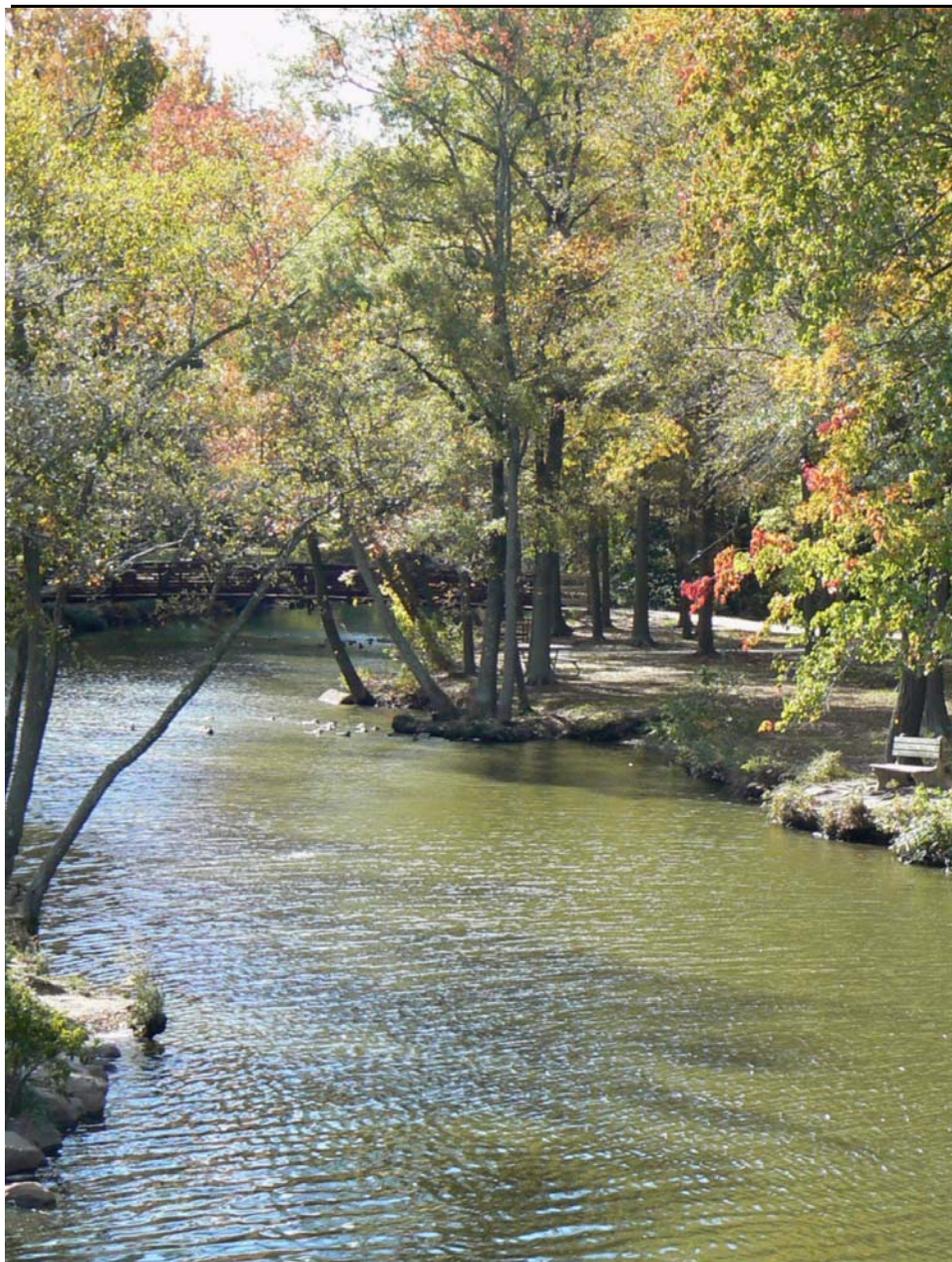

Delaware Register of Regulations

Issue Date: October 1, 2010

Volume 14 - Issue 4, Pages 204 - 332



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Proposed
Final

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2010.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE
NUTRIENT MANAGEMENT PROGRAM

Statutory Authority: 3 Delaware Code, Section 2221 (3 **Del.C.** §2221)
3 **DE Admin. Code** 1201

PUBLIC NOTICE**1201 Nutrient Management Certification Regulations****1. Title of the Regulations:**

1201 Nutrient Management Certification Regulations. These regulations are promulgated pursuant to the authority provided by 3 **Del.C.**, Ch. 22, §2221 and 3 **DE Admin. Code** 1201

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

Nutrient Management Certification Regulation Amendments: Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulatory amendments address field staging and stockpiling of poultry manure.

Comments on the proposed changes will be accepted from October 1, 2010 until October 31, 2010. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: Mark Davis

3. Possible Terms of the Agency Action:

The revised regulations are being amended to clarify the Delaware Nutrient Management Commission's and the Delaware Department of Agriculture's regulatory position related to the temporary outdoor storage of manure. The amended regulations will also now be aligned with the new confined animal feeding operation regulations.

4. Statutory Basis or Legal Authority to Act:

3 Del.C. §2221

5. Other Regulations That May be Affected by the Proposal:

None

6. Notice of Public Comment:

The proposed regulations are posted on the Delaware Department of Agriculture website (www.dda.delaware.gov) Hard copies of the proposed regulations may be obtained from the Delaware Department of Agriculture. Comments may be submitted in writing and/or e-mail to the Mark Davis, (mark.davis@state.de.us), at the Delaware Department of Agriculture, on or before October 31, 2010. A public hearing on these regulations will NOT be held unless the Secretary of Agriculture and the Delaware Nutrient Management Commission (in accordance with 3 **Del.C.**, Section 2221) receive a request within 30 days from this notice, or if the Secretary determines that a public hearing is in the public interest. A request for a hearing shall be in writing and shall state the nature of the issues to be raised at the hearing. It must show familiarity with the proposal and a reasoned statement of the proposed regulations impact. It is requested that written comments, or requests for a hearing be addressed to:

Mark Davis
Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901
Mark.davis@state.de.us

7. Prepared By:

Mark Davis 302.698.4503 September 15, 2010
mark.davis@state.de.us

Regulatory Flexibility Act Analysis: for Proposed Certification Regulations for Outdoor Staging and Stockpiling of Manure

September 2010

Regulatory Action:

The Delaware Nutrient Management Commission is proposing to adopt new regulations, which will establish requirements regarding the handling of manure. The purpose of these regulations is to reduce pollution from farms where poultry, swine, beef cattle, dairy cattle and horses are raised. Such farms are known as Animal Feeding Operations (AFO). AFO's can be substantial contributors to the pollution of the State's waterways if manure and other waste products are not properly managed. The actions proposed by the Commission are necessary to achieve Delaware's water quality goals and to comply with US Environmental Protection Agency directives.

Background on the Proposed Regulation

Part 122, Sub Section 122 and 412 of the Clean Water Act requires States to develop regulations governing the discharge of nutrients from farms into nearby waterways. Farms (AFOs) identified to have such discharges are required to obtain a National Pollutant Discharge System (NPDES) permit known as a Concentrated Animal Feeding Operation (CAFO) permit. The Delaware Nutrient Management Commission (Commission) will enforce these proposed regulations. The proposed regulations are required in order to keep our "at least equal to" status with USEPA. Failure to do so may result in federal enforcement action against Delaware farmers and the withdraw of the Delaware's delegated authority to administer the NPDES CAFO program.

Regulatory Flexibility Act Considerations

1. Nature and cost of reporting.

In order to assess and track implementation efforts to reduce the loads of nutrients reaching the waters of

the State and to ensure compliance with these Regulations, the Commission is requiring farmers to maintain nutrient handling records (including location and length of time manure is staged or stockpiled). Farmers must also file an annual report. These reports detail nutrient application rates to crop land during the preceding crop year as well as crop yields (which indicate nutrient removal). The 1999 Delaware Nutrient Management Law already requires such annual reports. These proposed regulations do not have additional record keeping requirements, but state agencies have obligated to provide technical assistance to help meet any additional burden placed on farmers by these requirements. Therefore there will be minimal cost to farmers due to these proposed regulations.

2. Nature and cost of required measures or investment.

In order to protect and improve water quality, these Regulations will require farmers to implement specific time limits as to when and where uncovered manure can be placed on the farm. This will help prevent nutrient laden storm-water from leaving their farms. There are approximately 1,400 farm operations in the state with livestock. There also are approximately 600 farms that raise crops only. There is extensive cost share funding for BMP's that assist farmers in managing the staging and stockpiling of manure. The State provides over \$450,000 annually to provide farmers with nutrient management plans. The State and Federal Government provide \$849,870 annually to assist in the relocation of manure from areas, which may have an overabundance of nutrients to areas with nutrient deficiencies. In addition the Federal government plans to provide additional funding to help all agricultural producers in the Chesapeake Bay watershed to implement additional BMPs to achieve more stringent water quality standards. Farmers will also need to practice proper manure handling on their farms. Technical assistance to achieve this is already available from the Department of Agriculture, The University of Delaware Cooperative Extension and NRCS.

3. The nature and cost of legal, consulting and accounting services.

There are no requirements in the proposed Regulations that would necessitate a need for legal and/or accounting services, however, in order to improve water quality, these Regulations may result in farmers needing to secure consulting services. Such technical assistance can be obtained from NRCS, The Delaware Department of Agriculture, and the University of Delaware Cooperative Extension at no cost to the farmer. The Commission/State provides cost share funds for the writing of nutrient management plans (NMPs). In 2010, over \$450, 000 of state funds were provided to producers to offset the cost of drafting NMPs.

4. The ability of the entity to absorb or recover the added costs without suffering economic harm and without adversely affecting competition in the marketplace.

These Regulations are based on solid environmental science, but also take into consideration and accommodate a variety of factors, including the ability of farmers to absorb or recover any added costs without suffering economic harm and without adversely affecting competition in the marketplace. As indicated above there is extensive cost share assistance from both State and Federal sources to implement any BMPs that might be required to better handle a farm's manure. Additionally technical guidance is available at no cost from a variety of sources. It is also important to note that EPA requires the proposed regulations. Similar regulations are being or have been implemented nation-wide. If Delaware does not adopt and implement said regulations, then EPA may implement and enforce similar federally based regulations in Delaware.

5. The added cost to the Department if exemptions or lesser requirements were promulgated.

The actions proposed in these Regulations are necessary to achieve water quality goals therefore any lessening would adversely affect the health and well being of people, animals, and plants living within the State. Failure to implement these regulations could lead to enforcement action by EPA against both the State and Delaware Farmers. This could include fines and the withholding of grants and other funding resources.

6. The impact on the public interest of exempting or setting lesser requirements of compliance.

The actions proposed in these Regulations are necessary to achieve water quality goals, which will benefit the health and well being of people, animals, and plants living within the State. If the exemptions and lesser requirements are allowed, there will be less assurance that water quality standards will be achieved, which may result in increased occurrences of excessive macro algae growth (sea lettuce and other species), phytoplankton blooms (some potentially toxic), large daily swings in dissolved oxygen levels, loss of submerged aquatic vegetation, reduced populations of fish, shellfish, and other aquatic life, and fish kills. Such environmental degradation threatens the future of the Waters of the State and their significant natural, ecological, and recreational resources. This in turn may result in an adverse impact to the economy of the State.

7. What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

These Regulations will require monitoring to ensure compliance. Commission staff already performs such

monitoring. In most situations reporting requirements are already required under the 1999 Delaware Nutrient Management Law. In addition, the NM Commission with the help of state and federal agency staff, and University of Delaware staff will provide written guidance through State Technical Standards to assist the regulated community with compliance.

As stated previously, these proposed Regulations may require additional measures and investment in order to protect and improve water quality; however, there is extensive federal and state cost share assistance available to meet the terms of these Regulations. In addition, the proposed Regulations do not create a need for legal and/or accounting services, while they may result in farmers securing consulting services; there is cost share available to cover such costs, which has been outlined previously in this document.

1201 Nutrient Management Certification Regulations

PREAMBLE

These regulations have been developed pursuant to 3 **Del.C.** Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

1.0 Authority

These regulations are promulgated pursuant to the authority provided by 3 **Del.C.**, Ch. 22, §2221.

2.0 Purpose

The purpose of these regulations is to establish certification requirements for certain generators or handlers of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

3.0 Definitions

For purposes of these regulations, the following words or terms shall have the meanings as indicated: "**Animal Feeding Operation**" or "**AFO**" means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

"**Animal Unit**" shall be as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

"**Applicant**" means any person seeking a certificate from the Commission.

"**Application Area**" means land under the control of a person, whether it is owned, licensed, or leased, which manure, litter or fertilizer may be applied.

"**Apply, Applying**", or any derivation of the word "apply", as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

"**Certification**" means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

"**Commercial Nutrient Handler**" means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

"Commercial Processor" means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

"Commission" or **"DNMC"** means the Delaware Nutrient Management Commission.

"Credit" represents a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

"Direct Supervision" refers to actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

"Fertilizer" means any synthetic or carbon based substance that is added to the soil to supply one or more plant nutrients.

"Frozen" relates to frozen ground and is the top 2-inches of surface area receiving nutrients where the moisture has changed to ice for a period of 72 consecutive hours or a condition where any ice formation below the 2-inch zone restricts the natural flow of moisture through the soil profile.

"Manure" means fecal and urinary defecations of livestock and poultry; may include but is not limited to spilled feed, bedding, soil, and compost if commingled with manure.

"Nutrient Consultant" means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

"Nutrient Generator" means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

"Nutrient Management Plan" or "plan" means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

"Nutrients" means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

"Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

"Private Nutrient Handler" means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

"Production Area" means that part of an AFO that includes the "animal confinement area", the "manure storage area", the raw materials storage area and the "waste containment areas", egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. The Production Area should be defined in the operation's Nutrient Management Plan.

"Program Administrator" or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

"Secretary" means the Secretary of the Delaware Department of Agriculture or his/her designee.

"State Nutrient Management Program" or **"SNMP"** means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

"Stockpiling" means the temporary location of manure piles in the production area for no more than 14 days unless the manure/litter is located under cover in an approved Manure Storage Structure. Stockpiling must be conducted and positioned in accordance with State Technical Standards.

"Temporary Field Staging" means the location of manure for 90 days or less prior to its application within the application area and is considered a part of the application process. Temporary Field

Staging criteria and performance standards are further described in State Technical Standards. In addition, staging must be performed in accordance with site specific Nutrient Management Plans.

10 DE Reg. 1794 (06/01/07)

4.0 Certification Categories And Activities Requiring Certification

- 4.1 No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:
 - 4.1.1 Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.
 - 4.1.2 Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.
 - 4.1.3 Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state must have a commercial nutrient handler certificate.
 - 4.1.4 Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.
- 4.2 These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.
- 4.3 Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

5.0 Certification Requirements

- 5.1 Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.
- 5.2 Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.3 Private nutrient handler - To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.4 Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:
 - 5.4.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
 - 5.4.2 The applicant must pass a written test approved by the Commission.
- 5.5 Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:

- 5.5.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.
- 5.5.2 The applicant must pass a written test approved by the Commission.

6.0 Nutrient Handling Requirements

- 6.1 As required by 3 **Del.C** §2201 et.al, Nitrogen and Phosphorus fertilizers shall be applied according to an approved Nutrient Management plan.
- 6.2 For land areas not required to have a Nutrient Management plan, applications of Nitrogen and Phosphorus fertilizers by anyone holding a commercial nutrient handler or nutrient consultant certification, or anyone required to be certified at said level pursuant to 3 **Del.C.** §2242 and section 4.0 herein, are prohibited when one of the following conditions exist:
 - 6.2.1 The surface area of application is impervious such as sidewalks, roads and other paved areas and the misdirected fertilizer is not removed on the same day of application;
 - 6.2.2 The surface area is covered by snow or frozen; or
 - 6.2.3 The date of application is between December 7 and February 15.

6.3 Nutrient Storage and Staging Requirements

- 6.3.1 For any person required to develop and implement a nutrient management plan and who stores, handles, or stages any manure in any area that may be exposed to rainfall, the following requirements must be met.
- 6.3.2 Any outdoor storage of manure within the production areas, or staging within the application areas must be the result of exhausting manure storage structure space available by the nutrient generator or nutrient applicator of such manure. Stockpiling must be performed in accordance with State Technical Standards.
- 6.3.3 Any outdoor stockpiling of poultry manure within the production area or any area other than the application area will be limited to 14 days without a cover.
- 6.3.4 Any outdoor temporary field staging of poultry manure within the application area will be limited to 90 days.
 - 6.3.4.1 Authorization for exceeding the 90 day time period may be granted on a case by case situation if approved by the nutrient consultant and reported to the nutrient management program administrator. Please refer to State Technical Standards.
- 6.3.5 In order to prevent discharges of pollutants to surface waters, any outdoor staging of poultry manure within the application area shall be handled according to the following:
 - 6.3.5.1 The manure must be at least 6 feet high and in a conical cross section shape; and
 - 6.3.5.2 Poultry litter manure shall not consist of more than 5% crust out material; and
 - 6.3.5.3 The selection of the staging site must consider the highest, most practical site possible and shall not use the same site more than once every two years (unless allowable under conditions as described in the State Technical Standards). Refer to State Technical Standards; and
 - 6.3.5.4 The staging site must be located at least 100 feet from a public road, 100 feet from any surface water and 200 feet from any residence not located on the property; and
 - 6.3.5.5 The staging site must be at least 200 feet from a domestic well and 300 feet from a public water supply well; and
 - 6.3.5.6 Post litter removal treatment must include the removal of all litter and the top 1-2 inches of topsoil if the topsoil is co-mingled with the litter to prevent nutrient loads; and
 - 6.3.5.7 A production crop or vegetative cover crop must be established and maintained at the staging site as soon as practical following post removal treatment.

10 DE Reg. 1794 (06/01/07)

7.0 Reciprocity

- 7.1 Notwithstanding the requirements of Section 5.0, supra, any person may obtain a certificate under these regulations if all the following requirements are satisfied.
- 7.2 The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.
- 7.3 The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.
- 7.4 The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

10 DE Reg. 1794 (06/01/07)

8.0 Continuing Education

- 8.1 After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:
 - 8.1.1 Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.
 - 8.1.2 Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.
 - 8.1.3 Commercial nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.
 - 8.1.4 Nutrient consultants - 5 credits of continuing education each year following the issuance of the certification.
- 8.2 Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.
- 8.3 Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

9 DE Reg. 966 (12/01/05)

10 DE Reg. 1794 (06/01/07)

9.0 Duration Of Certificates And Certification Fees

- 9.1 Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications annually.
- 9.2 Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient handlers for a three-year certificate shall be \$150.00.
- 9.3 No fee will be charged for certification of a nutrient generator or a private nutrient handler.

10 DE Reg. 1794 (06/01/07)

10.0 Suspensions, Modifications, And Revocations

- 10.1 The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for violations of the nutrient management statute (Title 3, Chapter 22, of the **Delaware Code**) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

10 DE Reg. 1794 (06/01/07)**11.0 Certification Renewals**

- 11.1 At least 60 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.
- 11.2 Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.
- 11.3 The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.
- 11.4 Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.
- 11.5 Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section 2262, Chapter 22, of the **Delaware Code**.

10 DE Reg. 1794 (06/01/07)**12.0 Appeals To The Secretary**

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section 2263, Chapter 22, of the **Delaware Code**. Provided, however, that the denial of a certificate pursuant to Sections 2243 or 2245, Chapter 22, of the **Delaware Code** shall first be appealed to the Commission which shall hold a hearing.

10 DE Reg. 1794 (06/01/07)**13.0 Record Keeping.**

- 13.1 Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:
 - 13.1.1 A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.
 - 13.1.2 A copy of any applicable nutrient management plan.
- 13.2 Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:
 - 13.2.1 A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.
 - 13.2.2 A copy of any applicable nutrient management plan.
- 13.3 Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.
- 13.4 Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.
- 13.5 The information required in this section shall be kept and maintained for a period of 6 years.

10 DE Reg. 1794 (06/01/07)**14.0 Effective Date.**

These regulations shall become effective on ~~January 10, 2004~~ December 11, 2010

4 DE Reg. 1117 (01/01/01)

10 DE Reg. 1794 (06/01/07)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 225

PUBLIC NOTICE

225 Prohibition of Discrimination

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 225 Prohibition of Discrimination. The amendment includes the addition of the language to be consistent with Executive Order 8. The Executive Order continues the Governor's Council on Equal Employment Opportunity, directs state agencies to pursue equal employment and promotional opportunity for all state employees and applicants, and includes a strong recruitment and retention component.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to the prohibition of discrimination for employment.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to the prohibition of discrimination for employment.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the prohibition of discrimination for employment.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the prohibition of discrimination for employment.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is related to the prohibition of discrimination for employment and preserves the necessary authority and flexibility for decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to the prohibition of discrimination for employment and does not place unnecessary reporting or administrative or mandates upon decision makers at the local board and school levels.

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

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

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

burdensome method for addressing the purpose of the regulation.

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

225 Prohibition of Discrimination

1.0 Prohibition of Discrimination

No person in the State of Delaware shall on the basis of race, color, religion, national origin, sex, sexual orientation, genetic information, marital status, disability, age or Vietnam Era veteran's status be unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware Department of Education.

2 DE Reg. 1246 (01/01/99)

7 DE Reg. 1177 (03/01/04)

9 DE Reg. 1069 (01/01/06)

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 505

PUBLIC NOTICE

505 High School Graduation Requirements and Diplomas

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

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** 505 High School Graduation Requirements and Diplomas to provide additional information related to the World Languages credit requirement that goes into effect for the Class of 2015 (freshmen 2011-2012). The regulation requiring the 2 credits in World languages was originally scheduled to go into effect for the Class of 2013. This was revised in January 2009 making the requirement effective for the Class of 2015. The recommendations of the Task Force on World Languages were taken into consideration in the proposed amendments. The definition of World Language includes American Sign Language. This was a recommendation of the Task Force and is also required by legislation, pursuant to HB 345 of the 145th General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation provides additional information related to the credit requirements for World Languages that takes effect for the Class of 2015.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation provides additional information related to the credit requirements for World Languages that takes effect for the Class of 2015. The amendments will help ensure all students receive an equitable education as there are options provided for meeting the requirement.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to credit requirements and does not 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 provides additional information related to the credit requirements for World Languages that takes effect for the Class of 2015 and does not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation provides additional information related to the credit requirements for World Languages that takes effect for the Class of 2015 and preserves the necessary authority and flexibility of decision making at the local board and school level.

