmington, DE 19801
Email: Shane.O'Hare@state.de.us

Public Comments will be accepted until July 15th, 2013.

DELAWARE SOLID WASTE AUTHORITY**PUBLIC NOTICE****501 Regulations of the Delaware Solid Waste Authority****502 Statewide Solid Waste Management Plan****503 Differential Disposal Fee Program**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (the "Regulations") to modify the Regulations last amended as of November 1, 2011.

Notice of Hearing: A public hearing will be held July 2, 2013 beginning at 5:00 p.m., in the DSWA board room located in the main administrative offices of the DSWA at 1128 South Bradford St., Dover, DE 19903. The hearing is to provide an opportunity for public comment on the proposed amendments.

Written Comments: The DSWA will receive written comments, suggestions briefs or other written material until the close of business, July 17, 2013. Written comments, suggestions, compilations of data or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, June 17, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH****4104 Delaware Conrad State 30/J-1 Visa Waiver Program****PUBLIC NOTICE**

The Bureau of Health Planning and Resource Management, Division of Public Health, Department of Health and Social Services, is proposing amendments to the 4104 Conrad State 30/J-1 Visa Waiver Program regulations. Originally adopted on January 11, 2000, these regulations set forth requirements and procedures for an international medical graduate (IMG) requesting State support for a waiver of the J-1 visa home residency requirement.

On June 1, 2013, DHSS plans to publish as proposed regulations governing the Conrad State 30/J-1 Visa Waiver Program and hold them out for public comment per Delaware law. Copies of the proposed regulations are available for review in the June 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Bureau of Health Planning and Resource Management at (302) 744-4776.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Tuesday, July 2, 2013 at:

Deborah Harvey

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: Deborah.Harvey@state.de.us

Phone: (302) 744-4913

DIVISION OF PUBLIC HEALTH**4202 Control of Communicable and Other Disease Conditions****PUBLIC NOTICE**

The Bureau of Epidemiology, Division of Public Health, Department of Health and Social Services, is proposing revisions to the State of Delaware Regulations for the Control of Communicable and Other Disease Conditions in response to legislation created by HB 403.

House Bill 403, signed into law on July 20, 2012, broadens the purpose of the Hospital Acquired Infections Advisory Committee to include prevention and control of hospital acquired infections in addition to disclosing such infections to the Department of Health and Social Services. It also extends the scope of the Hospital Infections Disclosure Act to long-term care facilities, freestanding surgical centers, dialysis centers, and psychiatric facilities. These facilities would not be required to report healthcare associated infections unless required by DHSS with the concurrence of the Advisory Committee. The bill requires all physicians to report a healthcare associated infection, not just those physicians who performed the procedure that led to the infection. It also changes the required content of quarterly and annual reports. Finally, the legislation clarifies that reports of infections by Correctional facilities are infections that result from health care provided in the facility.

On June 1, 2013, the Division plans to publish as proposed the amended regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the June 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Bureau of Epidemiology, Division of Public Health, at (302) 744-1033.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Tuesday, July 2, 2013 at:

Deborah Harvey

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: Deborah.Harvey@state.de.us

Phone: (302) 744-4700

Fax: (302) 739-6659

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

PUBLIC NOTICE

Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (HAPs) in the Clean Air Act Amendments of 1990. Congress stipulated that the EPA implement a 2-phase rulemaking process to reduce health risks. In phase one, the EPA was to adopt emission standards based on currently available control technologies; these standards are referred to as maximum achievable control technology (MACT) standards. In phase two, the EPA was to adopt additional standards based on an assessment of the health risks remaining after the implementation of the MACT standards and an assessment of the availability of new control technologies; these standards were referred to as risk and technology review (RTR) standards.

Delaware adopted the federal MACT standard (40 CFR Part 63 Subpart N) applicable to chromium electroplating and chromium anodizing facilities, as Section 6 of 7 **DE Admin. Code** 1138 on November 1, 2001.

In 2010 and 2011, the EPA undertook an extensive assessment and, on September 19, 2012, promulgated the RTR standard applicable to chromium electroplating and chromium anodizing facilities. The notable, more stringent changes to Subpart N included the lowering of the maximum allowable emission rate of chromium to the atmosphere, the prohibition of continued use of certain fume suppressants, and the addition of new housekeeping procedures.

This proposed amendment to Section 6 of 7 **DE Admin. Code** 1138 is being undertaken to incorporate the more stringent changes the EPA made to Subpart N, in order to reduce the public's exposure to chromium and to maintain the consistency of Delaware's air toxics regulatory requirements under Section 6 with national requirements under Subpart N.