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The requirement for the additional credits for graduation has been in the regulation for several years. District and charter schools may need to make adjustments to staffing to fulfill the requirement.

505 High School Graduation Requirements and Diplomas

1.0 Definitions:

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

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

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

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

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

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

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

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

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

"Novice-high proficiency level" means the novice-high level of proficiency of certain skills and knowledge as defined by the American Council for the Teaching of Foreign Languages (ACTFL).

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

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

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

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

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

"World Languages" ~~RESERVED~~ means any language other than English that is used by peoples around the world for communicating information and ideas and transmitting its culture(s), including American Sign Language (ASL), Latin and Ancient Greek.

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

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

2.0 Current Graduation Requirements

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

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

3.0 Graduation Requirements Beginning with the Class of 2011 (Freshman Class of 2007-2008)

- 3.1 Beginning with the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 1/2) credits in elective courses.
- 3.1.1 Students shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.

- 3.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements.
- 3.1.3 During the senior year students shall maintain a credit load each semester that earns them at least a majority of credits that could be taken that semester including one (1) of the four credits required in Mathematics.
 - 3.1.3.1 Senior year credits shall include regular high school course offerings, the options available in 8.0 or a combination of both.
 - 3.1.3.1.1 Options for the senior year in 3.1.3.1 that the districts and charter schools provide shall be submitted to the Department with a copy to the office of the State Board of Education for review.

4.0 Monitoring Student Progress (Personalizing the High School Experience)

- 4.1 Beginning with the 2007-2008 school year, every eighth and ninth grade student shall have a Student Success Plan (SSP) developed by the student, the student's advisor, at least one other school staff member and the student's parent(s), guardian(s) or relative caregiver. Each school year thereafter a grade shall be added so that by the 2011-2012 school year, every student in grades 8 through 12 shall have a Student Success Plan. [For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 DE Admin. Code 925.]
- 4.2 Each local school district and charter school shall establish a process for developing Student Success Plans that includes:
 - 4.2.1 Actively monitoring student progress, on an ongoing basis and, at a minimum, by the end of each marking period in those courses required for graduation,
 - 4.2.2 Providing support services if a student is failing or in danger of failing courses required for graduation, and
 - 4.2.3 Annual updating of the Student Success plans by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver] and others as appropriate.
 - 4.2.4 Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the CTE State Plan.
 - 4.2.5 Reviewing each student's transcript at the end of the first and second year of high school to determine if the student is on track to graduate based on the following criteria:
 - 4.2.5.1 At the end of the first year of high school the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits; and
 - 4.2.5.2 At the end of the second year of high school the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits.
 - 4.2.5.3 For a student with an Individualized Education Program (IEP), on track to graduate shall be consistent with 4.2.5.1 and 4.2.5.2 unless otherwise determined by the student's IEP Team.

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

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

5.0 Credit Requirements Beginning with the Graduation Class of 2015 (Freshman Class of 2011-2012)

- 5.1 Beginning with the graduating class of 2015, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.

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

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

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

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

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

6.0 Career Pathway

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

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

7.0 Additional Credit Requirements

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

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

8.0 Options for Awarding Credit Toward High School Graduation

8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.

8.1.1 Courses taken at or through an accredited community college, two or four year college.

8.1.2 Voluntary community service as defined in 14 **Del.C.** §§8901A and 8902A.

8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.

8.1.4 Independent study.

8.1.5 Correspondence Courses.

8.1.6 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.

8.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.

8.1.8 Course credit transferred from another high school.

8.1.9 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.

8.1.10 Tutoring programs taught by a teacher certified in the subject being taught.

8.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

9.0 High School Diplomas and the Certificate of Performance

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

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

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

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

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 746

PUBLIC NOTICE

746 Criminal Background Check for Student Teaching

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching for implementation of the process.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to student teacher criminal background checks and does not specifically address state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to student teacher criminal background checks and does not specifically address students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation ensures that all student teachers are subjected to the same criminal record screening.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to student teacher criminal background checks and does not specifically address students' legal rights.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendment does not change the decision making authority or accountability.

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 amendment is not an impediment to the implementation of other state educational policies.

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

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

746 Criminal Background Check for Student Teaching

This regulation shall apply to candidates for a Student Teaching Assignment in a Delaware public school. Refer to 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment for the requirements and procedures related to criminal background checks for public school related employment in a Delaware public school.

1.0 Definitions

"Higher Education Institution" means the Delaware college or university that has a teacher preparation program that places candidates into Student Teaching Positions in a Delaware public school district or charter school.

"Student Teaching Position" means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom

management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class.

2.0 Criminal Background Check Requirements and Procedures for Student Teaching Position

Candidates

- 2.1 Effective January 1, 2011, any candidate for a Student Teaching Position in a public school district or charter school shall be required to have a criminal background check as prescribed through this regulation.
- 2.2 The higher education institution where candidates for Student Teaching Positions are enrolled shall require all candidates to complete a Release for Criminal Background Check Information form approved by the Department of Education as a part of the assignment process for a Student Teaching Position in a Delaware public school district or charter school.
- 2.3 The candidate for a Student Teaching Position in a Delaware public school district or charter school shall be subject to the following procedures:
 - 2.3.1 After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the candidate shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or at an on site appointment arranged by the higher education institution.
 - 2.3.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to the candidate's placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 2.3.3 The candidate shall request the State Bureau of Identification send original versions of the criminal background check to both the candidate and higher education institution.
 - 2.3.3.1 Provided further, a candidate attending a private Delaware Higher Education Institution shall provide a copy of his/her state and federal criminal history record, certified by the State Bureau of Identification, to the designated person at the placing private Delaware Higher Education Institution.
- 2.4 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

12 DE Reg. 1306 (04/01/09)

13 DE Reg. 843 (12/01/09)

3.0 Procedures for Higher Education Institutions, Public School Districts and Charter Schools for the Determination of Suitability for Candidates in Student Teaching Positions.

- 3.1 The higher education institution where the candidate is enrolled and that was sent an original copy of the completed criminal background check shall make the initial determination for suitability for student teaching placement. The criteria for determining the suitability for student teaching placement shall be at the discretion of the higher education institution and may vary among the various higher education institutions in Delaware.
 - 3.1.1 If a determination is made to deny a candidate placement into a student teaching position based upon the higher education institution's review of the criminal history, the higher education institution may provide for an appeal process.
- 3.2 Upon the initial determination for suitability for the candidate to be placed in a public school, the higher education institution liaison responsible for overseeing Student Teaching Position placements shall confirm the receipt of the original complete criminal background check and send a copy of such to the district superintendent or charter school director of the Delaware school district or charter school considering the person as a candidate for a Student Teaching Position.
- 3.3 Each school district and charter school shall make the final determination of suitability for placement of a candidate in a Student Teaching Position in its school.

- 3.3.1 Each school district and charter school shall establish the process and criteria for determining suitability for placement of a candidate in a Student Teaching Position in its school(s).
- 3.3.2 The criteria for determining the suitability and subsequent placement of a candidate in a student teaching position may vary among the districts and charter schools. In addition, a school district or charter school may have criteria for student teaching placement that differs from the criteria for public school employment.
- 3.3.3 The school district or charter school shall provide the candidate's higher education institution the decision to place or deny a candidate in a Student Teaching Position placement in writing.
- 3.4 Candidates for student teaching may have criminal background checks from other states accepted, if all of the following conditions are met;
 - 3.4.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
 - 3.4.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to the higher education institution;
 - 3.4.3 The out of state candidate shall sign a release to allow the higher education institution receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

4.0 Procedures for Maintaining Criminal Background Check Information

- 4.1 All information and records pertaining to criminal background checks and this regulation shall be maintained in a confidential manner including, but not limited to, the following:
 - 4.1.1 Access to criminal background check records, letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the higher education institution officer responsible for student teacher assignments and one person designated to assist in the processing of criminal background checks; and the district superintendent or charter school director and the district or charter school chief personnel officer responsible for the determination of suitability in the placing district or charter school. These persons shall be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential;
 - 4.1.2 All such records shall be kept in locked, fireproof cabinets;
 - 4.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Student Teaching Position.
- 4.2 The higher education institution may dispose of the criminal background check in a secure manner no earlier than six (6) months after the student graduates from the higher education institution.

5.0 Penalties

The higher education institution officer responsible for student teacher assignments shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates this regulation.

6.0 Subsequent Criminal History Information

- 6.1 Subsequent criminal history on a person in a Student Teaching Position may be sent by the State Bureau of Identification to the higher education institution.
- 6.2 The higher education institution where the candidate is enrolled shall be required to send any subsequent criminal history information received to the school district or charter school where the candidate is engaged in student teaching activities.
- 6.3 The district or charter school where the person is in a Student Teaching Position may consider any subsequent criminal history received for the person's continued suitability for the Student Teaching Position.

12 DE Reg. 329 (09/01/08)
12 DE Reg. 1306 (04/01/09)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 930

PUBLIC NOTICE

930 Supportive Instruction (Homebound)

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 930 Supportive Instruction (Homebound) for formatting purposes as well as clarification. The regulation was reviewed pursuant to the five year cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

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 did not substantively change the current regulation and were for clarification and formatting purposes only.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

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 did not substantively change the current regulation and were for clarification and formatting purposes only.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments did not substantively change the current regulation and were for clarification and formatting purposes only.

930 Supportive Instruction (Homebound)

1.0 Definition

“**Supportive Instruction**” is an alternative educational program provided at home, in a hospital or at a related site for a students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

- 1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.
- 1.2 Services for children with disabilities as defined in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C 1400 et.seq), and its regulations (34 CFR parts 300 and 301), 14 Del.C., Ch. 31, and the State Department of Education's regulations on Children with Disabilities (14 DE Admin. Code 922 through 929) shall be provided ~~according to the Administrative Manual: Special Education Services, in accordance with these laws~~ and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) ~~and the Administrative Manual and its regulations, 14 Del.C., Chapter 31, and the Department of Education's regulations on Children with Disabilities.~~
- 1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility

- 2.1 A student enrolled in a school district is eligible for supportive instruction when the ~~school~~ district receives the required certification that an accident, injury, sudden illness or episodic flare up of a chronic condition will prevent the student from attending school for at least ten (10) school days.
 - 2.1.1 A physician must certify absences due to a medical condition.
 - 2.1.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.
 - 2.1.3 A physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.
 - 2.1.3.1 ~~Students do~~ A student does not qualify for supportive instruction for normal pregnancies unless there are complications.
 - 2.1.3.2 ~~Students~~ A student who remain enrolled in school ~~are~~ is eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.
- 2.4 Supportive instruction can be requested as an in school transitional program that follows a period of supportive instruction that was provided outside of the school setting. If the supportive instruction is provided as an in school transitional program, it must be approved through a staff conference.

9 DE Reg. 402 (9/1/05)

3.0 Implementation

- 3.1** Supportive instruction for a students shall begin as soon as the documentation required by 2.0 is received. Supportive instruction may continue upon the return to school setting only in those exceptional cases where it is determined that a student needs a transitional program to guarantee a successful return to the school ~~program as delineated in~~ setting in accordance with 2.4.
- 3.1.1** Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.
- 3.1.1.1** The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for ~~students a~~ K to 5th grade student, and a minimum of five hours each week of eligibility for ~~students a~~ 6 to 12th grade student. There is no minimum for in school transition.
- 3.1.1.2** Nothing in this regulation shall prevent a school district school from providing additional hours of supportive instruction to an eligible students from ~~either its Academic Excellence allotment~~ or other available funding sources.
- 3.1.2** Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school ~~program~~ setting the following school year.

4 DE Reg. 344 (8/1/00)**4 DE Reg. 497 (9/1/00)****9 DE Reg. 402 (9/1/05)**

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1517

PUBLIC NOTICE**1517 Permits Predicators****Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

B. Synopsis of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1517 Permits Paraeducators. It is necessary to amend this regulation in order to facilitate proper and current formatting trends, and to update renewal options. This regulation sets forth the requirements for a Paraeducator Permit.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, November 1, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice

in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

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

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

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

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

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

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

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

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

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

1517 Permits Paraeducators Permit

1.0 Content

~~Pursuant to 14 **Del.C.** §1205(a) this regulation shall apply to the qualifications required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full time or part time, in support positions in public schools.~~

This regulation shall apply to the issuance of a Paraeducator Permit, pursuant to 14 **Del.C.** §1205(a). This Permit is required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full time or part time in support positions in public schools. This Permit is required of all Paraeducators, regardless of employment date.

2.0 Definitions

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

“Associate's or Higher Degree” means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally ~~or nationally~~ accredited ~~through an agency recognized by the U.S. Secretary of Education, or any other accrediting agency~~ the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency.

“Completed at Least 2 Years of Study at an Institution of Higher Education” means the satisfactory completion of a minimum of sixty (60) semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally or ~~nationally~~ accredited through ~~an agency recognized by the U.S. Secretary of Education, or any other accrediting agency~~ the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two (2) years of full time study as the successful completion of a minimum of forty-eight (48) semester hours, and provides documentation of such definition.

“Department” means the Delaware Department of Education.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

“Instructional Paraeducator” means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional Paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

“Paraeducator”, as used herein, means a paraprofessional, as it is used in 14 **Del.C.** §1205. Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202 (~~64~~).

“Permit” means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional or Service Paraeducator.

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

“Service Paraeducator” means a public school employee who provides support services other than instructional assistance to students, but does not include bus aides (See 14 **DE Admin. Code** 1105).

“Standards Board” means the Professional Standards Board of the State of Delaware as established in response to 14 **Del.C.** §1205.

“State Board” means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

“Title I Paraeducator” means a public school employee who provides one on one or small group instruction; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I Paraeducators are all Instructional Paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I Paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home school liaison.

9 DE Reg. 139 (7/1/05)

3.0 Title I Paraeducators

- 3.1** A Title I Paraeducator must hold a Title I Paraeducator Permit. In accordance with 14 **Del.C.** §1205(a), the Department shall issue a Title I Paraeducator Permit to an applicant who has met the following:
- 3.1** ~~The Department shall issue a Permit to a Title I Paraeducator applicant who submits evidence to his/ her district, charter school, or other employing authority of:~~
 - 3.1.1** ~~e~~Completion of at least two (2) years of study in general or educational studies at an institution of higher education; or
 - 3.1.2** ~~r~~Receipt of an associate's or higher degree; or

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- 3.1.3 ~~evidence~~ Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.
- 3.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:
- 3.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.
- 3.1.3.1.2 ~~Accuplacer Test, if taken before April 1, 2003, with the following qualifying scores:~~
- 3.1.3.1.2.1 ~~Mathematics: greater than or equal to a total right score of 94 on arithmetic.~~
- 3.1.3.1.2.2 ~~English: greater than or equal to a total right score of 87.~~
- 3.1.3.1.2.3 ~~Reading: greater than or equal to a total right score of 78.~~
- 3.1.3.1.3~~2~~ Such alternative as may be established by the Standards Board, with the approval of the State Board; and

3.1.4 Submits sufficient verifiable evidence of qualifications to the Department.

3.2 ~~Pursuant to the provisions of the *No Child Left Behind Act*, Title I Paraeducators hired after January 8, 2002 must meet the requirements set forth in 3.1 immediately.~~

3.3 ~~Notwithstanding the above, and pursuant to the provisions of the *No Child Left Behind Act*, Title I paraeducators hired before January 8, 2002 must hold a high school diploma or its recognized equivalent and shall have until June 30, 2006 to meet the requirements of 3.1.~~

3.3.1 ~~Accordingly, Title I paraeducators hired before January 8, 2002 who do not meet the requirements set forth in 3.1 above, with the exception of the high school diploma or its recognized equivalent, shall be issued a Title I paraeducator permit which shall expire on June 30, 2006 unless evidence of meeting the requirements set forth in 3.1 above is provided prior thereto. If such evidence is provided to the Department prior to June 30, 2006 the permit shall expire five years from the date of issuance and may be renewed pursuant to 5.0.~~

3.4~~2~~ Application Procedures.

3.4~~2~~.1 The district, charter school, or other employing authority shall submit the approved application form, official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, to the Department on behalf of the applicant. The district, charter school or other employing authority shall certify as part of the application form that the applicant, in their opinion, meets the requirements of Section 3.0.

3.4~~2~~.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope to the district, charter school or other employing authority.

3.4~~2~~.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the district, charter school or other employing authority. Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

3.2.2 Unemployed applicants shall submit sufficient verifiable evidence of qualifications to the Department.

9 DE Reg. 232 (8/1/05)

4.0 Instructional Paraeducators and Service Paraeducators

4.1 All Instructional Paraeducators and Service Paraeducators Must Hold the Appropriate Permit in accordance with 14 Del.C. §1205(a).

4.2 The Department shall issue a Permit to an Instructional Paraeducator applicant or a Service Paraeducator applicant for whom the district, charter school, or other employing authority has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

4.4 ~~Notwithstanding the above, instructional paraeducators and service paraeducators hired before February 11, 2004 and who do not have a high school diploma may be issued the applicable permit~~

~~which shall expire June 30, 2006 unless evidence of a high school diploma or its recognized equivalent is provided prior thereto. If such evidence is provided prior to June 30, 2006 the permit shall expire five years from the date of issuance and may be renewed pursuant to section 5.0.~~

9 DE Reg. 232 (8/1/05)

5.0 Validity

- 5.1 Unless stated otherwise herein, a Title I, Instructional, or Service Paraeducator Permit shall be valid for five (5) years from the Date of Issuance.
- 5.2 The Department shall renew a Paraeducator Permit, valid for an additional five (5) years, to a Paraeducator whose school district, charter school, or other employing authority provides evidence to the Department of successful completion of a minimum of fifteen (15) clock hours of professional development.
- 5.43 Fifteen (15) clock hours of professional development is required to be completed during the term of validity of the Paraeducator Permit.

6.0 Options for Renewal

- ~~5.2~~ 6.1 Options for Renewal: are listed in Sections 6.2 and 6.3. These following professional development activities are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:
- 6.2 Options listed in Section 6.2 shall be valid for paraeducators holding a Permit whose expiration date does not exceed December 19, 2015.
 - ~~56.2.1~~ 6.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass or fail course (One [1] semester hour equals fifteen [15] clock hours).
 - ~~56.2.2~~ 6.2.2 Planned school professional development day (maximum six (6) clock hours per day).
 - ~~56.2.3~~ 6.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).
 - ~~56.2.4~~ 6.2.4 Participation on a school, district, or state sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).
- 6.3 Educators holding a Paraeducator Permit whose expiration date does not exceed December 10, 2015 may also use the Paraeducator Permit renewal options listed in Section 6.3.
 - 6.3.1 College courses taken at a regionally accredited College or University. College or University Credit shall be taken for credit and the educator shall attain a grade of "C" or better in the course, or a "P" in Pass / Fail course. [One (1) semester hour equals fifteen (15) clock hours.]
 - 6.3.2 Professional development programs targeting curriculum, instruction, assessment, school climate, or other identified need.
 - 6.3.3 A Committee, Professional Learning Community (PLC), Conference, Workshop, Institute or Academy that contribute to the participant's knowledge and skills, competence, performance or effectiveness in education that are directly connected to the school, district or charter school's Success Plan or State initiative. This option includes workshops offered by districts or other employing authorities either as part of a professional development day or during after school hours.
- 6.4 Options listed in Section 6.2 for the renewal of a Paraeducator Permit shall expire on December 10, 2015.
- 6.5 Educators either receiving their original Paraeducator Permit after December 11, 2010 or upon renewing their Paraeducator Permit on or after December 11, 2010 shall use the options listed in Section 6.3.

67.0 Criminal Conviction History

- 7.1 An applicant shall disclose his or her criminal conviction history upon application for any Paraeducator Permit.
- 7.2 Failure to disclose a criminal conviction history is grounds for denial or revocation of a Paraeducator Permit as specified in 14 **Del.C.** §1219.

78.0 Denial and Revocation

- 8.1 A Paraeducator Permit may be denied an applicant upon a finding that an applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in the State.
- 8.2 A Paraeducator Permit may be revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application.
- 8.3 A Paraeducator whose Permit has been denied or revoked may file a request for a hearing with the Secretary within ten (10) days of receipt of the notice of denial or revocation.

8.3.1 The Secretary's decision shall be final.

5 DE Reg. 856 (10/1/01)

7 DE Reg. 1006 (2/1/04)

8 DE Reg. 1141 (2/1/05)

9 DE Reg. 139 (7/1/05)

9 DE Reg. 232 (8/1/05)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1583

PUBLIC NOTICE

1583 School Psychologist

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

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1583 School Psychologist. Amendments include limiting issuance of the Standard Certificate to applicants who have completed an organized graduate level program of study approved by the NASP or APA, a valid NCSP Certificate from the NASP or a valid and current license or certificate from another state in school psychology. This regulation sets forth the requirements for a School Psychologist.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, November 1, 2010 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1583 School Psychologist**1.0 Content**

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for School Psychologist. This certification is required for all School Psychologists providing services to children within the Delaware public school system.

1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

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

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

~~“Internship” means a supervised, culminating, comprehensive field experience, completed at or near, the end of formal training, through which school psychology candidates have the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica, as well as to acquire new competencies consistent with training program goals.~~

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

~~“School Setting” means a setting in which educational services are provided to children of diverse backgrounds, characteristics, abilities, disabilities, and needs age birth through 20 years inclusive, provided such setting is approved by the appropriate local governmental authority.~~

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

3.0 Standard Certificate

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

- 3.1 A bachelor's degree in any content area from a regionally accredited college or university; and
- 3.2 An organized graduate level program of study approved by the National Association of School Psychologists (NASP) or the American Psychological Association (APA) offered by a regionally accredited college or university titled “School Psychology”, consisting of a minimum of 60 graduate level credit hours, of which at least 54 credits are exclusive of an internship; and
 - 3.2.1 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full time or half time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting; or
- 3.3 Completion of an organized graduate level program of study offered by a regionally accredited college or university titled “School Psychology”, consisting of a minimum of 60 graduate level credit hours, of which at least 54 credits are exclusive of an internship; and
 - 3.3.1 Evidence of substantial graduate level preparation in the following areas. Substantial preparation may be acquired through one or more courses devoted specifically to an area, or significant portions of one or more courses. Candidates may be required to provide additional documentation to demonstrate such preparation.
 - 3.3.1.1 Data based Decision Making and Accountability: Coursework and practicum or internship experiences that demonstrate knowledge and skills on the use of various models and methods of assessment that yield information for identifying strengths and needs, understanding problems, identifying disabilities, and measuring progress and accomplishments;
 - 3.3.1.2 Consultation and Collaboration: Coursework and Practicum or Internship experiences that demonstrate knowledge of behavioral, mental health, collaborative, or other consultation models and methods and their application to planning and decision making processes at the individual, group, and system levels;
 - 3.3.1.3 Effective Instruction and Development of Cognitive and Academic Skills: Coursework and practicum or internship experiences that demonstrate knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills. Coursework in this area includes but is not limited to development of instructional interventions;
 - 3.3.1.4 Socialization and Development of Life Skills: Coursework and practicum or internship experiences that demonstrate knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development

of behavioral, affective, adaptive, and social skills. Coursework in this area includes behavioral assessment or intervention, and counseling;

3.3.1.5 School and Systems Organization, Policy Development, and Climate: Coursework and practicum or internship experiences that demonstrate knowledge of policies and practices in general education, special education, and other educational and related services systems. Coursework in this area includes attention to the development of policies and practices that create and maintain safe, supportive, and effective learning environments for children and others;

3.3.1.6 Prevention, Crisis Intervention, and Mental Health: Coursework and practicum or internship experiences that demonstrate knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Coursework in this area includes promotion of student mental health and knowledge of crisis intervention procedures;

3.3.1.7 Home, School and Community Collaboration: Coursework and practicum or internship experiences that demonstrate knowledge of family systems, including family strengths and influences on student development, learning, and behavior; and of methods to involve families in education and service delivery;

3.3.1.8 Research and Program Evaluation: Coursework and practicum or internship experiences that demonstrate knowledge of research, statistics, and evaluation methods. Coursework in this area includes content related to evaluating research, translating research into practice, and understanding research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services;

3.3.1.9 School Psychology Practice and Development: Coursework and practicum or internship experiences that demonstrate knowledge of the history and foundations of the profession of school psychology; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards;

3.3.1.10 Student Diversity in Development and Learning: Coursework and practicum or internship experiences that demonstrate knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender related, and linguistic factors in development and learning; and

3.3.1.11 Information Technology: Coursework and practicum or internship experiences that demonstrate knowledge of information sources and technology relevant to their work, including the ability to access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services; and

3.3.2 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full time or half time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting; or

3.4 A valid certificate from the National School Psychology Certification Board (NCSP); or

3.5 A valid certificate in school psychology from another State Department of Education in the U.S.; or

3.6 A valid license as a psychologist issued by the Delaware Board of Examiners of Psychologists, and

3.6.1 Evidence of substantial graduate level preparation in the following areas. Substantial preparation may be acquired through one or more courses devoted specifically to an area, or significant portions of one or more courses. Candidates may be required to provide additional documentation to demonstrate such preparation.

3.6.1.1 Data based Decision Making and Accountability: Coursework and practicum or internship experiences that demonstrate knowledge and skills on the use of various models and methods of assessment that yield information for identifying strengths and needs, understanding problems, identifying disabilities, and measuring progress and accomplishments;

PROPOSED REGULATIONS

- 3.6.1.2 Consultation and Collaboration: Coursework and practicum or internship experiences that demonstrate knowledge of behavioral, mental health, collaborative, and other consultation models and methods and their application to planning and decision making processes at the individual, group, and system levels;
 - 3.6.1.3 Effective Instruction and Development of Cognitive Academic Skills: Coursework and practicum or internship experiences that demonstrate knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills. Coursework in this area includes development of instructional interventions;
 - 3.6.1.4 Socialization and Development of Life Skills: Coursework and practicum or internship experiences that demonstrate knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills. Coursework in this area includes behavioral assessment or intervention, and counseling;
 - 3.6.1.5 School and Systems Organization, Policy Development, and Climate: Coursework and practicum or internship experiences that demonstrate knowledge of policies and practices in general education, special education, and other educational and related services systems. Coursework in this area includes attention to the development of policies and practices that create and maintain safe, supportive, and effective learning environments for children and others;
 - 3.6.1.6 Prevention, Crisis Intervention, and Mental Health: Coursework and practicum or internship experiences that demonstrate knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Coursework in this area includes promotion of student mental health and knowledge of crisis intervention procedures;
 - 3.6.1.7 Home, School and Community Collaboration: Coursework and practicum or internship experiences that demonstrate knowledge of family systems, including family strengths and influences on student development, learning, and behavior; and of methods to involve families in education and service delivery;
 - 3.6.1.8 Research and Program Evaluation: Coursework and practicum/internship experiences that demonstrate knowledge of research, statistics, and evaluation methods. Coursework in this area includes content related to evaluating research, translating research into practice, and understanding research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services;
 - 3.6.1.9 School Psychology Practice and Development: Coursework and practicum or internship experiences that demonstrate knowledge of the history and foundations of the profession of school psychology; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards;
 - 3.6.1.10 Student Diversity in Development and Learning: Coursework and practicum/internship experiences that demonstrate knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender related, and linguistic factors in development and learning; and
 - 3.6.1.11 Information Technology: Coursework and practicum or internship experiences that demonstrate knowledge of information sources and technology relevant to their work, including the ability to access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services; and
- 3.6.2 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full time or half time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting. Applicants who meet all of the requirements above except 600 hours of internship in a school setting may complete the school based internship requirements under an emergency certificate.

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

4.0 Additional Requirements

- 4.1 An educator shall also have satisfied at least one (1) of the following additional education and internship requirement Options:
- 4.1.1 NASP or APA School Psychology Degree:
 - 4.1.1.1 Has successfully completed an organized graduate level program of study in "School Psychology" offered by a regionally accredited college or university and approved by the National Association of School Psychologists (NASP) or the American Psychological Association (APA), culminating in a Masters with an additional Educational Specialist (Ed.S.) degree or a Doctoral degree in School Psychology; and
 - 4.1.1.2 Has successfully completed a supervised internship
 - 4.1.2 NCSP Certificate:
 - 4.1.2.1 Holds a valid Nationally Certified School Psychologist (NCSP) Certificate from the National Association of School Psychologists (NASP).
 - 4.1.3 License or certificate from other state:
 - 4.1.3.1 Holds a valid and current license or certificate from another state in school psychology.

45.0 Internship

- 4.1 An internship must be in an institution or agency approved by the DOE or the applicant's graduate program. The internship placement agency provides appropriate support for the internship experience including:
- 4.1.1 A written agreement specifying the period of appointment and any terms of compensation;
 - 4.1.2 A schedule of appointments, expense reimbursement, a safe and secure work environment, adequate office space, and support services consistent with that afforded to school psychologists employed by the approved internship institution or agency;
 - 4.1.3 Provision for participation in continuing professional development activities;
 - 4.1.4 Release time for internship supervision; and
 - 4.1.5 A commitment to the internship as a diversified training experience.
- 4.2 An internship must be supervised by a certified school psychologist or state licensed psychologist who has a minimum of three (3) years experience as a practicing school psychologist and who has experienced an internship.
- 4.3 A censed psychologist completing the school based portion of the internship may be employed as a school psychologist concurrent with completion of the internship. A minimum of two (2) hours per week of supervision is required.

56.0 Emergency Certificate

- 5.1 An Emergency Certificate for a School Psychologist may only be granted to a candidate who has completed all required course work and has been accepted into a school based internship is not available.

8 DE Reg. 448 (09/01/04)

Renumbered effective 6/1/07 - see Conversion Table

PROPOSED REGULATIONS

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

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

PUBLIC NOTICE

Durable Medical Equipment (DME) Provider Specific Policy Manual

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 31, 2010.

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

SUMMARY OF PROPOSAL

The purpose of this proposal is to amend the Delaware Medical Assistance Provider (DMAP) Manuals regarding the ownership of certain *Durable Medical Equipment (DME)*.

Statutory Authority

- 42 CFR §414.202, *Definitions (DME)*
- 42 CFR §440.70(b)(3), *Home Health services*
- 42 CFR §440.230, *Sufficiency of amount, duration, and scope*

Background

The Delaware Medical Assistance Program (DMAP) covers medically necessary durable medical supplies and equipment, under the Durable Medical Equipment (DME) program, which meet program guidelines when prescribed by a physician.

The Division of Medicaid and Medical Assistance (DMMA), in collaboration with the University of Delaware, Center for Disabilities Studies (CDS), is interested in developing a durable medical equipment retrieval program. Such a program would enable high-quality products such as wheelchairs, scooters, and communication devices to be refurbished and made available to a new customer when no longer needed by the original beneficiary. Similar programs have been implemented in other states, demonstrating both fiscal and environmental advantages.

Current DMMA policy assigns ownership of equipment purchased by DMMA to the client. The proposed revision would assign ownership of certain specified DME to DMMA. When the equipment is no longer needed, it will be recovered by CDS. CDS will assess and refurbish, if appropriate. A new customer service component will also be established to periodically evaluate the effectiveness of equipment in meeting the needs of the beneficiary. DMMA customers will also have the option of accepting refurbished equipment, when available, at a reduced cost to the state.

Summary of Proposal

The DME provider manual is revised to establish a policy of ownership for certain purchased durable medical equipment. This rule revision will allow certain durable medical equipment purchased by DMMA to remain the property of the DMMA to be used by for the benefit of the Medicaid recipient until it is no longer medically

necessary. At such time as the item is no longer medically necessary, DMMA may retrieve the durable medical equipment product if it is determined to be administratively and fiscally prudent.

This rule will allow DMMA to establish a durable medical equipment retrieval program and meet the needs of Delawareans who do not have access to durable medical equipment and ultimately reducing the amount of uncompensated care provided by DMAP healthcare providers. This rule promulgation is the first step in establishing procedures necessary to implement a durable medical equipment retrieval program.

Fiscal Impact Statement

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

DMMA PROPOSED REGULATION #10-41

REVISION:

DELAWARE MEDICAL ASSISTANCE PROGRAM Durable Medical Equipment (DME) Provider Specific Policy Manual

3.5 Purchase Versus Rental

3.5.4 ~~If purchase is the only option (such as for a custom made wheelchair), or is determined to be the most cost effective method of providing the equipment, the equipment will become the property of the client after the DMAP reimbursement is made.~~ Items specified below, purchased by DMMA shall be the property of DMMA. Other equipment purchased by DMMA will become the property of the client after the DMAP reimbursement is made.

- Augmentative Communication Devices
- Bath Benches
- Bi-Paps
- C-Paps
- Car Seats
- Commodes
- Feeder Seats
- Feeding Pumps
- Gait Trainers
- Hospital Beds and Hospital Bed Accessories
- Nebulizers
- Oxygen Concentrators
- Patient Lifts
- Quad Canes
- Scooters
- Shower Chairs
- Standers
- Strollers
- Walkers
- Wheelchairs and Wheelchair Accessories



DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2602 (16 Del.C., §2602)

PUBLIC NOTICE**4459A Regulations for the Childhood Lead Poisoning Prevention Act**

The Health Systems Protection Section, under the Division of Public Health is proposing Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months of Age. On July 15, 2010, the Childhood Lead Poisoning Prevention Act was signed into law. Prior to this Act the State of Delaware required lead poisoning screening for children at 12 months of age. Because many children are not yet sufficiently mobile prior to 12 months of age to have full exposure to potential lead hazards in their environments, it has become common practice in other states to test some children at higher risk for lead exposure at 24 months of age as well. The Childhood Lead Poisoning Prevention Act requires that the Division pass regulations to enforce compliance according to the provisions of Chapter 26, Title 16 of the **Delaware Code** relating to Lead Based Paint Hazards. On October 1, 2010, the Division plans to publish as proposed regulations governing the Childhood Lead Poisoning Prevention Act and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Regulations governing the Childhood Lead Poisoning Prevention Act.

Currently, the State of Delaware requires lead poisoning screening for children at 12 months of age. The Childhood Poisoning Prevention Act requires a formal screening process be developed so that children at high risk for lead exposure can receive an additional screening test at 24 months of age, while children at lower risk will continue to receive only the currently required screening at 12 months of age. The Division of Public Health plans to promulgate regulations governing the Childhood Lead Poisoning Prevention Act that address a new blood lead screening, record retention protocol, and the requirements of compliance, enforcement, and penalties for violators.

The public hearing will be held on October 22, 2010, at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the October 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4705.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by October 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by November 1, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months of Age**1.0 General Provisions.****1.1 Preamble.**

1.1.1 These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to 16 Del.C., §122(3)(t) and § 2602. These regulations establish standards for blood lead testing of children between 22 and 26 months of age who are at high risk of lead poisoning. These regulations also establish a record retention policy, enforcement modalities and penalties for violators.

2.0 Definitions.

For purposes of this chapter, the following definitions shall apply:

“Blood lead registry” means the database maintained by the Department that includes the results of all blood lead testing reported to the Department.

“Blood lead testing” means taking a capillary or venous sample of blood for point of care testing using a Clinical Laboratory Improvement Act of 1988 (CLIA) licensed or waived test or sending it to a laboratory to determine the level of lead in the blood.

“Capillary” means a blood sample taken from the finger or heel for lead analysis.

“Division” means the Delaware Division of Public Health.

“Department” means the Delaware Department of Health and Social Services.

“Health care provider” means the individual that generally provides medical care to a child including, but not limited to, a physician, a physician’s assistant or a nurse.

“High risk” means a child between the ages of 22 and 26 months who meets any of the following conditions:

- Is suspected by a parent or a health care provider to be at risk for lead exposure or to exhibit the symptoms of lead poisoning.
- Has a sibling or frequent playmate with lead poisoning.
- Is a recent immigrant, refugee, or foreign adoptee.
- Has a household member who uses traditional, folk, or ethnic remedies or cosmetics or who routinely eats food imported informally (e.g., by a family member) from abroad.
- Lives in or regularly visits a house or day care center (including out buildings) built before 1978.
- Lives with an adult whose job or hobby involves exposure to lead (e.g. construction, welding, pottery, mechanic, jeweler, plumber, renovator, firing range enthusiast, stained glass maker).
- Lives near an active lead smelter, battery recycling plant, or other industry likely to release lead.
- Lives in, attends day care in, or visits any of the following zip code areas at least 6 hours a week or 60 hours a year:
 - 197XX: 01, 02, 03, 06, 09, 11, 13, 20, 33
 - 198XX: 01, 02, 03, 04, 05, 06, 08, 09, 10
 - 199XX: 01, 04, 33, 34, 38, 39, 40, 41, 43, 45, 46, 47, 50, 52, 53, 56, 58, 60, 62, 63, 66, 68, 71, 73, 75, 77.

“Laboratory” means a laboratory certified to perform either waived or non-waived blood lead analysis according to the federal Clinical Laboratory Improvement Act of 1988 (CLIA).

“Low Risk” means a child between the ages of 22 and 26 months who does not meet any of the conditions listed in the definition for “High Risk”.

“Venous” means a blood sample taken from a vein in the arm for lead analysis.

3.0 Requirement.

The health care provider of a child between the ages of 22 and 26 months shall determine if said child is at high risk of lead poisoning. If the child is determined to be at high risk, the health care provider shall perform or cause to be performed a blood lead test.

4.0 Applicability.

- 4.1 The blood lead testing requirement specified in these regulations applies to all children 22 to 26 months of age except those determined not to be at high risk.
- 4.2 Blood lead testing is not required on a child between the ages of 22 and 26 months when said child is determined by the health care provider to be at low risk for elevated blood lead levels. If a health care provider determines that a child is low risk, the health care provider will keep the completed risk assessment questionnaire (with all "NO" responses) in the child's chart for at least three years.

5.0 Religious exemption.

A religious exemption may be granted to a child if the blood lead testing conflicts with a genuine and sincere religious belief and not a belief based merely on philosophical, scientific, moral, personal, or medical opposition to blood lead testing. A certificate of blood lead testing exemption for religious reasons shall be signed and dated by the child's parent or guardian, notarized, and kept in the child's medical chart.

6.0 Time line for valid blood lead testing.

To be valid, a blood lead test shall be performed, as required by these regulations, on a child after completion of a risk assessment questionnaire when the child is between the ages of 22 and 26 months. Children that test with blood lead levels above the level of concern established by the Centers for Disease Control ("CDC"), which is currently 10 µg/dl, will have venous confirmation by a laboratory prior to intervention.

7.0 Documentation.

- 7.1 A health care provider and a laboratory performing a blood lead test required by these regulations shall ensure that the results of the blood lead test are reported to the Division.
- 7.2 Proof of blood lead testing will be verified through the Blood Lead Registry and by auditing a child's medical charts.

8.0 Records.

A completed risk assessment questionnaire, including the determination of the child's risk of lead poisoning, shall be maintained in a child's medical chart for at least three years. The Division will conduct scheduled and impromptu chart audits to monitor compliance.

9.0 Severability.

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

10.0 Penalty.

Violators are subject to sanctions pursuant to 16 Del.C., §107 for each violation of the requirements established in these regulations.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§313, 1111)

PUBLIC NOTICE

506 Crop Insurance Adjusters and Producers

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 506 relating to Crop Producers and Adjusters. The docket number for this proposed amendment is 1456.

The purpose of the proposed Regulation 506 is to delineate licensing and continuing education requirements for producers and adjusters specifically for Crop Insurance. The text of the proposed amendment is reproduced in the October 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday, November 1, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

506 Crop Insurance Adjusters and Producers

1.0 Purpose

- 1.1 The purpose of this Chapter is to provide rules to assist the Commissioner in administering the laws relating to the licensure and regulation of crop insurance producers and adjusters, as provided for in 18 Del.C. Chapter 17 et. seq.
- 1.2 This regulation should not be viewed as replacing any other or additional statutory requirements not explicitly included in this regulation.

2.0 Scope

This regulation applies to all persons acting as crop insurance adjusters or producers in this state. The crop insurance producer and adjuster licenses to be issued by the Commissioner.

3.0 Definitions

"Commissioner" means the Commissioner of the Delaware Insurance Department.

"Crop" means and includes any agricultural product, including livestock, nursery product, tree and product from a tree, as well as anything insured by the Federal Crop Insurance Corporation under a crop insurance program.

"Crop insurance adjuster" means any person, who, for compensation or any other thing of value, does any of the following:

- Acts or aids in investigating, verifying, substantiating, estimating, appraising, determining, presenting, and discussing the value of the claim, and/or effectuating the resolution of a claim for loss or damage covered by an insurance contract that insures crops;
- Advertises for employment as an adjuster of claims arising under insurance contracts that insure crops or solicits business or represents to the public to be a crop insurance adjuster of insurance claims, for losses or damages arising out of policies of insurance that insure crops; or

- Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about claims for losses or damages arising out of policies of insurance that insure crops, when doing any of the foregoing for or on behalf of another person engaged in the business of adjusting losses or damages covered by an insurance policy that insures crops, for the insured.

"Department" means the Department of Insurance;

"NAIC" means the National Association of Insurance Commissioners;

"Person" means a natural person;

"Producer" means any person required to be licensed under the laws of this State to sell, solicit, or negotiate contracts of insurance authorized within the scope of said license.

"Risk Management Agency" means that agency of the United States Department of Agriculture acting on behalf of the Federal Crop Insurance Corporation to administer federal crop insurance programs.

4.0 Qualification for the Issuance of a License

A person shall apply for and receive from the Commissioner a multi-peril crop insurance adjuster and/or producer license to operate as a multi-peril crop insurance producer or adjuster in this State. All applications for licensure shall be in accordance with the requirements of 18 Del.C., §§1706 and 1707 (1).

5.0 Examination Requirements

- 5.1 All individuals applying for a multi-peril crop insurance adjuster license are required to pass the Risk Management Agency-approved Proficiency test for multi-peril crop insurance adjusters.
- 5.2 All individuals applying for a multi-crop insurance producer license shall be required pass a written examination as required by 18 Del.C., §1705.
- 5.3 The Commissioner may enter into a contract with a testing organization for the examination of applicants for a license as a multi-peril crop insurance producer or adjuster. Such contract may provide that the testing organization shall:
 - 5.3.1 Assume responsibility for the administration and grading of the examination; and
 - 5.3.2 Charge and collect from each applicant the fee for administering the examination.

6.0 Continuing Education Requirement

- 6.1 An individual, who holds a multi-peril crop insurance license shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education credits. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under Chapter 17 of the Delaware Code.
- 6.2 Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of Paragraph 6.1.

7.0 Effective Date

This Regulation shall take effect 10 days after execution of an Order by the Commissioner and its publication in the *Register of Regulations* or January 1, 2011, whichever shall occur last.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§313, 1111)

PUBLIC NOTICE

507 Workers' Compensation Insurance Adjusters

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 507 relating to Workers Compensation Adjusters. The docket number for this proposed amendment is 1457.

The purpose of the proposed Regulation 507 is to delineate licensing and continuing education requirements for adjusters specifically for Workers' Compensation Insurance. The text of the proposed amendment is reproduced in the October 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday, November 1, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

507 Workers' Compensation Insurance Adjusters

1.0 Purpose

- 1.1 The purpose of this Chapter is to provide rules to assist the Commissioner in administering the laws relating to the licensure and regulation of Workers' Compensation insurance adjusters, as provided for in 18 Del.C. Chapter 17 et. seq.
- 1.2 This regulation should not be viewed as replacing any other or additional statutory requirements not explicitly included in this regulation.

2.0 Scope

This regulation applies to all persons acting as Workers' Compensation insurance adjusters in this state. The Workers' Compensation Insurance adjuster license is to be issued by the Commissioner.