In addition, the Department adopted Section 10 into 7 **DE Admin. Code** 1138 on November 1, 2009. That regulatory action was precipitated by the EPA's adoption of a new area source air toxics standard under 40 CFR Part 63 Subpart W (Subpart 6Ws) on June 12, 2008, which was applicable nationally to metal plating and polishing facilities that emit cadmium, chromium, lead, manganese, or nickel compounds.

In 2010, the EPA received numerable questions from individual metal plating and polishing facilities and their industry trade associations seeking clarifications and interpretations on various aspects of their original June 12, 2008 adoption of Subpart 6Ws. Following this dialogue and review, the EPA amended Subpart 6Ws on September 19, 2011. The primary change effected by the EPA's amendment was a clarification that Subpart 6Ws did not apply to any bench scale activities. At the same time, the EPA 1) clarified industries' confusion on applicability of Subpart 6Ws to various types of metal plating operations, 2) corrected portions of the original text that was prone to misinterpretation, and 3) corrected several technical errors.

This proposed amendment to Section 10 of 7 **DE Admin. Code** 1138 is being undertaken to incorporate the clarifications and corrections the EPA made to Subpart 6Ws (76 FR 57913, 9/19/11), in order to maintain the consistency of Delaware's air toxics regulatory requirements under Section 10 with national requirements under Subpart 6Ws.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, June 27, 2013 starting at 6:00 PM in the DNREC Richardson & Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**DIVISION OF FAMILY SERVICES****OFFICE OF CHILD CARE LICENSING****105 Residential Child Care Facilities and Day Treatment Programs****PUBLIC NOTICE**

The Office of Child Care Licensing proposes to amend the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received in response to Executive Order 36. That process elicited very limited public response. In response to that input the changes to existing regulations address only required staff training hours. A full review is planned in Fall 2013 at which time the normal process for revising regulations will occur. This will include the involvement of a wide cross-section of stakeholders, with all licensed programs participating. The review will examine best practices, regulations promulgated by other States, research on subjects related to residential and day treatment care and identified issues and services within existing programs within Delaware.

A copy of the proposed regulations is being published in the June 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on June 30, 2013.

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

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
200 Board of Landscape Architecture
PUBLIC NOTICE**

The Delaware Board of Landscape Architecture proposes to amend its regulations. These changes remove references to paper licensure renewal forms, clarify that license renewal is conducted on-line, make non-substantive verbiage changes to ensure continuity across the Division of Professional Regulation, and clarify that audits are now conducted after renewal, rather than before.

The Board will hold a public hearing on the proposed rule change on August 8, 2013 at 9:15 AM, Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jessica Williams, Administrator of the Delaware Board of Landscape Architecture, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until August 23, 2013.

**DIVISION OF PROFESSIONAL REGULATION
3300 Board of Veterinary Medicine
PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on August 13, 2013 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be August 28, 2013, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its regularly scheduled meeting on September 10, 2013 at 1:15 p.m., at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes amendments to Rule 11.1.2, addressing licensure of veterinary technicians. The revisions clarify that applicants seeking licensure pursuant to the educational and/or experiential alternatives set forth in Rule 11.1.2 must have their applications approved by October 1, 2013. If an application is not approved by October 1, 2013, the applicant must show graduation from an AVMA approved program. The revisions also If an applicant does not pass the examination set forth in Rule 11.1.4 within one year after the date of approval of the application, in order to pursue licensure, the applicant shall re-apply for licensure and submit the application fee. Any applicant who re-applies after October 1, 2013 shall have received a degree from a veterinary technician program accredited by the AVMA or from a foreign veterinary program approved by the AVMA.

DIVISION OF PROFESSIONAL REGULATION
4100 Board of Home Inspectors
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §4106(a)(1), the Delaware Board of Home Inspectors has proposed adoption of rules and regulations to implement its licensing law, Chapter 41 of Title 24 of the Delaware Code. In particular, the proposed rules and regulations set forth the process whereby applicants may qualify for licensure under the grandfather provision. Standards for continuing education are adopted. The rules and regulations set forth a code of ethics and standards of practice for licensees. The Board has also proposed adoption of a list of crimes substantially related to the practice of home inspection.

A public hearing will be held on June 24, 2013, at 9:30 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the proposed rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Home Inspectors, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be July 9, 2013, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on July 10, 2013, at 9:30 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make changes due to the public comment.