3.0 Definitions.

"Commissioner" means the Commissioner of the Delaware Insurance Department.

"Department" means the Department of Insurance;

"NAIC" means the National Association of Insurance Commissioners;

"Person" means a natural person;

"Workers Compensation insurance adjuster" means any person, who, as an independent contractor, or on behalf of an independent contractor, insurer or self-insurer, producer or managing general agent, investigates and/or negotiates settlement of workers' compensation claims arising under insurance contracts.

4.0 Qualification for the Issuance of a License.

A person shall apply for and receive from the Commissioner a Workers Compensation insurance adjuster license to operate as a workers compensation adjuster in this State. All applications for licensure shall be in accordance with the requirements of 18 Del.C. §§1706 and 1707(1).

PROPOSED REGULATIONS

5.0 Examination Requirements.

- 5.1 All individuals applying for a workers compensation insurance adjuster license are required to pass the approved proficiency test for workers compensation insurance adjusters.
- 5.2 The Commissioner may enter into a contract with a testing organization for the examination of applicants for a license as a workers compensation insurance adjuster. Such contract may provide that the testing organization shall:
- 5.2.1 Assume responsibility for the administration and grading of the examination; and
- 5.2.2 Charge and collect from each applicant the fee for administering the examination.

6.0 Continuing Education Requirement.

- 6.1 An individual, who holds a workers compensation insurance adjuster license shall satisfactorily complete a minimum of twelve (12) hours of continuing education credits, three (3) of which shall be in ethics subjects, during each biennium reporting period. The education required by this section shall be in addition to any other continuing education requirements required for other professional licenses held by the individuals licensed under Chapter 17 of the **Delaware Code**.
- 6.2 Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of Paragraph 6.1.

7.0 Effective Date

This Regulation shall take effect 10 days after execution of an Order by the Commissioner and its publication in the *Register of Regulations* or January 1, 2011, whichever shall occur last.

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
CONSUMER PROTECTION UNIT

Statutory Authority: 29 Delaware Code, Section 2521 (29 **Del.C.** §2521)

PUBLIC NOTICE

103 Consumer Protection Unit Administrative Enforcement Proceedings

The Attorney General in accordance with 29 **Del.C.** §2521 has proposed to adopt rules and regulations for administrative enforcement of the consumer protection statutes.

A public hearing will be held at 10:00 a.m. on Wednesday, November 3, 2010, in the Attorney General's conference room on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to submit written comments will be at the public hearing.

103 Consumer Protection Unit Administrative Enforcement Proceedings

1.0 Construction of rules of practice and procedure.

- 1.1 Unless otherwise provided, these Rules of Practice govern Consumer Protection Unit ("CPU") administrative proceedings brought under 29 **Del.C.** § 2523.

- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

2.0 Appearance and practice in administrative proceedings.

- 2.1 *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.
- 2.2 *Attorneys.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the State of Delaware. Attorneys who are not so admitted must apply for admission *pro hac vice* through Rule 2.3 below.
- 2.3 *Appearance pro hac vice.* Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in a proceeding in the discretion of the administrative hearing officer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Pursuant to Delaware Supreme Court Rule 72(c), Delaware Counsel for any party shall appear in the matter for which admission *pro hac vice* is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the hearing officer, unless excused by the hearing officer.
- 2.4 *Designation of address for service; notice of appearance; withdrawal.*
- 2.4.1 *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before a hearing officer in a proceeding, he or she shall file with the hearing officer or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.
- 2.4.2 *Attorneys.* When an attorney first makes any filing or otherwise appears in a representative capacity before a hearing officer in a proceeding, he or she shall file with the hearing officer, and keep current, a written notice of appearance stating the name of the proceeding; the attorney's name, bar identification number, business address, telephone number, and electronic mail address; and the name and address of the person or persons represented.
- 2.4.3 *Withdrawal.* Withdrawal by any attorney shall be permitted only by written order of the hearing officer. A motion seeking leave to withdraw shall state with specificity the reason for such withdrawal.

3.0 Appointment of a hearing officer.

- 3.1 The Attorney General shall designate a Deputy Attorney General outside the Fraud and Consumer Protection Division to act as the hearing officer in a particular CPU administrative case or indefinitely until the authority is transferred. If no hearing officer has been designated, a Deputy Attorney General in the CPU initiating a complaint shall proceed in accordance with Rule 12.1 below.
- 3.2 This authority of the Attorney General to name a hearing officer may be delegated to any Deputy Attorney General outside the Fraud and Consumer Protection Division.

4.0 Disqualification and recusal of administrative hearing officer.

- 4.1 *Notice of disqualification.* If at any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.
- 4.2 *Motion for withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not biased or otherwise disqualified, he or she shall so rule and shall continue to preside over the proceeding.

5.0 Ex parte communications.

- 5.1 No party to a proceeding, or counsel to or representative of a party to a proceeding, shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of that proceeding to the administrative hearing officer.
- 5.2 No administrative hearing officer with respect to a proceeding shall make or knowingly cause to be made to a party to that proceeding, or counsel to a party to that proceeding, an *ex parte* communication relevant to the merits of that proceeding.

6.0 Motions.

- 6.1 Generally. Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 7.0, be filed in accordance with Rule 8.0, meet the requirements of Rule 9.0, and be signed in accordance with Rule 10.0. The hearing officer may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the hearing officer otherwise directs.
- 6.2 Opposing and reply briefs. Briefs in opposition to a motion shall be served and filed within 10 days after service of the motion. Reply briefs shall be served and filed within three days after service of the opposition.
- 6.3 Length limitation. A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

7.0 Service of papers by parties.

- 7.1 Service initiating a proceeding. At the outset of an administrative proceeding, the complaint and any accompanying papers shall be served on each respondent by certified mail, return receipt requested, and by United States first class mail at the respondent's last known address. The return of a return receipt signed by the respondent is not required for service to be effective.
- 7.2 Service of all other filings.
- 7.2.1 When required. In every administrative proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section.
- 7.2.2 Upon a person represented by counsel. Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 2.0, service shall be made pursuant to paragraph 7.2.3 of this section upon counsel, unless service upon the person represented is ordered by the hearing officer.
- 7.2.3 How made. Service shall be made by delivering a copy of the filing. "Delivering" means:
- 7.2.3.1 Personal service by handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;
- 7.2.3.2 Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;
- 7.2.3.3 Sending the papers through a commercial courier service or express delivery service; or
- 7.2.3.4 Transmitting the papers by facsimile machine or electronic mail transmission where the following conditions are met:
- 7.2.3.4.1 The persons serving each other by facsimile transmission or electronic mail transmission have agreed to do so in a writing, and

7.2.3.4.2 Receipt of each document served is confirmed electronically or by a manually signed receipt.

7.2.4 When service is complete. Personal service, service by U.S. Postal Express Mail or service by commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile or electronic mail transmission is complete upon confirmation of transmission.

8.0 Filing of papers with the hearing officer: procedures.

8.1 When to file. All papers required to be served by a party upon any person shall be filed with the hearing officer at the time of service. Papers required to be filed with the hearing officer must be received within the time limit, if any, for such filings.

8.2 Where to file. Filing of papers shall be made by filing the original papers with the hearing officer.

8.3 To whom to direct the filing. All motions, objections, applications or other filings made during a proceeding shall be directed to and decided by the hearing officer.

8.4 Certificate of service. Papers filed with the hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number, or electronic mail address to which service was made, if not made in person.

9.0 Filing of papers: form.

9.1 Specifications. Papers filed in connection with any administrative proceeding shall:

9.1.1 Be on one grade of unglazed white paper measuring 8-1/2 x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

9.1.2 Be typewritten or printed in either ten or twelve-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

9.1.3 Include at the head of the paper, or on a title page, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

9.1.4 Be paginated with all margins at least one inch wide;

9.1.5 Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

9.1.6 Be stapled, clipped or otherwise fastened in the upper left corner.

9.2 Signature required. All papers must be dated and signed as provided in Rule 10.0.

9.3 Suitability for record keeping. Documents which, in the opinion of the hearing officer, are not suitable for computer scanning or microfilming may be rejected.

10.0 Filing of papers: signature requirement and effect.

10.1 General requirements. Every filing of a party represented by counsel shall be signed by Delaware Counsel of record in his or her name and shall state that counsel's bar identification number, business address, electronic mail address, and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

10.2 Effect of signature.

10.2.1 The signature of counsel or a party shall constitute a certification that:

10.2.1.1 the person signing the filing has read the filing;

10.2.1.2 to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

10.2.1.3 the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

10.2.2 If a filing is not signed, the hearing officer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

11.0 Computation of time.

- 11.1 *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the hearing officer, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. Unless otherwise specified, intermediate Saturdays, Sundays and State legal holidays shall be excluded from the computation when the period of time prescribed or allowed is 10 days or less, not including any additional time allowed for service by mail in paragraph 11.2 of this section. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, Sunday nor State legal holiday.
- 11.2 *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

12.0 Complaints: general and summary proceedings.

- 12.1 *General.* If the Director or a Deputy Attorney General acting under his or her authority believes that any person is violating or has violated any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the CPU may issue a complaint as provided herein. The service and filing of the complaint constitutes the commencement of the administrative proceeding. If no hearing officer has been generally designated, the Director or the Deputy Attorney General filing the complaint shall give notice to the Attorney General, Chief Deputy Attorney General, or the State Solicitor requesting the appointment of a hearing officer for the proceeding.
- 12.2 *Summary proceedings.* See Rule 25.1.3 for procedure in summary proceedings.

13.0 Complaints: form and content.

- 13.1 Each complaint shall be in writing and signed by a Deputy Attorney General. The complaint shall specify in reasonable detail the conduct alleged to constitute the violation and the statutory provision, rule or regulation the respondent is alleged to be violating or to have violated.
- 13.2 If the complaint consists of several claims, each claim shall be stated separately.

14.0 Complaints: amendment and withdrawal.

- 14.1 At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Deputy Attorney General who initiated the proceeding may amend the complaint. After the filing of a responsive pleading or the commencement of a hearing, upon motion by the Deputy Attorney General who initiated the proceeding, the hearing officer may permit amendment of a complaint.
- 14.2 At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Deputy Attorney General who initiated the proceeding may withdraw the complaint. Such withdrawal shall be without prejudice to refile, and the Deputy Attorney General who initiated the proceeding shall be permitted to file a complaint based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. The Deputy Attorney General who initiated the proceeding may withdraw the complaint after the filing of a responsive pleading or commencement of a hearing, and in the absence of a motion the withdrawal shall be without prejudice; however, upon motion of the respondent, the hearing officer, after considering the facts and circumstances of the withdrawal, shall determine whether the withdrawal shall be with prejudice.

15.0 Answers to complaints.

- 15.1 *Form, service, notice.* Pursuant to Rule 7.2, each respondent named in a complaint shall serve an answer to the complaint on the Deputy Attorney General who initiated the proceeding, all other parties,

and the hearing officer within 20 days after service of the complaint on such respondent. The hearing officer may extend such period for good cause.

- 15.2 Content, affirmative defenses. Unless otherwise ordered by the hearing officer, an answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the complaint. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied shall be deemed admitted. Any affirmative defense shall be asserted in the answer.
- 15.3 Amendments to answer. Upon a motion by a respondent, the hearing officer may permit an answer to be amended.
- 15.4 Extension of time to answer amended complaint. If a complaint is amended pursuant to Rule 14.0, the time for filing an answer or amended answer shall be extended to 20 days after service of the amended complaint.
- 15.5 Failure to answer; default. If the respondent does not file an answer within the time required, the hearing officer shall send a second notice to such respondent requiring an answer within 10 days after service of the second notice, or within such longer period as the hearing officer in his or her discretion may order. The failure of the respondent to answer shall not prevent the hearing officer, in the exercise of his or her discretion, from scheduling a hearing.

16.0 Scheduling a hearing.

- 16.1 Hearing officer order requiring hearing. Upon the filing of a complaint, the hearing officer should promptly schedule a hearing to be held between 40 and 60 days after the date the complaint was filed. See Rule 25.1.3 for hearing procedures in summary proceedings.
- 16.2 Notice of hearing. Upon scheduling a hearing, the hearing officer shall issue a notice stating the date, time and place of the hearing, and shall serve such notice on the parties.

17.0 Pre-hearing conferences.

- 17.1 Purpose of conferences. The purpose of pre-hearing conferences includes, but is not limited to:
- 17.1.1 Expediting the disposition of the proceeding;
 - 17.1.2 Establishing early and continuing control of the proceeding by the hearing officer; and
 - 17.1.3 Improving the quality of the hearing through more thorough preparation.
- 17.2 Procedure. On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.
- 17.3 Subjects to be discussed. At a pre-hearing conference consideration may be given and action taken with respect to any or all of the following:
- 17.3.1 Simplification and clarification of the issues;
 - 17.3.2 Exchange of witness and exhibit lists and copies of exhibits;
 - 17.3.3 Stipulations, admissions of fact, and stipulations concerning the contents, authenticity or admissibility into evidence of documents;
 - 17.3.4 Matters of which official notice may be taken;
 - 17.3.5 The schedule for exchanging prehearing motions or briefs, if any;
 - 17.3.6 The method of service for papers;
 - 17.3.7 Summary disposition of any or all issues;
 - 17.3.8 Settlement of any or all claims;
 - 17.3.9 Determination of hearing dates;

17.3.10 Amendments to the complaint or answers thereto; and

17.3.11 Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

17.4 Pre-hearing orders. At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

18.0 Pre-hearing submissions.

18.1 Submissions generally. In connection with the pre-hearing conference, the hearing officer, on his or her own motion or at the request of a party, may order any party to furnish such information as deemed appropriate, including any or all of the following:

18.1.1 An outline or narrative summary of the party's case or defense;

18.1.2 The legal theories upon which the party will rely;

18.1.3 Copies and a list of documents that the party intends to introduce at the hearing; and

18.1.4 A list of witnesses who will testify on the party's behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

18.2 Expert witnesses. Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph 18.1.4 of this section, a *curriculum vitae* or statement of the expert's qualifications and a written summary of the expert's opinions on the topic of the intended testimony. The hearing officer may in his or her discretion order an expert witness to produce a listing of other proceedings in which the expert has given expert testimony and a list of publications authored or co-authored by the expert.

18.3 Timing of production. The hearing officer may modify the time limits for production of evidence set by these rules.

19.0 Administrative hearings.

19.1 Hearings. Hearings for the purpose of taking evidence shall be held upon order of the hearing officer. Except for summary proceedings, hearings should generally be scheduled not less than 40 days nor more than 60 days after the issuance of a complaint.

19.1.1 All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

19.1.2 All hearings, except *ex parte* applications for a summary order, shall open to the public.

19.2 Continuance. Any motion for a continuance of the hearing date shall be filed as far in advance of the hearing date as practicable. Motions must be for good cause and state with specificity the reason for the continuance request. Any motion for a continuance filed within 10 days of a scheduled hearing is disfavored and will be denied in the absence of extraordinary circumstances.

19.3 Exchange of evidence and witness list. Unless otherwise ordered by the hearing officer, no later than 20 calendar days prior to the date of the hearing the CPU shall submit to each respondent and to the hearing officer copies of all documentary evidence and the names of the witnesses the CPU intends to present in its case-in-chief at the hearing. Unless otherwise ordered, no later than 10 calendar days prior to the date of the hearing each respondent shall submit to the CPU and to the hearing officer all documentary evidence and the names of the witnesses the respondent intends to present at the hearing. If a party intends to use the testimony of an expert witness, that party shall include as part of its documentary production a *curriculum vitae* or statement of the expert's qualifications and a written summary of the expert's opinions on the topic of the intended testimony.

19.4 Hearing procedure. In the hearing, each party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the hearing officer, may be required for a full and true disclosure of the facts.

19.5 Testimony. Witnesses shall testify under oath or affirmation. The oath or affirmation may be administered by a Deputy Attorney General, court reporter, notary public or any other officer authorized to administer oaths and affirmations under Delaware law.

20.0 Evidence.

- 20.1 Admissibility. The hearing officer shall receive relevant evidence and may exclude all evidence that is irrelevant, immaterial or unduly repetitious.
- 20.1.1 The hearing officer may make reference to and be guided by the Delaware Uniform Rules of Evidence. Notwithstanding those rules, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence.
- 20.1.2 Evidence may not be excluded solely on the ground that it is hearsay.
- 20.2 Objections. Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling.
- 20.3 Offers of proof. Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record.

21.0 Proposed findings of fact, conclusions of law, and post-hearing briefs.

- 21.1 At the discretion of the hearing officer, the parties may be ordered to file proposed findings of fact and conclusions of law, or post-hearing briefs, or both. The hearing officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.
- 21.2 Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.
- 21.3 In any case in which the hearing officer has ordered the filing of proposed findings of fact and conclusions of law, or post-hearing briefs, the hearing officer shall, after consultation with the parties, prescribe the period within which proposed findings of fact and conclusions of law and/or post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 30 days after the conclusion of the hearing unless the hearing officer permits a different period and sets forth in an order the reasons why a longer period is necessary.
- 21.4 Unless the hearing officer orders otherwise, no post-hearing submission shall exceed 25 pages, exclusive of cover sheets, tables of contents and tables of authorities.

22.0 Final decision after a hearing.

- 22.1 In any administrative proceeding in which a hearing is held, the hearing officer shall issue a final written decision. Such decisions should generally be issued within 60 days after the last day of the hearing or the filing of any post-hearing submission, whichever is later. The decision shall include:
- 22.1.1 A brief summary of the evidence;
- 22.1.2 Findings of fact based on the evidence;
- 22.1.3 Conclusions of law; and
- 22.1.4 A statement of any sanctions, where applicable.
- 22.2 The hearing officer may order any remedy authorized by 29 Del.C. §2524.

23.0 Failure to appear at hearing.

A party's failure to appear at a hearing that has been duly noticed shall not be cause to continue the hearing. If the hearing officer so orders, the hearing shall proceed in the party's absence, which shall be noted in the record.

24.0 Disruptive conduct.

If a party, counsel to a party or witness engages in conduct in violation of an order of the hearing officer, or other disruptive conduct during an administrative proceeding, the hearing officer may impose non-monetary sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the proceeding; (ii) striking pleadings or evidence from

the record; (iii) providing that certain facts shall be taken to be established for purposes of the proceeding; or (iv) providing for such other relief as is just and equitable under the circumstances.

25.0 Cease and desist orders; summary proceedings.

25.1 Cease and desist orders may be issued by agreement, administrative order, or summary administrative order.

25.1.1 *By agreement.* Where it appears to the Director that a person has engaged in, is engaging in, or is about to engage in a practice declared unlawful by any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may enter into a written agreement with that person and issue a cease and desist order ordering the immediate discontinuance of that practice. Consistent with the agreement, the order may also order any relief or remedy authorized under any statute enforced by the CPU. A cease and desist order by agreement may be issued in the absence of a complaint initiating an administrative or civil action, or it may be issued in connection with the settlement of an administrative or civil action.

25.1.2 *By administrative order.* Upon the finding of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the administrative hearing officer may issue a cease and desist order. The prohibited conduct in the order should be reasonably related to the conduct constituting the violation.

25.1.3 *By summary administrative order.* Where the Director, in his or her discretion, perceives an immediate threat to the public interest as a result of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order.

25.1.3.1 Before issuing the summary order, the Director or his or her designee shall attempt to obtain voluntary compliance from the alleged violator by telephone call or letter. A failure to comply with any aspect of the request for voluntary compliance shall be deemed non-compliance with the request. Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor.

25.1.3.2 A complaint detailing the specific allegations against the alleged violator shall accompany any summary cease and desist order served upon the alleged violator. The complaint and summary cease and desist order shall be served upon the alleged violator by first class and certified mail to the alleged violator's last known address. Service shall be deemed effective upon mailing.

25.1.3.3 A hearing shall be scheduled by the Director or his or her designee at the time of the issuance of the complaint and summary cease and desist order. The CPU shall provide a hearing on the charges in the complaint within 10 days after the issuance of the complaint and the cease and desist order.

25.1.3.4 A written opinion and order, containing findings of fact and conclusions of law, shall issue within 10 days after the close of the hearing.

25.1.3.5 If no hearing has been provided within 10 days after the issuance of the summary cease and desist order, the order shall expire at the end of the tenth day after it was issued unless the alleged violator waives his or her right to a prompt hearing. If there is a hearing but no decision is issued within 10 days after the close of the hearing, the summary cease and desist order shall expire at the end of the tenth day after the close of the hearing. An order that has expired in accordance with the restrictions of this subparagraph may not be reissued as a summary order.

25.1.3.6 The order issued after the hearing may provide for any administrative remedy contained in 29 Del.C. § 2524.

25.1.3.7 Any person who willfully violates a cease and desist order may be sanctioned as provided in 29 Del.C. § 2524(b) or § 2526.

26.0 Appeals.

- 26.1 In any administrative proceeding, any person aggrieved by a final order of the hearing officer may file an appeal to the Superior Court no later than 30 days after the date of the order, as provided in 29 Del.C. §2523(d). A copy of the notice of appeal shall be promptly filed with the hearing officer in the administrative proceeding.
- 26.2 Upon the filing of an appeal to the Superior Court, the administrative record shall be filed with the Court in accordance with Superior Court Civil Rule 72.
- 26.3 Any party that files an appeal to the Superior Court shall be responsible for filing with the Court in a timely manner the transcript of that portion of the administrative proceedings in which error allegedly occurred. Each party on appeal shall bear his, her or its own costs of transcription.
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DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Office of Labor Law Enforcement

Statutory Authority: 19 Delaware Code, Section 3511(e) (19 Del.C. §3511(e))
19 DE Admin.Code 1327

PUBLIC NOTICE

1327 Notice of Independent Contractor or Exempt Person Status

The Delaware Department of Labor, Division of Industrial Affairs, Office of Labor Law Enforcement gives notice that it has created a form for employer to complete which contains guidelines of the notice required to be provided to an individual of their classification as either an independent contractor or an exempt person. The Office of Labor Law Enforcement will receive written public comment as to the notice form beginning Friday, October 1, 2010 and ending on Thursday, October 31, 2010, at the Delaware Department of Labor, 225 Corporate Blvd., Suite 104, Newark, Delaware 19702.

The Office of Labor Law Enforcement proposes to adopt the Notice of Independent Contractor or Exempt Person Status form as presented in this notice. The proposed form is published in the Delaware Register of Regulations. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Francis Chudzik, Supervisor in the Office of Labor Law Enforcement at (302) 451-3401. Persons may submit written comment to the Office of Labor Law Enforcement c/o Francis Chudzik at the address and for the time period set forth above.

1327 Notice of Independent Contractor or Exempt Person Status

The classification of an individual as an independent contractor or exempt employee has significant implications. 19 Del.C. § 3503 sets forth the acts which are prohibited. Specifically that:

- (a) An employer shall not improperly classify an individual who performs work for remuneration provided by an employer as an independent contractor.
- (b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined in subsection (c) of this section, but the employer has not classified the individual as an employee.
- (c) An "employer-employee" relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Department the employer demonstrates that the individual is an exempt person or independent contractor.
- (d) A person shall not knowingly incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1125, 1130

1125 Requirements for Preconstruction Review & 1130 Title V State Operating Permit Program **REGISTER NOTICE SAN #2010-19**

1. Title of the Regulations:

Amend 7 DE Admin. Code 1125 Requirements for Preconstruction Review and 1130 Title V State Operating Permit Program.

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

The Department proposes to revise Section 3.0 "Prevention of Significant Deterioration of Air Quality "(PSD) of 7 DE Admin. Code 1125, and Section 2.0 "Definitions" of 7 DE Admin. Code 1130 to clarify how air permitting requirements apply to greenhouse gas emissions. The Departments proposal is based on an Environmental Protection Agency rule, 75 FR 31514 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (June 3, 2010).

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:

The Department will hold a public hearing on these proposed amendments on Thursday, October 28, 2010 beginning at 6:00pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to Ronald A. Amirikian, Division of Air Quality, 655 South Bay Road, Suite 5N, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. Prepared By:

Ronald A. Amirikian (302-739-9409)
September 2, 2010

Proposed Amendments to 7 DE Admin Code 1125 and 1130 Regulatory Flexibility Act Compliance Form

Background:

Regulation of greenhouse gases (GHG) under the CAA was established by a Supreme Court decision and subsequent actions by EPA. These amendments are required to clarify how Delaware's existing permitting requirements apply to sources emitting certain GHGs under Delaware prevention of significant deterioration (PSD)

and Title V operating permit programs. These amendments are based on 75 FR 31514 (June 3, 2010), also known as the Greenhouse Gas (GHG) Tailoring rule. To avoid permitting GHG sources emitting above the existing standard threshold levels of 100 and 250 tons per year, which would include a very high number of mostly combustion sources never before permitted, the Tailoring Rule sets higher threshold levels for greenhouse gases. These higher thresholds will help ensure that small businesses will not be impacted. Currently, we believe there will be no more than about 20 sources, already permitted under Title V for non-GHG pollutant emissions, that will remain impacted after these revisions to 7 DE Admin. Code 1125 and 1130.

Potential areas for consideration:

1) The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule: None. The revisions are to raise the air permitting thresholds relative to GHG emissions, which will help ensure small businesses will not be subject to PSD and Title V permitting requirements.

2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule: None.

3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule: None.

4) The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace: N/A

5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business: N/A. The purpose of this revision is to raise the existing air permitting thresholds relative to GHG emission, which will ensure individuals and small businesses will remain exempt from PSD and Title V permitting requirements.

6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses. N/A. The purpose of this revision is to raise the existing air permitting thresholds relative to GHG emission, which will ensure individuals and small businesses will remain exempt from PSD and Title V permitting requirements.

7) What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above? The threshold limits for permitting GHG pollutant under the PSD and Title V programs is being proposed to be significantly increased to avoid the need to permit small businesses.

**1125 Requirements for Preconstruction Review
1130 Title V State Operating Permit Program**

***Please Note: Due to the size of these proposed regulations, they are not being published here. A copy of both regulations is available at:**

[1125 Requirements for Preconstruction Review & 1130 Title V State Operating Permit Program](#)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1140

REGISTER NOTICE SAN # 2009-33

1140 Delaware's National Low Emission Vehicle (NLEV) Regulation

1. Title of the Regulation:

Regulation 1140 – Delaware Low Emission Vehicle Program

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

The provisions of this regulation establish in Delaware a LEV program, which incorporates the requirements of the California LEV program.

The LEV program shall apply to all model year 2013 and subsequent motor vehicles that are passenger cars and light-duty trucks subject to the California LEV program and delivered for sale in Delaware on or after January 1, 2013.

3. Possible Terms of the Agency Action:

None.

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60 and the Federal Clean Air Act, section 177 (42 U.S.C. § 7507), which allows states to establish more stringent motor vehicle standards than the Federal program by implementing the California program.

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 Friday, October 22, 2010 beginning at 6:00 p.m. in DNREC's R & R Building auditorium, Dover, DE. Interested parties may submit comments in writing to:

Kristoffer Gontkovsky
DNREC Division of Air Quality
BHCC 655 South Bay Road Suite 5N
Dover, DE 19901

7. Prepared By:

Kristoffer Gontkovsky
DNREC Division of Air Quality
BHCC 655 South Bay Road Suite 5N
Dover, DE 19901
Ph:(302)739-9402 x9960 Fax:(302)739-3106
kristoffer.gontkovsky@state.de.us

August 31, 2010

Regulatory Flexibility Act Analysis**Regulatory Action**

The Department is proposing to implement Regulation 1140 that would affect vehicle manufacturers, dealers, and any other person who transfers vehicles within DE. The proposed regulation would replace the Federal Tier 2 program in Delaware beginning with MY 2013, and as a result, only California certified vehicles can be legally sold in Delaware after January 1st of 2013. Considerable benefits to human health and the environment will be realized under this program in the long term. A significant portion of particulate emissions, ozone-forming emissions, and

airborne cancer risks come from vehicle emissions. The primary goal of this proposal is to reduce the emissions of ozone precursors, particulates, toxic air pollutants and greenhouse gas emissions.

Conclusions

After thorough consideration of the proposed implementation of Regulation 1140 under the *Regulatory Flexibility Act*, 29 **Del.C.** Ch. 104, (Act), the Department concludes the following:

- After considering the impact on small business, as discussed below, there is no reason to exempt or to lessen the requirements by implementing Regulation 1140 for individuals or small businesses.
- That the Department's proposed implementation of Regulation 1140, when compared to EPA's national Tier 2 standard,
 - Will not add to the reporting requirements, compared to the federal notification and reporting requirements;
 - Will not create a need for any legal, consulting, or accounting services;
 - Will not create any competitive disadvantages;
 - Will not drastically alter the operating cost for the Department compared to maintaining the less stringent national rule; and
 - Will reduce the public's potential cancer and non-cancer health risks through the reduction of air pollutant emissions.

Background

- The purpose of the Act is "to establish as a principle of regulatory policy that regulatory and reporting requirements fit the scale of those being regulated, that fewer, simpler requirements be made of individuals and small businesses and that to achieve these ends agencies be empowered and encouraged to issue regulations which apply differently to individuals and small businesses than to larger businesses."
- In making the consideration for qualifying small business entities, the Department must consider the following:
 - The nature of the reports and cost of their preparation;
 - The nature and cost of required measures or investment;
 - The nature and cost of legal, consulting and accounting services;
 - The ability of the entity to absorb or recover the added costs without suffering economic harm and without adversely affecting competition in the marketplace;
 - The added cost to the Department if exemptions or lesser requirements were promulgated; and
 - The impact on the public interest of exempting or setting lesser requirements of compliance.

Considerations

1. The nature of the reports and cost of their preparation. Currently, vehicle manufactures either report to EPA or CARB and the corresponding state if a LEV program is implemented.

Reporting requirements for manufactures under the federal program:

- Total Deliveries.
- Fleet-wide NOx average.
- Durability demonstration (if requested).
- Emission standards testing including: tailpipe emissions, on-board diagnostic requirements, and evaporative emission standards (if requested).

Proposed Regulation 1140 reporting requirements for manufacturers:

- Total Deliveries in DE.
- Fleet-wide NMOG average.
- Durability demonstration (if requested).
- Emission standards testing including: tailpipe emissions, on-board diagnostic requirements, and evaporative emission standards (if requested).

2. The nature and cost of required measures or investment. As both the federal program and California programs have evolved over the past two decades, the programs have become strikingly similar. Emission limits for both (including GHGs) have tightened to current levels that essentially mirror each other. However, the federal program contains three less stringent vehicle categories that are not acceptable under the LEV program.

Required measures

Vehicle manufacturers already produce "California certified" vehicles for our region. When extensive research was conducted with local dealers, the highest percentage of non-CARB vehicles available on a lot was less than ten percentage. The majority of dealers had zero, one, or two vehicles (larger trucks) that did not have a CARB certification

Required investment

Since vehicle manufactures already produce LEV cars on a regional basis, no additional investment will be necessary if DE implements Regulation 1140. With over 20 states and Washington D.C. already participating in the LEV program, vehicle manufacturers are well prepared for DE to implement a LEV program.

3. The nature and cost of legal, consulting and accounting services. There are no requirements in proposed Regulation 1140 that would necessitate a need for legal, consulting or accounting services. Therefore, there are no added costs for these services.

4. The ability of the entity to absorb or recover the added costs without suffering economic harm and without adversely affecting competition in the marketplace.

- Vehicle manufacturers affected by proposed Regulation 1140 are subject to the requirements of the Cal LEV equivalent already established by surrounding states that comprise the North East Region (New England States, NY, PA, MD, NJ). Vehicles are not individually manufactured specifically for DE.
- As the requirements of proposed Regulation 1140 apply equally to all regulated sources, the Department does not anticipate any source to have a competitive advantage over the other sources.

5. The added cost to the Department if exemptions or lesser requirements were promulgated.

- Due to the "third wheel" clause stipulated by the CAA, no such exemptions or lesser requirements diverting from Cal LEV requirements can be promulgated.

6. The impact on the public interest of exempting or setting lesser requirements of compliance.

- Were the Department to continue with the Federal Tier 2 program requirements rather than proposed Regulation 1140, the public would potentially experience greater exposure to vehicle emissions.
 - The exposure to higher concentrations of vehicle emissions (VOCs, NOx, and PM) could lead to increased incidences of cancer, primarily manifested in lung tumors.
 - Long term exposure to higher concentrations of vehicle emission could also lead to other non-carcinogenic health impacts. These health impacts range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity.

1140 Delaware's National Low Emission Vehicle (NLEV) Regulation

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

[1140 Delaware's National Low Emission Vehicle \(NLEV\) Regulation](#)

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

700 BOARD OF CHIROPRACTIC

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)
(24 Del.C. §706(a)(1) and (10))
24 DE Admin. Code 700

PUBLIC NOTICE

The Delaware Board of Chiropractic, pursuant to 24 Del.C. §706(a)(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing licensed chiropractors in the State of Delaware.

The Board will hold a public hearing on the proposed rule change on November 4, 2010 at 09:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nancy Fields, Administrator of the Delaware Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

700 Board of Chiropractic

1.0 Chiropractic Defined; Limitations of Chiropractic License

An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

Acupuncture Procedures

Physiological Therapeutics

Diet and Nutritional Programs

Rehabilitation/Exercise Programs

4 DE Reg. 1940 (6/1/01)

2.0 Officers; Meetings; Quorum

The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

2.0 Continuing Education (CE) Requirements

- 2.1 Completion of the required continuing education (CE) hours is a prerequisite for renewing a license. Licensees shall complete 24 hours of approved CE during each biennial licensing period, except as otherwise provided in these regulations for new licensees.
 - 2.1.1 The deadline for completion of all required CE hours is the license renewal deadline, unless extended or waived pursuant to regulation 2.3. CE hours must be completed and approved by the Board before applying for renewal.
 - 2.1.2 CE hours must be completed within the biennial licensure period for which they are being applied. Only six CE hours can be carried over into a subsequent licensure period.
 - 2.1.3 The same course shall not count more than once during a single licensing period. For courses completed multiple times in one licensing period, credit shall only be given for the first course completion.
 - 2.1.4 Licensees shall retain their CE course attendance documentation for at least two years after the renewal deadline.

- 2.1.5 At least 3 of the credit hours required for renewal must contain ethics, recordkeeping, or risk management.
- 2.1.6 Only 50% of the required CE can be taken online or home study which includes video replay, video- or tele-conference, correspondence, or mail.
- 2.1.7 Only courses co-sponsored by accredited Chiropractic colleges, national or states organizations are presumptively approved so long as the course relates to the field of Chiropractic. Excepted from this presumptive approval are courses in practice management subjects.
- 2.1.8 The subject matter of all Continuing Education must contribute directly to the competency of a person licensed to practice as a Chiropractor. The activity must have a significant intellectual or practical content and deal with chiropractic techniques, issues or ethical standards relevant to the practice of chiropractic.
- 2.2 New Licensee Exception:
 - 2.2.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. For these individuals only, the continuing education hours will be pro-rated based on when the license was issued.
 - 2.2.1.1 If the new license was issued during the first year of the renewal period, July 1 – December 31 of the odd year, the licensee must complete 24 CE hours.
 - 2.2.1.2 If the new license was issued during the first year of the renewal period, January 1 – June 30 of the even year, the licensee must complete 18 CE hours.
 - 2.2.1.3 If the new license was issued during the second year of the renewal period, July 1 – December 31 of the even year, the licensee must complete 12 CE hours.
 - 2.2.1.4 If the new license was issued during the second year of the renewal period, January 1 – June 30 of the odd year, the licensee must complete 24 CE hours.
- 2.3 Hardship. For good cause, the Board may grant extensions of the CE deadline or may grant waivers of the CE requirements. **Good cause** includes, but is not limited to disability, serious illness, extended absence from the country, exceptional family responsibilities, or unique personal hardship that is not the result of professional negligence or inadvertence. Requests for hardship extensions or waivers must be submitted to the Board in writing before the end of the licensing period for which the request is sought.
- 2.4 Board approval for Continuing Education (CE) Courses
 - 2.4.1 CE courses that are presented by a Chiropractic college accredited by the Council on Chiropractic Education (CCE) and are related to the practice of Chiropractic are approved, except courses on practice management or law other than Delaware law. These colleges and organizations do not have to submit Continuing Education Approval forms. It is the provider's responsibility to post and advertise their CE courses available.
 - 2.4.2 In order for licensees to receive credit for CE courses not sponsored by a Chiropractic college accredited by the CCE or presented by any other national or state Chiropractic organization, the course must be approved by the Board before the deadline for submission of a licensee's renewal application.
 - 2.4.2.1 CE course participants and providers may apply for pre-approval of courses by submitting a written request for approval that must include a program agenda, a syllabus indicating the time spent on each topic, the names and resumes of the presenters, and the number of CE hours requested. The Board may approve less than the number of hours requested.
- 2.5 Board approval of a licensee's CE hours in a specialty area is not a Board endorsement of the licensee's competence to practice that specialty.

3-0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of 100 or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique

by the American Chiropractic Association, the International Chiropractic Association, or any Board approved nationally recognized certification body.

11-DE Reg. 348 (09/01/07)

3.0 Renewal Requirements

- 3.1 The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed sixty days; however, it is illegal to practice Chiropractic in the State of Delaware beyond the expiration date. Licensees who do not renew their license within sixty days of the expiration date must reapply under the licensure requirements of a new licensee and have 24 credits of continued education from the previous licensing period
- 3.2 Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.
- 3.3 Post-Renewal Audit. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. All licensees renewing during the late renewal period shall be audited.

4.0 Continuing Education

4.1 Continuing Education for New Licensees:

- 4.1.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

License Granted During First Year:	Credit Hours Required:
July 1 – December 31	24 hours
January 1 – June 30	18 hours
License Granted During Second Year:	Credit Hours Required:
July 1 – December 31	12 hours
January 1 – June 30	0 hours

4.2 Continuing Education for Licensees other than new licensees:

- 4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must attest to the satisfactory completion of twenty four (24) credit hours of Board approved continuing education within the immediately preceding two (2) year period. Effective July 1, 2006, of the required twenty four (24) credit hours of Board approved continuing education, a maximum of twelve (12) credit hours may be fulfilled by participating in online courses.

- ~~4.2.1.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted;~~
- ~~4.2.2 Attestation of continuing education shall be submitted to the Division of Professional Regulation, Dover, Delaware, no later than June 30th of the reporting year and shall be received every two (2) years after such date. Continuing education completed before June 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.~~
- ~~4.2.2.1 All licensees shall maintain documentation of continuing education during the licensure period to be submitted if their renewal application is selected for audit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit the log and attendance verification.~~
- ~~4 DE Reg. 1940 (6/1/01)~~
~~8 DE Reg. 1586 (5/1/05)~~
~~9 DE Reg. 1766 (5/1/06)~~
~~10 DE Reg. 146 (7/1/06)~~

5-2 4.0 Inactive Status and or Termination of Practice.

- 4.1 Any licensee who seeks to be placed on inactive status or who is terminating his or her practice in this State or who is leaving this State and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three (3) years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Except in an emergency situation where as much notice as is reasonably possible shall be given, the notice by publication shall be made at least ninety (90) days prior to termination of the practice or leaving the State and must be published at least 3 times over this ninety (90) day period and must explain how a patient can procure his or her patient records. ~~All patients who have not requested their records thirty (30) days prior to the termination of the licensee's practice or the licensee leaving the State shall be notified by first class mail by the licensee to permit patients to procure their records.~~ Any patient records that have not been procured within 7 years after the licensee terminates his or her practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.
- 4.2 In order to reactivate an inactive license, the licensee must make a written request to the Board, submit 24 continuing education hours, and pay the renewal fee before the expiration date of the inactive status. If the written request to become active is not received before the expiration date, the licensee will have to reapply and meet the requirements of a new applicant regardless of the way they were originally licensed.

5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records

- ~~5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year. Licenses renewal may be accomplished online at <http://dpr.delaware.gov>.~~

5-3 5.0 Retention of Patient Records.

- 5.1 Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for seven (7) years from the date of the last treatment.

- 5-4 5.2 Whenever a patient changes from the care of one Chiropractor to another Chiropractor and upon the request of either the new Chiropractor or the patient the previous Chiropractor (a) may charge for the reasonable expenses of copying the patient's records and upon receiving payment for such expenses, shall transfer the patient's records to the new Chiropractor, or (b) if there is no copying charge, shall transfer the records of the patient to the new Chiropractor, within a reasonable time frame. Alternatively, if the patient and new Chiropractor agree, the Chiropractor may forward to the new Chiropractor a summary of the patient's records in lieu of the entire record at no charge to the patient. If a patient changes care from one Chiropractor to another Chiropractor, and fails to notify the previous Chiropractor or leaves the care of the previous Chiropractor for a period of 7 years from the date of the last treatment and fails to notify the previous Chiropractor, or fails to request the transfer of records to the new Chiropractor, then the previous Chiropractor shall maintain said records for a period of 7 years from the date of last treatment, after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.
- 5-5 5.3 This rule shall not apply to a Chiropractor who has seen or treated a patient on referral from another Chiropractor and who has provided a record of the diagnosis or treatment to another chiropractor, hospital or agency which has provided treatment for the patient.
- 5-6 5.4 A Chiropractor or the personal representative of the estate of a Chiropractor who disposes of patient records in accordance with the provisions of this rule is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

4 DE Reg. 1940 (6/1/01)

5 DE Reg. 270 (9/1/01)

7 DE Reg. 36 (7/1/03)

10 DE Reg. 146 (7/1/06)

6.0 Grounds for Discipline

- 6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.
- 6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:
- 6.2.1 The use of testimonials without written permission of that doctor's patient.
- 6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.
- 6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.
- 6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.
- 6.3 Unprofessional conduct with Patient, Employees, or Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

4 DE Reg. 1940 (6/1/01)

5 DE Reg. 270 (9/1/01)

7.0 **License to Practice Consulting**

A Chiropractor licensed ~~elsewhere in another state~~, but not licensed in the State of Delaware may only practice chiropractic within the State of Delaware ~~only~~ in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period. The, which consultations shall be limited to examination, recommendation, or testimony in litigation. The Delaware licensed Chiropractor must inform the Board that a consulting Chiropractor is consulting with them and inform the Board of the terms of the consulting agreement.

8.0 **Voluntary Treatment Option**

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 **Del.C.** §8807(n).

- 8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in section 8.8.
- 8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
 - 8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or

his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

- 8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

4 DE Reg. 1940 (6/1/01)

9.0 Crimes Substantially Related to the Practice of Chiropractic

- 9.1 ~~Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of chiropractic in the State of Delaware without regard to the place of conviction:~~
 - 9.1.1 ~~Manslaughter. 11 **Del.C.** §632.~~
 - 9.1.2 ~~Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.~~
 - 9.1.3 ~~Murder in the second degree. 11 **Del.C.** §635.~~
 - 9.1.4 ~~Murder in the first degree. 11 **Del.C.** §636.~~

- ~~9.1.5 Rape in the second degree. 11 **Del.C.** §772.~~
- ~~9.1.6 Rape in the first degree. 11 **Del.C.** §773.~~
- ~~9.1.7 Continuous sexual abuse of a child. 11 **Del.C.** §778.~~
- ~~9.1.8 Dangerous crime against a child. 11 **Del.C.** §779.~~
- ~~9.1.9 Sexual exploitation of a child. 11 **Del.C.** §1108.~~
- ~~9.1.10 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.~~

~~9.2 Crimes substantially related to the practice of chiropractic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.~~

8 DE Reg. 997 (1/1/05)

9.1 The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Chiropractic in the State of Delaware without regard to the place of conviction:

9.2 For the purposes of this section the following definitions shall apply:

“**Conviction**” means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a “Robinson” or “Alford” plea unless the individual has been discharged under §4218 of Title 11 of the **Delaware Code** (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

“**Jurisdiction**” [**Substantially similar crimes in another State or Jurisdiction**] including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

9.3 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the **Delaware Code Annotated**:

Assaults and Related Offenses

- 9.3.1 §601. Offensive touching;
- 9.3.2 §602. Menacing;
- 9.3.3 §603. Reckless endangering in the second degree;
- 9.3.4 §604. Reckless endangering in the first degree;
- 9.3.5 §605. Abuse of a pregnant female in the second degree;
- 9.3.6 §606. Abuse of a pregnant female in the first degree;
- 9.3.7 §611. Assault in the third degree;
- 9.3.8 §612. Assault in the second degree;
- 9.3.9 §613. Assault in the first degree;
- 9.3.10 §614. Assault on a sports official.
- 9.3.11 §615. Assault by abuse or neglect;
- 9.3.12 §621. Terroristic threatening;
- 9.3.13 §625. Unlawfully administering drugs;
- 9.3.14 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;
- 9.3.15 §629. Vehicular assault in the first degree;
- 9.3.16 §630. Vehicular homicide in the second degree;
- 9.3.17 §630A. Vehicular homicide in the first degree;
- 9.3.18 §631. Criminally negligent homicide;
- 9.3.19 §632. Manslaughter;
- 9.3.20 §633. Murder by abuse or neglect in the second degree;

9.3.21 §634. Murder by abuse or neglect in the first degree;

9.3.22 §635. Murder in the second degree;

9.3.23 §636. Murder in the first degree;

9.3.24 §645. Promoting suicide.

Abortion and Related Offenses

9.3.25 §651. Abortion;

9.3.26 §653. Issuing abortifacient articles.

Sexual Offenses

9.3.27 §763. Sexual harassment;

9.3.28 §765. Indecent exposure in the first degree;

9.3.29 §766. Incest;

9.3.30 §767. Unlawful sexual contact in the third degree;

9.3.31 §768. Unlawful sexual contact in the second degree;

9.3.32 §769. Unlawful sexual contact in the first degree;

9.3.33 §770. Rape in the fourth degree;

9.3.34 §771. Rape in the third degree;

9.3.35 §772. Rape in the second degree;

9.3.36 §773. Rape in the first degree;

9.3.37 §776. Sexual extortion;

9.3.38 §777. Bestiality;

9.3.39 §778. Continuous sexual abuse of a child;

9.3.40 §780. Female genital mutilation.

Kidnapping and Related Offenses

9.3.41 §781. Unlawful imprisonment in the second degree;

9.3.42 §782. Unlawful imprisonment in the first degree;

9.3.43 §783. Kidnapping in the second degree;

9.3.44 §783A. Kidnapping in the first degree;

9.3.45 §785. Interference with custody;

Coercion

9.3.46 §791. Acts constituting coercion;

9.4 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Arson and Related Offenses

9.4.1 §801. Arson in the third degree;

9.4.2 §802. Arson in the second degree;

9.4.3 §803. Arson in the first degree;

Criminal Trespass and Burglary

9.4.4 §820. Trespassing with intent to peer or peep into a window or door of another;

9.4.5 §824. Burglary in the third degree;

9.4.6 §825. Burglary in the second degree;

9.4.7 §826. Burglary in the first degree;

9.4.8 §828. Possession of burglar's tools or instruments facilitating theft;

Robbery

9.4.9 §831. Robbery in the second degree;

9.4.10 §832. Robbery in the first degree.

9.4.11 §835. Carjacking in the second degree;

9.4.12 §836. Carjacking in the first degree;

Theft and Related Offenses

9.4.13 §840. Shoplifting; class G felony;

9.4.14 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.

9.4.15 §841. Theft;

9.4.16 §842. Theft; lost or mislaid property; mistaken delivery.

9.4.17 §843. Theft; false pretense.

9.4.18 §844. Theft; false promise.

9.4.19 §845. Theft of services.

9.4.20 §846. Extortion;

9.4.21 §848. Misapplication of property;

9.4.22 §849. Theft of rented property;

9.4.23 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.

9.4.24 §851. Receiving stolen property;

9.4.25 §854. Identity theft;

9.4.26 §860. Possession of shoplifter's tools or instruments facilitating theft;

Forgery and Related Offenses

9.4.27 §861. Forgery; class F felony;

9.4.28 §862. Possession of forgery devices;

Offenses Involving Falsification of Records

9.4.29 §871. Falsifying business records;

9.4.30 §872. Falsifying business records;

9.4.31 §873. Tampering with public records in the second degree;

9.4.32 §876. Tampering with public records in the first degree;

9.4.33 §877. Offering a false instrument for filing;

9.4.34 §878. Issuing a false certificate;

Bribery Not Involving Public Servants

9.4.35 §881. Bribery;

9.4.36 §882. Bribe receiving;

Frauds on Creditors

Other Frauds and Cheats

9.4.37 §900. Issuing a bad check;

9.4.38 §903. Unlawful use of credit card;

9.4.39 §903A. Reencoder and scanning devices;

9.4.40 §906. Deceptive business practices;

9.4.41 §907. Criminal impersonation;

9.4.42 §907A. Criminal impersonation, accident related;

9.4.43 §907B. Criminal impersonation of a police officer;

9.4.44 §909. Securing execution of documents by deception;

9.4.45 §911. Fraudulent conveyance of public lands;

9.4.46 §912. Fraudulent receipt of public lands;

9.4.47 §913. Insurance fraud;

9.4.48 §913A. Health care fraud;

Computer Related Offenses

9.4.49 §933. Theft of computer services.

9.4.50 §934. Interruption of computer services.

9.4.51 §938. Failure to promptly cease electronic communication upon request.

Offenses Relating to Marriage

9.4.52 §1001. Bigamy;

9.4.53 §1003. Bigamous marriage contracted outside the State.

- 9.5 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Child Welfare; Sexual Offenses, Animal Offenses

9.5.1 §1100. Dealing in children;

9.5.2 §1101. Abandonment of child;

9.5.3 §1102. Endangering the welfare of a child;

9.5.4 §1105. Endangering the welfare of an incompetent person;

9.5.5 §1106. Unlawfully dealing with a child;

9.5.6 §1107. Endangering children;

9.5.7 §1108. Sexual exploitation of a child;

9.5.8 §1109. Unlawfully dealing in child pornography;

9.5.9 §1111. Possession of child pornography;

9.5.10 §1112. Sexual offenders; prohibitions from school zones.

9.5.11 §1112A. Sexual solicitation of a child;

9.5.12 §1113. Criminal non-support and aggravated criminal non-support.

9.5.13 §1117. Notice;

9.5.14 §1325. Cruelty to animals;

9.5.15 §1326. Animals; fighting and baiting prohibited (Felony only);

- 9.6 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Bribery and Improper Influence

9.6.1 §1201. Bribery;

9.6.2 §1203. Receiving a bribe;

Perjury and related offenses

9.6.3 §1221. Perjury in the third degree;

9.6.4 §1222. Perjury in the second degree;

9.6.5 §1223. Perjury in the first degree;

9.6.6 §1233. Making a false written statement;

9.6.7 §1239. Wearing a disguise during the commission of a felony;

9.6.8 §1240. Terroristic threatening of public officials or public servants;

9.6.9 §1243. Obstructing fire-fighting operations;

9.6.10 §1244. Hindering prosecution;

9.6.11 §1245. Falsely reporting an incident;

9.6.12 §1249. Abetting the violation of driver's license restrictions;

9.6.13 §1250. Offenses against law-enforcement animals;

9.6.14 §1254. Assault in a detention facility (Felony only)

9.6.15 §1257A. Use of an animal to avoid capture (Felony only);

9.6.16 §1259. Sexual relations in detention facility;

Offenses Relating to Judicial and Similar Proceedings

- 9.6.17 §1261. Bribing a witness;
- 9.6.18 §1262. Bribe receiving by a witness;
- 9.6.19 §1263. Tampering with a witness;
- 9.6.20 §1263A. Interfering with child witness.
- 9.6.21 §1264. Bribing a juror;
- 9.6.22 §1265. Bribe receiving by a juror;
- 9.6.23 §1266. Tampering with a juror;
- 9.6.24 §1267. Misconduct by a juror;
- 9.6.25 §1269. Tampering with physical evidence;
- 9.6.26 §1271A. Criminal contempt of a domestic violence protective order;
- 9.6.27 §1273. Unlawful grand jury disclosure.

9.7 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the **Delaware Code Annotated** which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

- 9.7.1 §1302. Riot;
- 9.7.2 §1304. Hate crimes;
- 9.7.3 §1311. Harassment;
- 9.7.4 §1312. Aggravated harassment;
- 9.7.5 §1312A. Stalking;
- 9.7.6 §1313. Malicious interference with emergency communications;
- 9.7.7 §1335. Violation of privacy (Felony only);
- 9.7.8 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;
- 9.7.9 §1339. Adulteration;

Offenses Involving Public Indecency

- 9.7.10 §1342. Prostitution;
- 9.7.11 §1343. Patronizing a prostitute prohibited.
- 9.7.12 §1351. Promoting prostitution in the third degree;
- 9.7.13 §1352. Promoting prostitution in the second degree;
- 9.7.14 §1353. Promoting prostitution in the first degree;
- 9.7.15 §1355. Permitting prostitution;

Obscenity

- 9.7.16 §1361. Obscenity; acts constituting;
- 9.7.17 §1365. Obscene literature harmful to minors;

9.8 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

- 9.8.1 §4751. Prohibited acts A;
- 9.8.2 §4752. Prohibited acts B;
- 9.8.3 §4752A. Unlawful delivery of noncontrolled substance.
- 9.8.4 §4753. Prohibited acts C.
- 9.8.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.

- 9.8.6 §4754. Prohibited acts D;
- 9.8.7 §4754A. Possession and delivery of noncontrolled prescription drug.
- 9.8.8 §4755. Prohibited acts E;
- 9.8.9 §4756. Prohibited acts;
- 9.8.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;
- 9.8.11 §4761. Distribution to persons under 21 years of age;
- 9.8.12 §4761A. Purchase of drugs from minors;
- 9.8.13 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
- 9.8.14 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.

9.9 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Offenses Involving Deadly Weapons and Dangerous Instruments

- 9.9.1 §1442. Carrying a concealed deadly weapon;
- 9.9.2 §1443. Carrying a concealed dangerous instrument;
- 9.9.3 §1444. Possessing a destructive weapon;
- 9.9.4 §1445. Unlawfully dealing with a dangerous weapon;
- 9.9.5 §1447. Possession of a deadly weapon during commission of a felony;
- 9.9.6 §1447A. Possession of a firearm during commission of a felony;
- 9.9.7 §1448. Possession and purchase of deadly weapons by persons prohibited;
- 9.9.8 §1448A. Criminal history record checks for sales or firearms;
- 9.9.9 §1449. Wearing body armor during commission of felony;
- 9.9.10 §1450. Receiving a stolen firearm;
- 9.9.11 §1451. Theft of a firearm;
- 9.9.12 §1452. Unlawfully dealing with knuckles-combination knife;
- 9.9.13 §1454. Giving a firearm to person prohibited;
- 9.9.14 §1455. Engaging in a firearms transaction on behalf of another;
- 9.9.15 §1456. Unlawfully permitting a minor access to a firearm;
- 9.9.16 §1457. Possession of a weapon in a Safe School and Recreation Zone;
- 9.9.17 §1458. Removing a firearm from the possession of a law enforcement officer;
- 9.9.18 §1459. Possession of a weapon with a removed, obliterated or altered serial number;

Offenses Involving Drug Paraphernalia

9.9.19 §4774. Penalties.

Offenses Involving Organized Crime and Racketeering

9.9.20 §1504. Criminal Penalties for Organized Crime & Racketeering

Offenses Involving Intimidation of Victims or Witnesses

- 9.9.21 §3532. Acts of Intimidation: Class E felony
- 9.9.22 §3533. Aggravated act of intimidation, Class D felony

Other Crimes

- 9.9.23 §3532. Act of intimidation;
- 9.9.24 §3533. Aggravated act of intimidation;
- 9.9.25 §3534. Attempt to intimidate;
- 9.9.26 §8523. Penalties [for violation of reporting provision re: SBI];
- 9.9.27 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;
- 9.9.28 §2133. Penalties: jurisdiction of justices of the peace.

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- 9.9.29 §2315. False statements;
 - 9.9.30 §2620. False statements; incorrect or incomplete information;
 - 9.9.31 §2752. False statements;
 - 9.9.32 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.
 - 9.9.33 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs (Felony only);
 - 9.9.34 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties (Felony only).
 - 9.9.35 §4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs (Felony only);
 - 9.9.36 §4202. Duty of driver involved in accident resulting in injury or death to any person;
 - 9.9.37 §6704. Receiving or transferring stolen vehicle;
 - 9.9.38 Title 30 §571. Attempt to evade or defeat tax;
 - 9.9.39 §572. Failure to collect or pay over tax;
 - 9.9.40 §573. Failure to file return, supply information or pay tax;
 - 9.9.41 §574. Fraud and false statements;
 - 9.9.42 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]
 - 9.10 Any crime which is a violation of Title 24, Chapter 7 as it may be amended from time to time.
 - 9.11 The Board reserves the jurisdiction and authority to modify this regulation as necessary and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure as a chiropractor and to determine whether to waive the disqualification under 24 Del.C. §707(a)(5).
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DIVISION OF PROFESSIONAL REGULATION

5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Statutory Authority: 24 Delaware Code, Section 5204(1) (24 Del.C. §5204(1))
24 DE Admin. Code 5200

PUBLIC NOTICE

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 Del.C. §5206(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing licensed nursing home administrators in the State of Delaware.

The Board will hold a public hearing on the proposed rule change on November 9, 2010 at 2:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Michele Urbaniak, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

5200 Board of Examiners of Nursing Home Administrators

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

[5200 Board of Examiners of Nursing Home Administrators](#)

PROPOSED REGULATIONS

PUBLIC SERVICE COMMISSION

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

IN THE MATTER OF THE ADOPTION OF RULES AND	
PROCEDURES TO IMPLEMENT THE PROVISIONS OF	
26 DEL. C. CH. 10 RELATING TO THE CREATION OF A	
COMPETITIVE MARKET FOR RETAIL ELECTRIC	PSC REGULATION DOCKET NO. 49
SUPPLY SERVICE (OPENED APRIL 27, 1999;	
RE-OPENED JANUARY 7, 2003; RE-OPENED AUGUST	
21, 2007; RE-OPENED SEPTEMBER 22, 2009;	
RE-OPENED SEPTEMBER 7, 2010	

ORDER NO. 7832

This 7th day of September, 2010, the Commission determines and Orders the following:

WHEREAS, the Commission has promulgated regulations entitled *Regulations Governing Service Supplied by Electrical Corporations*. See 26 DE Admin. Code §3001, *et seq.* (the “Regulations”);¹ and

WHEREAS, included in the Regulations are certain rules pertaining to “net energy metering” (the “Net Energy Metering Rules”); and

WHEREAS, on July 28, 2010, Senate Bill No. 267, as amended by Senate Amendment No. 1 (“SB267”), was enacted into law; and

WHEREAS, SB267 amends 26 Del.C. §§1001 and 1014, mostly to provide electric customers the opportunity to aggregate individual meters for the purpose of allocating net metering credits to electricity accounts other than the account hosting an energy generating facility. SB267 also provides community choice aggregation provisions for community-owned energy generating facilities that are established by a group of customers. Recognizing that not all customers own properties that are favorable for energy generating facilities, the community-owned net metering provisions of SB267 will allow a group of customers to invest and participate in distributed renewable energy facilities; and

WHEREAS, the amendments to Sections 1001 and 1014 effected by SB267 require certain amendments to the Net Energy Metering Rules; and

WHEREAS, Commission Staff has proposed revisions to the Regulations that effect the changes required by SB267, as well as make certain other clarifications to the existing Regulations not related to those bills;

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

1. That this docket is reopened to consider further revisions to the Commission’s *Rules For Certification And Regulation Of Electric Suppliers*, adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised from time to time (the “Regulations”). The proposed revisions are required by the recent amendments to Sections 1001 and 1014 of Title 26. A copy of the Regulations, showing in red-line the proposed revisions, is appended as Exhibit “A” to this Order.

2. That, pursuant to 29 Del.C. §§10113 and 10115, the Commission Secretary shall transmit to the Registrar of Regulations for publication in the October 2010 *Delaware Register of Regulations* a copy of this Order; a copy of the Regulations, showing the proposed changes; and a copy of a notice attached hereto as Exhibit “B.” In addition,

1. The Regulations have been amended several times since their original passage in 1999. See PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), and 7435 (Sept. 2, 2008).

the Secretary shall cause the notice attached as Exhibit "B" to be published in *The News Journal* and the *Delaware State News* newspapers on or before September 30, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

3. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 31, 2010. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Regulations on December 7, 2010, beginning at 1:00 p.m. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments are received to the proposed revisions to the Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

5. That at such time as these regulations are approved in an order as final by the Commission, tariffs in compliance with the final regulations as approved by the Commission shall be filed by Delmarva Power & Light Company within 45 days of such a final order.

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

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

3001 Regulations Governing Service Supplied by Electrical Corporations

Effective: August 31, 1999

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

[3001 Regulations Governing Service Supplied by Electrical Corporations](#)

PROPOSED REGULATIONS

PUBLIC SERVICE COMMISSION

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

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

PSC REGULATION DOCKET NO. 56

ORDER NO. 7834

AND NOW, this 7th day of September, 2010:

WHEREAS, in 2005 the General Assembly and the Governor enacted the “Renewable Energy Portfolio Standards Act,” 26 Del. C. §§351-364 (2006 Supp.) (the “RPS Act”), which required each electric supplier, beginning in 2007, to annually accumulate a portfolio of “renewable energy credits”, or “RECs” equivalent to a specified percentage of its retail electric supply sales in Delaware; and

WHEREAS, in 2006, the Commission promulgated “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”). See Order No. 6931 (June 6, 2006); and

WHEREAS, the Commission has revised its RPS Rules from time to time to reflect amendments to the RPS Act. See, e.g., PSC Order Nos. 7377 (Apr. 17, 2008), 7494 (Dec. 16, 2008), and 7699 (Dec. 8, 2009); and

WHEREAS, on July 28, 2010, Senate Substitute No. 1 for Senate Bill No. 119 (77 Del. Laws ch. 451) (July 28, 2009) was signed into law, which adds several new sections to the RPS Act and amends numerous other sections; and

WHEREAS, the recently enacted law, among other things:

- Modifies the minimum percentages of sales that must be from eligible energy resources and solar photovoltaics and extends the period for the minimum standard from 2019 to 2025.
- Establishes a mechanism for a freeze of the minimum requirements under certain circumstances.
- Provides for credits toward the minimum requirements where solar and wind installations are sited in Delaware, as long as a certain percentage of the equipment used in the installation is manufactured in Delaware, and where facilities are constructed or installed with a certain percentage of Delaware workers.
- Increases the amount of solar alternative compliance payments.
- Provides the State Energy Coordinator with the authority to review the reasonableness of alternative compliance payments and solar alternative compliance payments.
- Establishes a Renewable Energy Taskforce to review trading mechanisms and other structures to support growth of renewable trading markets in Delaware.
- Explicitly provides the Commission with the authority to promulgate rules and regulations with respect to certain of the above-noted amendments to the RPS Act.

WHEREAS, the Commission now proposes to update the RPS Rules to reflect the amendments to the RPS Act (attached as Exhibit “A” hereto is a copy of the RPS Rules with the proposed additions in black-line format); and

WHEREAS, the Commission also takes this opportunity to make other, mostly non-substantive, changes to the RPS Rules; and

WHEREAS the Commission believes that the proposed revised regulations should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final regulations;

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §362 and 29 **Del.C.** §10115, the Commission proposes to revise its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," originally adopted by PSC Order No. 6931 (June 6, 2006) and published at 10 DE Reg. 151-57 (the "RPS Rules"). A copy of the proposed revised RPS Rules is attached to this Order as Exhibit "A".

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order, along with copies of the proposed revised RPS Rules (Exhibit "A") and the Notice of Proposed Rule-Making, attached as Exhibit "B." The Secretary shall also cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on or before October 1, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers and rural electric cooperatives; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

3. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 31, 2010. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the RPS Rules on November 18, 2010 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments are received to the proposed revisions to the Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

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

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard
(Opened August 23, 2005)****1.0 Definitions**

- 1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or **"ACP"** means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar Photovoltaic Energy Resources means solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or **"PJM Interconnection"** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Renewable Energy Credit" ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" and **"Renewable Energy Portfolio Standard"** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of

supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"**Sustainable Energy Utility**" ("**SEU**") is the nonprofit entity according to the provisions of 29 **Del.C.** §8059 that develops and coordinates programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

"**Solar Renewable Energy Credit**" or "**SREC**" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"**Total Retail Sales**" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

11 DE Reg. 1670 (06/01/08)

13 DE Reg. 952 (01/01/10)

2.0 Purpose and Scope

- 2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 **Del.C.**, §351 - 363, is to set forth the rules for governing the RPS.
- 2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.
 - 2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:
 - 2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;
 - 2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;
 - 2.2.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.
 - 2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.
 - 2.3 Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 **Del.C.** §223 of the **Delaware Code** shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.
 - 2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:
 - 2.4.1 submit a written notice to the Delaware General Assembly;
 - 2.4.2 submit a written notice to the Commission;
 - 2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;
 - 2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and
 - 2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or

demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

11 DE Reg. 1670 (06/01/08)**3.0 Administration of RPS****3.1 Certifying Eligible Energy Resources:**

- 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
- 3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.
- 3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.
- 3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.
- 3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
- 3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) Solar Renewable Energy Credit (SREC) for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.
 - 3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.
- 3.1.7 RECs or SRECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.
 - 3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.
- 3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.
- 3.1.9 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.2 Compliance with RPS

- 3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of

PROPOSED REGULATIONS

electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1. Any portion of a Retail Electric Supplier's renewable energy supply portfolio for 2007, 2008 and 2009 Compliance Years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Services ("SOS") auctions shall be subject to the provisions of this Regulation as shown in Schedule 2 below that were in effect on the date of the 2005 or 2006 SOS auction.

SCHEDULE 1		
Compliance Year (beginning June 1st)	Cumulative Minimum Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources^a
2007		2.0%
2008	0.011%	3.0%
2009	0.014%	4.0%
2010	0.018%	5.5%
2011	0.048%	7.0%
2012	0.099%	8.5%
2013	0.201%	10.0%
2014	0.354%	11.5%
2015	0.559%	13.0%
2016	0.803%	14.5%
2017	1.112%	16.0%
2018	1.547%	18.0%
2019	2.005%	20.0%

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics.

SCHEDULE 2		
Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources^a
2007		1.00%
2008	0.011%	1.50%
2009	0.014%	2.00%
2010	0.018%	5.00%
2011	0.048%	7.00%
2012	0.099%	8.50%
2013	0.201%	10.00%
2014	0.354%	11.50%
2015	0.559%	13.0%
2016	0.803%	14.5%
2017	1.112%	16.00%
2018	1.547%	18.00%
2019	2.005%	20.00%

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

- 3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations.¹ Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.
- 3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- 3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs or SRECs not required to meet this Regulation.
- 3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs or SRECs for the purposes of calculating compliance with the RPS.
- 3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1 or Schedule 2, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.
- 3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 or Schedule 2 of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- 3.2.7.1 Customer-Sited solar photovoltaic physically located in Delaware; or
 - 3.2.7.2 A fuel cell powered by Renewable Fuels.
- 3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.
- 3.2.9 A Commission regulated electric company shall receive 350% credit toward meeting the Renewable Energy Portfolio Standards established for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.
- 3.2.9.1 To be entitled to 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by Commission regulated electric companies prior to commencement of construction of such installations.
 - 3.2.9.2 Commission regulated electric companies shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to section 3.2.9.
- 3.2.10 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that a minimum of 50% of the cost of the renewable energy equipment, inclusive of mounting components, are manufactured in Delaware.
- 3.2.11 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a minimum of 75% in-state workforce.

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of SRECs and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1 or Schedule 2. The Commission shall, in another proceeding, further define how SRECs and RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

PROPOSED REGULATIONS

- 3.2.102 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels (for a Rural Electric Cooperative the Eligible Energy Resource must be sited in Delaware).
- 3.2.143 Cumulative minimum percentage requirements of Eligible Energy Resources and Solar Photovoltaic Resources shall be established by Commission rules for Compliance Year ~~2020~~ 2026 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year ~~2019~~ 2025 in Schedule 1 ~~or Schedule 2~~. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.
- 3.2.124 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 ~~and Schedule 2~~ and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of ~~20~~ 25%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.
- 3.2.135 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of ~~20~~ 25%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP or SACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs and SRECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.
- 3.2.16 The minimum percentages from Eligible Energy Resources and Solar Photovoltaic Energy Resources as shown in Schedule 1 may be frozen for Commission-regulated electric companies as authorized by, and pursuant to, 26 Del.C. §354(i)-(j). For a freeze to occur, the Delaware Energy Office must determine that the cost of complying with the requirements of this Regulation exceeds, for Solar Photovoltaic Energy Resources, 1%, and for Eligible Energy Resources, 3%, of the total retail cost of electricity for Commission-regulated electric companies during the same compliance year. The total cost of compliance shall include the costs associated with any ratepayer funded state renewable energy rebate program, REC and SREC purchases, and ACPs and SACPs.
- 3.2.16.1 Once frozen, the minimum cumulative requirements shall remain at the percentage for the compliance year in which the freeze was instituted.
- 3.2.16.2 The freeze may be lifted only upon a finding by the State Energy Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% or 3% threshold, as applicable.
- 3.2.17 The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware according to 26 Del.C. §360 (d).
- 3.3 Verification of Compliance with the RPS
- 3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 ~~or Schedule 2~~ and the Total Retail Sales of each Retail Electricity Product.

- 3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.
- 3.3.3 SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.
- 3.3.4 The three (3) year period referred to in 3.3.3 shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in 29 **Del.C.** §8059.
- 3.3.5 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to the provisions of 26 **Del.C.** §358 or as determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 **Del.C.** §354 (a).
- 3.3.6 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP or SACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.
- 3.3.7 All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

13 DE Reg. 952 (01/01/10)

4.0 Recovery of Costs

- 4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.
- 4.2 A Retail Electricity Supplier may recover any ACP or SACP if the payment of an ACP or SACP is the least cost measure to ratepayers as compared to the purchase of RECs and SRECs to comply with the RPS; or if there are insufficient RECs and SRECs available for the Retail Electricity Supplier to comply with the RPS.
- 4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.
- 4.4 Special provisions for customers of Public Service Commission regulated electric companies. All costs arising out of contracts entered into by a Commission regulated electric company pursuant to 26 **Del.C.** §1007 (d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission. Such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

5.0 Other General Rules

- 5.1 Under Delaware's Freedom of Information Act, 29 **Del.C.** ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the

Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

- 5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.
- 5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 **Del.C.**, §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

11 DE Reg. 1670 (06/01/08)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1511

1511 Issuance and Renewal of Continuing License**REGULATORY IMPLEMENTING ORDER****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. This regulation requires a minor amendment to clarify requirements for educators with expired Continuing Licenses.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on April 1, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1511 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date Of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5TH DAY OF AUGUST, 2010

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

IT IS SO ORDERED the 16th day of September, 2010.

Department of Education

Lillian M. Lowery, Ed. D., Secretary of Education
Approved this 16th day of September, 2010

STATE BOARD OF EDUCATION

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

1511 Issuance and Renewal of Continuing License

(Break in Continuity of Sections)

4.0 Educators with Expired Delaware Licenses applying for their Original Continuing License

4.1 Delaware Certificates issued prior to July 2, 2001

- 4.1.1 In accordance with 14 **Del.C.** §1215, the Department may issue an original Continuing License to qualified educator who holds a Delaware certificate issued by an education certifying board prior to July 13, 1971 or who previously held a valid Delaware Standard or Professional Status certificate that has expired
- 4.1.1.1 As a condition of maintaining the original Continuing License, the educator shall successfully complete ~~[the first a]~~ year of ~~the Department's~~ an approved mentoring program required of educators on an Initial License within their first year of employment.
- 4.1.1.1.1 Upon request by the applicant and employing authority, the Department may extend the time to complete the approved mentoring program for a period of up to one (1) year upon a showing of exigent circumstances.
- 4.1.1.1.2 Failure to successfully complete the approved mentoring program shall result in the suspension of the License. If the Continuing License expires during the term of the suspension, the educator must apply for an Initial License and meet the requirements in effect at the time of the application.
- 4.1.1.2 The educator shall be entitled to notice and the right to a hearing as provided in Section 12.

4.2 Application Procedures and Requirements

- 4.2.1 The educator shall make application to the Department on a Department approved form and provide evidence of previous Delaware certification.
- 4.2.2 The educator shall provide evidence that all other requirements have been successfully met.
- 4.2.3 Incomplete applications shall not be processed.
- 4.2.3.1 The Department shall send notice of the incomplete application. The applicant shall be responsible for maintaining current contact information with the Department.
- 4.2.3.2 Notification of an incomplete application shall also be sent to the applicant's employing authority.

- 4.3 A Continuing License is valid for five (5) years unless extended pursuant to 14 **Del.C.** §1216 or revoked or suspended for cause, as defined in 14 **Del.C.** §1218 or suspended for failure to meet the other conditions of maintaining a License.

6 DE Reg. 518 (10/1/02)

7 DE Reg. 197 (8/1/03)

10 DE Reg. 97 (7/1/06)

13 DE Reg. 1084 (02/01/10)

5.0 Renewal of a Continuing License

- 5.1 In accordance with 14 **Del.C.** §1212, the Department shall renew a Continuing License, valid for an additional five (5) years, to a qualified educator who has fulfilled the ninety (90) clock hour requirement for professional development and other requirements of this regulation. At least one half of the required hours [forty-five (45) hours every five (5) years] for educators shall be in activities that relate to the educator's work with students or staff. Satisfactory evidence of such completion, as set forth in Section 15 or Section 16, shall be submitted to the Department with the application for renewal. The ninety (90) clock hours of professional development shall have taken place during the term of the Continuing License.
- 5.2 Renewal of Expired Delaware Continuing License
- 5.2.1 The Department may issue a Continuing License to a qualified educator who previously held a Delaware Continuing License that expired not more than five years before the renewal application, with the following conditions:
- 5.2.1.1 Prior to renewal of the License, the educator shall provide to the Department evidence of successfully completing ninety (90) clock hours of professional development during the five (5) years preceding application, pursuant to Section 7.

- 5.2.1.2 If the educator has been out of the profession for less than three (3) years since the expiration of the Continuing License, the educator shall, within the first year of employment, successfully complete an approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards.
- 5.2.1.2.1 Failure to successfully complete the approved mentoring program shall result in the suspension of the License.
- 5.2.1.43 If the educator has been out of the profession for more than three (3) years since the expiration of the Continuing License, the educator shall, within the first year of employment, successfully complete a Department approved mentoring program which focuses on current best practices in curriculum, instruction and assessment and aligned to state and national standards [the first a] year of an approved mentoring program required of educators on an Initial License.
- 5.2.1.3.1 Failure to successfully complete the approved mentoring program shall result in the suspension of the License.
- 5.2.1.2 ~~Prior to renewal of the License, the educator shall provide to the Department evidence of successfully completing ninety (90) clock hours of professional development during the last five (5) years, pursuant to Section 7.~~
- 5.2.1.34 A Continuing License is valid for five (5) years unless extended pursuant to 14 **Del.C.** §1216 or revoked or suspended for cause, as defined in 14 **Del.C.** §1218 or suspended for failure to meet the other conditions of maintaining a License.
- 5.2.2 The Department may not reissue a Continuing License to an educator who previously held a valid Continuing License which expired more than five (5) years prior to application for renewal.
- 5.2.2.1 The educator shall apply for an Initial License and meet the requirements in effect at the time of the application.
- 5.3 Professional Development Options for Relicensure are listed in Section 15 and Section 16.
- 5.4 Documentation of Clock Hours for Relicensure
- 5.4.1 For renewal of the Continuing License, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies shall be used: one (1) semester hour equals fifteen (15) clock hours, one (1) quarter hour equals ten (10) clock hours, one (1) CEU equals ten (10) clock hours. To be documented for clock hours, activities shall meet the criteria set forth in the regulations and shall be appropriately verified and applied for. Professional development activities that are part of a DPAS assistance or improvement plan may be used to satisfy this requirement. Individuals, schools or school districts, or other agencies organizing or conducting professional development activities which may be used for fulfilling the requirements for renewal of a license are responsible for providing documentation of participation to all participants. Each educator is responsible for obtaining any necessary approvals, as set forth in Section 14 and in Section 15, from his or her employer before participating in a professional development activity. An employer may not impose additional activity requirements on the award of clock hours towards renewal of a Continuing License.
- 5.4.2 Criteria for determining if activities are acceptable for clock hour credit for an educator include the following:
- 5.4.2.1 The activity enhances the knowledge and skills in the educator's job or contributes to his/her school or profession.
- 5.4.2.2 The activity meets one of the relicensure options.
- 5.4.2.3 The activity addresses one of the standards for the educator's area of the profession.
- 5.4.2.4 The activity is completed during the term of the educator's current Continuing License.
- 5.4.2.5 The activity addresses specific Professional Educator Standards.
- 5.4.2.6 Participation in, or completion of, the activity can be documented.

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- 5.5 The Relicensure Application, Activity Documentation Form, and, where required, original or official documents shall be used to verify activities for renewal of a Continuing License. Official transcripts or original grade slips are required documentation for successful completion of college courses.
- 5.6 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five (5) year term of a Continuing License, clock hours documented shall have been appropriate to the educator's position at the time the clock hours were completed.
- 5.7 The Department shall have the responsibility to verify clock hours for applicants that are not currently employed by a Delaware employing authority or those employed in another jurisdiction and wish to renew their Continuing License. The Department may require that the applicant submit verifying documentation.

6 DE Reg. 518 (10/1/02)

7 DE Reg. 197 (08/01/03)

7 DE Reg. 1350 (04/01/04)

10 DE Reg. 97 (07/01/06)

13 DE Reg. 1084 (02/01/10)

(Break in Continuity of Sections)

***Please note that no additional changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1267 (13 DE Reg. 1267). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1511 Issuance and Renewal of Continuing License](#)

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1521

1521 Elementary Teacher

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1521 Elementary Teacher. It is necessary to amend this regulation in order to facilitate proper and current formatting trends. There are no changes in certification requirements. This regulation sets forth the requirements for an Elementary Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on August 2, 2010 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings Of Facts

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

III. Decision to Amend The Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1521 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF SEPTEMBER, 2010

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

IT IS SO ORDERED the 16th day of September, 2010.

Department of Education

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

Approved this 16th day of September, 2010

STATE BOARD OF EDUCATION

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

1521 Elementary Teacher

1.0 Content

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

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

~~7-DE Reg. 1747 (6/1/04)~~

2-0 Definitions

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

~~“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient’s assignment or employment status.~~

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

~~“**Educator**” means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“**Examination of Content Knowledge**” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“**Fifteen (15) Credits or Their Equivalent in Professional Development**” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

~~“**Immorality**” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness.~~

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

~~“**Major or its Equivalent**” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“**NASDTEC**” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“**NCATE**” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

~~“**Standards Board**” means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.~~

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

~~“**Valid and Current License or Certificate from Another State**” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

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

~~7-DE Reg. 1747 (6/1/04)~~

~~10-DE Reg. 100 (7/1/06)~~

3-0 Standard Certificate

The Department shall issue a Standard Certificate as an Elementary Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
 - 3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
 - 3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Elementary Education; or
 - 3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or
 - 3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and
- 3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or
- 3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Elementary Education;
 - 3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or
- 3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

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

~~7-DE Reg. 1747 (6/1/04)~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

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

~~10-DE Reg. 100 (7/1/06)~~

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or
- 5.4 An official copy of the out of state license or certification, if applicable.

~~5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

~~10 DE Reg. 100 (7/1/06)~~

6.0 Application Procedures for License Holders

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

~~10 DE Reg. 100 (7/1/06)~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~10 DE Reg. 100 (7/1/06)~~

8.0 Validity of a Standard Certificate

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~10 DE Reg. 100 (7/1/06)~~

9.0 Secretary of Education Review

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

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

~~7 DE Reg. 1747 (6/1/04)~~

~~10 DE Reg. 100 (7/1/06)~~

~~Renumbered effective 6/1/07 – see Conversion Table~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Elementary Teacher. This certification is required for grades K to 6.

- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

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

- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
- 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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

7 DE Reg. 1747 (6/1/04)

10 DE Reg. 100 (7/1/06)

Renumbered effective 6/1/07 - see Conversion Table

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Chapter 5, §512
(31 Del.C., Ch. 5, §512)

DSSM: 3000 Technical Eligibility for Cash Assistance and 4000 Financial Responsibility

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 General Assistance (GA) and Temporary Assistance for Needy Families (TANF) programs. 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 August 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's General Assistance (GA) and Temporary Assistance for Needy Families (TANF) programs. The impact of the proposed changes will be that children living in the home of a non-relative custodian or legal guardian will be technically eligible for the TANF program. These children will no longer be eligible to receive benefits through the GA program.

Statutory Authority

- 42 U.S.C. § 601(a)(1), *Purpose, Increase flexibility of States*
- 31 **Del.C.** §503(d), *Eligibility for assistance; amount; method of payment – Aid to Families with Dependent Children;*
- 31 **Del.C.** §505(1), *Categories of Assistance - Aid to Families with Dependent Children;*
- 31 **Del.C.** §505(2), *Categories of Assistance - General Assistance;*
- 31 **Del.C.** §512(1), *Administration;*
- 10 **Del.C.** §901(3), (6) and (12), *Definitions – Care, Custody and Control; Custodian; Family*

Summary of Proposed Changes

Children in the care of a non-relative adult will no longer receive cash assistance through the General Assistance program. These children will be eligible for cash assistance through the TANF program. The TANF program establishes additional expectations for the caregivers in these families including parenting classes, cooperation with child support, child immunizations, and child school attendance requirements. Caretakers in these families may also access the work support programs available to needy caretakers. This change supports the goals of both family self-sufficiency and increased family functioning.

The proposed changes affect the following policy sections:

DSSM 3000, *Temporary Assistance for Needy Families (TANF) – Definition*
DSSM 3000.4, *TANF and State Only Foster Care3004, Specified Relationship;*
DSSM 3004.1, *Living in the Home*
DSSM 3010, *Participation and Cooperation in Developing CMR*
DSSM 3018, *General Assistance (GA)*
DSSM 3021, *Unrelated Children;*
DSSM 3022, *Ineligibility Due to Family Cap*
DSSM 3027, *Age as a Condition of Eligibility;*
DSSM 3027.2, *Minor Parents;*
DSSM 3028.1, *Mandatory Composition of Assistance Units;*
DSSM 3028.2, *Optional Composition of Assistance Units;*
DSSM 4001, *Family Budget Group;*
DSSM 4001.1, *Examples to Illustrate Rules Regarding Budget Groups;*
DSSM 4004.3, *Earned Income Disregards in GA;*
DSSM 4007.1, *Standards of Need/Payment Standard – GA; and*
DSSM 4009, *Determining Financial Eligibility and Grant Amounts in GA.*

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Division of Social Services (DSS) received two comments from the public regarding this regulation. One from an individual and the other from the State Council for Persons with Disabilities (SCPD).

First Comment

DSS has considered the comment and responds as follows.

With all due respect, it is a very bad idea to go down that road of allowing morals that some connect with religion and which are not requirements of the law to be “encouraged” by the same people who are giving out the assistance. It is already a demeaning adventure to apply for assistance as it is and if the worker begins to start

“preaching” to the client about how much better it might be if she were married, there is no way of predicting how that may be received or whether such action may discourage people from coming back for assistance for themselves and their children – assistance that they really need. We are trying to drive them away by turning the process into one that resembles an attempt to convert applicants to one or another religious belief system. There is no law against being single, and many people are perfectly capable of becoming self-sufficient without being further demeaned in such a way as this. I would view comments of this type as the highly invasive and rude having grown up as a teen in the 70s and the feminist movement and feeling as though it would be an insult to say that just because I needed a little help now that I couldn’t become self-sufficient later without getting a man to help me do it. Other women may even have worse reactions than that to this sort of intrusive behavior.

There is NO GOOD REASON for the workers who are giving out benefits to say anything at all about the marital arrangements of the parents since that is way too personal and well out of the realm of necessary information that an individual should have to give in order to get the tiny bit of money she is going to get to tide her over.

Just the opinion of someone who assumes that you are not TRYING to drive people who are not Christian or other “marriage before sex” religions OUT of the process or otherwise make them feel as though they should feel guilty for needing help. We all need a little help once in a while, and the tiny bit of help that one gets from TANF cannot possibly be considered enough to warrant excessively intrusive statements that could alienate people from moral backgrounds that do NOT put (legal) marriage before sex so high on the list. Not everyone thinks the same way as Christians do. Please stop expecting all of us to do so. It’s insulting.

Agency Response: Thank you for your thoughtful comments. I understand your concern that TANF policy might promote the view that 2-parent families are more valued than single parent families. The policy section you referenced is not being changed. The referenced policy section has been in place since the late nineties following the enactment of Federal welfare reform. The change to the existing policy allows children being cared for by a non-relative to receive TANF; previously these families were not eligible for TANF and could only participate in the General Assistance program.

Here is a little background on the existing policy. The focus on encouraging 2-parent families has 3 desired impacts. One is to reduce the rate of out of wedlock pregnancies, particularly among teens. The second as you noted is to improve the potential financial stability of families. And lastly, the goal is to promote the opportunity for children to be raised by both parents.

I appreciate your concern that these goals could potentially be in conflict with the best path for a particular family. While the goal is to create programming that will promote the formation of 2-parent families the Division of Social Services (DSS) respects the decisions and choices that parents make for their families. Ultimately, the Division is most interested in helping families, no matter their makeup, to move toward self-sufficiency. The TANF program does attempt to provide the supports specific to the needs of the families it works with. For example within TANF, there is a 2-parent family program that tries to support the choices these parents make in terms of parenting, work, and economic self sufficiency. Similarly, the TANF program actively screens for domestic violence issues and waives program requirements for individuals who are in, or escaping, a home where domestic violence exists. I hope this provides you assurance that the policy is not intended to shame single parents or direct single parents into marriage. But as I noted, I understand your concern and appreciate your reservations.

Second Comment

In addition, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

According to the “Summary of Proposed Changes”, the impact will be that children living in the home of a non-relative custodian or legal guardian will be technically eligible for the TANF program. These children will no longer be eligible to receive benefits through the GA program. SCPD has the following observations.

First, there are positive aspects to the change. SCPD has been informally advised that the effect of switching an eligible child from a GA to a TANF grant would be to increase the monetary benefit from \$123.00 to \$201.00. This amounts to a benefit increase of more than 60%. Approximately 300 children would be affected. Moreover, the TANF standards (Section 3010) require the caretaker to enter into a Contract of Mutual Responsibility which prompts child immunization and regular school attendance. Finally, the TANF caretaker becomes eligible to participate in work support programs. See Summary of Proposed Changes at 14 DE Reg. At 91-92.

Second, there are some potentially negative aspects to the change. TANF imposes sanctions (§3009.1) on caretakers who fail to meet the benchmarks in the Contract of Mutual Responsibility which can amount to total elimination of benefits. The GA program is less prescriptive in imposition of beneficiary obligations. Unlike TANF, there are no equivalent requirements for participating in parenting classes, cooperation with child support, and ensuring child immunization and school attendance.

Third, §3004 should be revised.

A. The existing section contains an introductory sentence defining “relatives” which incorporates a bulleted list of “relatives”. The new section retains the bulleted list but no introductory sentence (e.g. “(a) relative is defined as follows”). The result is a list of qualifying “relative” standards with no context. See, e.g., analogous references in §3004 (e.g. “(a) guardian is defined as”; “a custodian...is defined as”).

B. The definition of “relative” could be enhanced by including a reference to an adult relative caregiver with a valid Caregiver Authorization form on record with the child’s public school pursuant to Title 14 **Del.C.** §202.

C. The definition of “guardian” is odd. For example, it only contemplates appointment of a guardian by the Family Court. The Court of Chancery has concurrent jurisdiction to appoint guardians of minors. See Title 12 **Del.C.** §3902. Moreover, it characterizes persons authorized by DFS to exercise custody and care of a child as a “guardian”. This is a distortion of law. Apart from the Court of Chancery, only the Family Court has the authority to appoint a “guardian” of a minor. See Title 10 **Del.C.** §925(16). SCPD is not aware of any statute which grants the DSCYF the authority to appoint a guardian. Finally, DFS is only one of multiple agencies which may delegate care of children to adults. See, e.g., Title 10 **Del.C.** §1009.

Fourth, in §3004.1, first sentence, DSS may wish to delete the reference to “parent’s” since it is redundant. The definition of “caretaker” in §3001 ostensibly covers both parents and non-parents.

In summary, SCPD has the following recommendations.

A. DSS should consider some technical amendments based on Pars. 3 and 4 above.

Agency Response: DSS responds as follows to your recommendations:

1) SCPD suggested a heading be added to the bulleted text that defines a relative. The suggested text was added.

2) SCPD suggested that relative status be verified by the submittal of the caregiver authorization form on record at the child’s public school. This document is one of a variety of documents which may be presented by the relative to verify their relationship to the child. Adding the suggested text would limit the relative’s ability to provide other verification which may be more readily available. At this time it has been decided not to limit verification of relationship to the caregiver authorization form.

3) SCPD commented that the definition of guardian was “odd”, and suggested some revisions. Based on the feedback received by you and others the text defining guardian has been replaced with the following:

For the purposes of the TANF program a guardian is defined as:

- An adult providing an appropriate supportive living arrangement who has been appointed as guardian of the child(ren) in his/her care by an authorized court, or
- an adult who has received the consent and approval to exercise the day-to-day care, custody, and control of the child(ren) in his/her care by the Delaware Division of Family Services or any agency or court licensed or authorized to place children in a nonrelated home.

However, the Council suggested the word “parent’s” be removed from the first sentence of policy 3004.1. The decision was made not to remove the word.

B. DSS should consider whether caretakers could be given the option of applying for GA or TANF on a qualifying child’s behalf. As illustrated in §4001.1, deleted Illustration #5, a caretaker and child can currently qualify as separate GA assistance units. There may be circumstances in which the caretaker views the TANF requirements as unduly onerous. If an option cannot be authorized, SCPD endorses the regulation given the significant increase in financial benefit to most eligible caretakers and children.

Agency Response: It is the decision of DSS not to allow this option.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2010 *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 Delaware General Assistance and TANF Programs is adopted and shall be final effective October 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #10-42

REVISIONS:

3000 Temporary Assistance for Needy Families (TANF) - Definition

TANF is a cash assistance program for minor children who are needy as determined by Division standards and who are:

Living in the home of a parent, guardian, custodian, or specified relative.

Purpose of Delaware's Welfare Reform Plan, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES is Delaware's plan to transform its welfare system. The State and the family have mutual responsibilities. The State will create positive incentives for the family to become self-sufficient. The family must accept responsibility to become self-sufficient and self-supporting. There are five key principles that form the plan's foundation. They are:

1. WORK SHOULD PAY MORE THAN WELFARE;
2. WELFARE RECIPIENTS MUST EXERCISE PERSONAL RESPONSIBILITY IN EXCHANGE FOR BENEFITS;
3. WELFARE SHOULD BE TRANSITIONAL, NOT A WAY OF LIFE;
4. BOTH PARENTS ARE RESPONSIBLE FOR SUPPORTING THEIR CHILDREN; and
5. THE FORMATION AND MAINTENANCE OF TWO-PARENT FAMILIES SHOULD BE ENCOURAGED, AND TEENAGE PREGNANCY AND UNWED MOTHERHOOD SHOULD BE DISCOURAGED.

The purpose of the following policies is to outline the manner in which the Division of Social Services intends to carry out this vision of its welfare reform plan.

*(Break in Continuity of Sections)***3000.4 TANF and State Only Foster Care**

If a child is living with a minor parent and the minor parent receives State Only Foster Care payments, the child may receive cash assistance. The minor parent cannot be included in the cash assistance program.

The minor parent may be a TANF payee if she cares for the child and is capable of handling funds. Contact the minor parent's Child Protective Services worker for this determination.

If someone other than the minor parent cares for the child or if the minor parent is not capable of handling funds, an adult in the household may be payee. ~~If the adult meets the definition of a "specified relative" (Social Services Manual Section 3004), that adult may receive TANF for the child. If the adult does not meet the definition of a "specified relative," that adult may receive GA for the child.~~

The minor parent is not included in the TANF grant and the State Only Foster Care payment is not considered income to the child.

(Break in Continuity of Sections)

3004 Specified Relationship Caretakers in TANF Families

Relationship

To be eligible for TANF, a child must be living in the home of one of the following relatives:

Assistance is provided to needy families. A family is one or more children living with a specified relative, guardian, or custodian (adult acting in loco parentis).

[Specified relative is defined as:]

- Any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. The degree of relationship is as follows: a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great-grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great-grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).
- Any other persons named in the above groups whose relationship to one of the child's parents is established by legal adoption;
- The spouse of any person named in the above groups even though the marriage terminated by death or divorce.

[A guardian is defined as:

~~An adult providing an appropriate supportive living arrangement who has been authorized by the Delaware Division of Family Services or the Family Court of Delaware to exercise the day to day care, custody, and control of the child(ren) in his/her care.~~

For the purposes of the TANF program a guardian is defined as:

- An adult providing an appropriate supportive living arrangement who has been appointed as guardian of the child(ren) in his/her care by an authorized court, or
- an adult who has received the consent and approval to exercise the day-to-day care, custody, and control of the child(ren) in his/her care by the Delaware Division of Family Services or any agency or court licensed or authorized to place children in a nonrelated home.]

A custodian or an adult acting *in loco parentis* ("in the place of a parent") is defined as:

An adult who provides an appropriate supportive living arrangement for the child(ren) in his/her care, and who has:

- intentionally taken over the duties of a parent and is responsible for exercising the day-to-day care, custody, and control of the child(ren).
- accepted the legal responsibility of caring for the child.
- been referred to the Delaware Division of Family Services for purposes of determining suitability of the adult to act *in loco parentis* and the dependency of the child(ren).

[Custodians Adults acting *in loco parentis*] are required to acknowledge their acceptance of the legal responsibility for the child(ren) in their care and their intentional acceptance of the day-to-day care, custody, and control of the child(ren) in their care. This acknowledgement must be in writing and on a Division of Social Services approved form.

The Division of Family Services **[(DFS)]**, within the Department of Services for Children, Youth, and Their Families **[DSCYF]** must approve the living arrangement of a custodian and the children they are caring for by the next redetermination. If ~~**[the custodial relationship verification of consent and approval by DFS]**~~ **is not approved provided** by the next redetermination, TANF payments should be stopped.

Paternity Establishment:

When a child lives with both the natural father and the mother but paternity has not been legally established, refer the parents to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgement of paternity. If the alleged father is unwilling to complete the voluntary acknowledgement of paternity, DSS will

consider the child deprived of the care and support of his/her father. Refer the case to DCSE for follow-up on establishing paternity.

When a child lives with the natural father, but paternity has not been legally established, have the father complete a declaration of natural relationship document. Obtain one additional document from the documents listed below to support the natural father's claim of relationship.

- Social Security Administration records;
- Hospital, clinic, or Public Health Records;
- Department of Services to Children, Youth, and Their Families records;
- Census Bureau records;
- Income Tax records specifying the relationship;
- Insurance policies which specify the relationship;
- Military or veterans records which specify the relationship Statement from a minister, priest, or rabbi;
- Family bible, Baptismal Certificate or other family records (such as wills, deeds), written in ink and not altered which specify the relationship;
- Statement of physician or midwife who attended the birth and remembers the names of the people involved;
- Other government or local agency records, newspaper records, or local histories which specify the relationship;
- A Declaration of Natural Relationship signed by the mother or other maternal relative;
- If none of the above documents are available, a declaration of Natural Relationship signed by a knowledgeable person.

When a child lives with a relative of the natural father, but paternity has not been legally established, have the relative complete a Declaration of Natural Relationship document. Obtain one additional document from the documents listed above to support the relative's claim of relationship.

3004.1 Living in the home

The parent's or ~~relative's~~ caretaker's statement that the child is living in the home must be verified at the time of application and at each subsequent redetermination.

A home is defined as the family setting where the child and the caretaker ~~relative~~ reside. The home exists ~~as long as the relative is the responsible caretaker~~ even if the child or ~~the relative~~ caretaker is temporarily absent (See DSSM 3023.4, 3023.5, and 3023.6).

The child is considered living with the ~~relative~~ caretaker even if the child is under the jurisdiction of the court (e.g., receiving probation services or protective supervision) or legal custody is held by an agency, as long as the child continues to live at home.

(Break in Continuity of Sections)

3010 Participation and Cooperation in Developing CMR

It is mandatory that the caretaker enter into a Contract of Mutual Responsibility. The Contract applies to those families in the Time Limited Program and Children's Program, as well as to teen parents. Other family members within the assistance unit may be subject to compliance with provisions of the Contract, even if the caretaker is a non-needy caretaker ~~relative~~ payee.

If the caretaker is a non-needy caretaker ~~relative~~, the individual would not be required to participate in employment-related activities, but may be required to participate in other Contract activities.

The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.

DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited to, participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be

amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.

Negotiating elements of the CMR can mean that aspects of the CMR are waived. On a case by case basis, elements of the CMR can be waived if good cause exists. If the particular circumstances of a family warrant waiving elements of the CMR it is to be justified and properly documented in the case record.

See Administrative Notice A-10-99 DFS/DSS Procedures.

For example: a parent's only child is terminally ill. It is reasonable to determine that a parent would want to spend as much time with the child as possible. Therefore, waiving school attendance requirements and parenting education requirements are reasonable. Document the child's illness and the reason for the waiving of the CMR requirements in the case record.

(Break in Continuity of Sections)

3018 General Assistance (GA)

General Assistance is a State funded cash assistance program available to families and unemployable individuals who meet the financial eligibility requirements of the program and who are ineligible for TANF and SSI with the following exception:

A child's caretaker ~~relative~~, who is otherwise eligible for GA and who is not the child's parent, may choose to receive GA instead of TANF.

EXAMPLE: A woman with no income is unemployable and is the caretaker of a seven year old niece. The woman may choose to receive GA for herself and be payee only for the TANF grant for her niece, or she may be included in the TANF unit with her niece.

Married or unmarried couples living with their children as a family unit that are not eligible for TANF or TANF-UP are technically eligible for GA.

EXAMPLE: A couple lives with their children as a unit. Both parents are healthy and unemployed. Neither parent meets work quarter requirements for TANF-UP. The family is technically eligible to receive GA.

(Break in Continuity of Sections)

3021 ~~Unrelated Children~~ RESERVED

~~A needy child (one whose income is less than the GA Standard of Need), who lives with an unrelated adult caretaker, is technically eligible for General Assistance. The caretaker is payee for the child's grant and may be included in the GA budget group if he/she is also needy and meets at least one of the conditions specified in DSSM 3019.~~

~~In such cases, DSS will document the child's presence in the home and the reason that the child is not living with his/her parents. The possibility of financial support from the parents is also investigated.~~

~~In all such cases, the DFS will be notified of the child's placement so a study of the home can be made.~~

3022 ~~Ineligibility Due to Family Cap~~ RESERVED

~~A needy child, who is ineligible for TANF cash benefits due to the Family Cap provision of Delaware's Temporary Assistance To Needy Families, is not technically eligible for GA.~~

(Break in Continuity of Sections)

3027 Age as a Condition of Eligibility

For purposes of determining eligibility for cash grants, persons 18 years old and over are considered adults.

Persons under age 18 are considered children. ~~An individual is not eligible for General Assistance as a child the month of his/her birthday. If such children are General Assistance recipients, they will be removed from the assistance unit that last day of the month prior to the month of their 18th birthday.~~

An individual is not eligible for TANF as a child the month of his/her 18th birthday if their birthdate is the 1st day of the month. If such children are TANF recipients, they will be removed from the assistance unit the last day of the month prior to the month of their 18th birthday.

An individual is eligible for TANF as the child the month of his/her 18th birthday if their birthday is the 2nd - 31st day of the month. If such children are TANF recipients, they will be removed from the assistance unit effective the last day of the month he/she turns 18.

(Break in Continuity of Sections)

3027.2 Minor Parents

An unmarried parent, under the age of 18, and the dependent child(ren) in his or her care is to reside in the household of a parent, legal guardian, custodian, other adult relative, or in an adult supervised supportive living arrangement to receive TANF benefits.

Emancipated minors are considered adults for the purpose of establishing eligibility for assistance. An eligible emancipated minor may receive an assistance grant in his/her own name.

Emancipation must be documented in the case record. Acceptable documentation includes:

- 1) Court records; or
- 2) The minor's valid marriage license; or
- 3) Written statements from the Division of Family Services verifying the minor's emancipation.

If the minor parent and his or her children reside in an adult supervised supportive living arrangement, the Division of Family Services, within the Department of Services for Children, Youth and Their Families, must approve the living arrangement by the next redetermination. If the adult supervised supportive living arrangement is not approved by the next redetermination, TANF payments should be stopped.

Assistance is to be provided in the form of a protective payment to the minor parent's parent, legal guardian, other adult relative, or adult in the supervised supportive living arrangement.

(Break in Continuity of Sections)

3028.1 Mandatory Composition of Assistance Units

In TANF, the assistance unit will always include:

1. The dependent child; and
2. The dependent child's blood related or adoptive siblings who are under 18 and who are also dependent children; and
3. The dependent child's natural or adoptive parent(s). If both parents live in the home, both parents must be included in the unit regardless of the parents' marital status. In a case where paternity has not been legally established, the putative father must acknowledge paternity as a condition of eligibility.

Note: In 2 and 3 above, the child or parent must also reside in the home and be otherwise eligible. Examples of persons who are not otherwise eligible include, but are not limited to SSI recipients, and the Employment and Training Program sanctioned individuals.

EXAMPLE: A grandmother has day to day care and control of her minor grandchild and is receiving TANF for herself and the child. The child's mother moves into the home, but the grandmother retains custody and continues to act as the child's caretaker. Since, according to TANF regulations, a parent is a mandatory member of the assistance unit, the mother must be added. If the mother has income, the income must be budgeted. The grandmother may remain in the unit because TANF regulations allow for the inclusion of a needy caretaker relative.

EXAMPLE: In TANF, where children who live in the home include the caretaker's own children and a child who is related in some other manner (e.g., niece or nephew), establish two assistance units. One will include the caretaker and his/her children, and the other will include the other related child with the caretaker as payee only. When more than one such child lives in the home, each child will be placed in a separate assistance unit unless the children must be considered together as specified in 1 and 2 above.

~~EXAMPLE: In GA, establish a separate assistance unit for an unrelated child living in the home of a family that is also eligible to receive a grant. When more than one such child resides in the home, each child will be placed in a separate assistance unit. However, children who are siblings are always considered together and will be placed in the same assistance unit.~~

~~EXAMPLE: In GA, establish a separate assistance unit for an unrelated child and the adult caretaker who is also eligible to receive GA on their own. For instance, the adult caretaker is age 55 or older. Establish two separate GA assistance units; one for the caretaker and one for the child. (See DSSM 4004)~~

9 DE Reg. 1979 (06/01/06)

3028.2 Optional Composition of Assistance Units

1. In TANF the dependent child, and if residing in the home and otherwise eligible, the child's blood related or adoptive minor siblings, and the child's natural or adoptive parent(s) must be included in the unit. When both parents of the dependent child are in the home, both parents must be included in the unit regardless of their marital status. In a case where paternity has not been legally established, the putative father must acknowledge paternity as a condition of eligibility.

A non-parent needy caretaker ~~relative~~ may be included in the unit if the caretaker so chooses.

The needy legal spouse of a caretaker ~~relative~~ may be included in the unit only if the caretaker is the natural or adoptive parent of the child(ren), and the caretaker is incapacitated or is the principal wage earner and qualifies as an unemployed parent.

2. In TANF married couple cases, where each adult has children from previous relationships that are eligible for TANF, include the family in one TANF unit. If the couple has children in common who are also eligible for TANF, include these children in the unit also.

3. In TANF married or unmarried couple cases where each adult has children from previous relationships who are eligible for TANF, they have the option of being in one assistance unit or two separate assistance units. If the unit fails financially, a separate assistance unit may be established for the child(ren) of the previous relationships.

For example, a couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married, a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and her child.

4. When a couple, married or unmarried, has a child in common and each partner has a child from a previous relationship, the couple, the child in common, and the other children will initially be placed in one TANF assistance unit. The siblings keep this as one assistance unit.

Example: A couple each have a child from previous relationships and they have a child in common. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and her child from a previous relationship into a TANF assistance unit. In this case if the couple were married, a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and her child.

5. A pregnant woman, with no other children, may receive TANF beginning on the first day of the month that her child is expected to be born, if the woman meets all other technical and financial eligibility requirements, and her expected due date has been verified by a physician. The child is added to the unit, and a supplemental grant is effective the date of its birth if the birth is reported within five (5) days. If the birth is not reported within five (5) days, the child is added to the unit and the grant is effective as of the date of the report. The child's father, if he is otherwise eligible, is also added using these guidelines. Procedures for completing supplemental applications for newborns are outlined in DSSM 2000.6.

(See DSSM 4010 for Budgeting instructions)

A pregnant woman who plans to place her child for adoption is eligible for TANF beginning the 1st day of the month her child is due, assuming she meets all other eligibility requirements. If she still plans to terminate her parental rights after the child is born, the child cannot be added to the assistance unit and the child is not eligible for Medicaid. In this instance, the TANF case is closed at the end of the month that the birth occurs.

6. If a child receiving SSI is the only child in the home, the child's caretaker ~~relative~~ can receive TANF if the child is deprived of parental care. The caretaker's needy legal spouse can receive TANF if the caretaker is the child's natural or adoptive parent and the caretaker is incapacitated or qualifies as an unemployed parent.

7. For GA eligible adults, include the adult. The adult's spouse or UMP is also included if the spouse or partner also meets a condition of unemployability.

~~8. For children eligible for GA who are living with a non relative caretaker, include the child. The caretaker may also be included if the child is under six and the caretaker is needy.~~

98. A woman who has a verified pregnancy and receives a GA check the month she delivers her child is eligible for TANF that month for herself and her child if she reports the birth to DSS, and she meets all other TANF technical and financial eligibility requirements.

The TANF grant is effective the date of the child's birth if the birth is reported within five (5) days.

The TANF grant is effective the date of the report if the birth is not reported within five (5) days.

If the pregnancy had not been verified, the TANF grant is effective the date the birth is verified.

(Break in Continuity of Sections)

4001 Family Budget Group

Assume there is no income.

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married couples if they live together and are both eligible for a grant.
2. Unmarried couples who live together as husband and wife and are both eligible for a grant.

NOTE: In GA, couples will be considered as living together as husband and wife if:

- a. They say they are married, even if the marriage cannot be verified, or
- b. They are recognized as husband and wife in the community, or
- c. One partner uses the other's last name, or
- d. They state they intend to marry, or
- e. They jointly hold resources.

3. Parents and their eligible children.

Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the TANF need standard for the budget group size as specified in Section 4007.2. (See DSSM 3028 for a definition of an assistance unit)

In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

- A. Assistance would be denied to any of the recipients by maintaining separate budget groups.
- B. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.

~~4. A needy caretaker caring for an unrelated child under the age of six (6) who is needed in the home to care for the child because no one else is available can receive General Assistance (GA) for him/her self and the child in two assistance units but one budget group. SEE DSSM 3028.~~

~~5. A caretaker caring for an unrelated child may be able to receive GA for the child in one assistance unit while receiving GA for him/her self as well, in a separate assistance unit as long as one condition in DSSM 3019, other than #4 is met. They would be in two separate budget groups.~~

4001.1 Examples to Illustrate Rules Regarding Budget Groups.

1. Mr. and Mrs. Brown apply for assistance for themselves, their two (2) children, and Mrs. Brown's niece. Mr. Brown is ill and unable to work. (Refer to A-18-99 for more details)

Mr. and Mrs. Brown are eligible for TANF and are placed in one budget group with their two (2) children. Mrs. Brown's niece is eligible for TANF and is placed in another budget group with Mrs. Brown as payee. The Browns with their children receive an TANF grant for four (4) people. Mrs. Brown's niece receives a TANF grant for one (1) person.

~~2. Mr. and Mrs. Johnson are applying for themselves, their child, and an unrelated child that lives in their home.~~

~~Mr. and Mrs. Johnson and their child are eligible for TANF and are placed in one budget group. The unrelated child is eligible for GA and placed in a separate budget group. The Johnson's will receive a TANF grant for three (3) people and the unrelated child will receive a GA grant for one (1) person.~~

~~3. Mrs. Jones is divorced and is applying for herself, her daughter, a niece, and an unrelated child.~~

~~Mrs. Jones and her child are eligible for TANF and are placed in one budget group. The niece is eligible for TANF and placed in another budget group. The unrelated child is eligible for GA and is in a third budget group.~~

~~4.2. Ms. Lord is applying for herself, her child and her niece and nephew who are sister and brother.~~

~~Ms. Lord and her child are eligible for TANF and are in one budget group. Ms. Lord's niece and nephew are eligible for TANF and placed in another budget group.~~

~~5. Mr. Smith is caring for a three year old child for whom he is not related. Mr. Smith is needy. Someone is needed in the home to care for the child but there is no one else available.~~

~~Mr. Smith and the child could each receive GA in separate assistance units. They would be in one budget group capped by the GA size for two (2) people.~~

~~6. Mrs. Robinson is caring for a child for whom she is not related. Mrs. Robinson is fifty five (55) years of age.~~

~~Mrs. Robinson and the child could each receive GA in separate assistance units. They would be two (2) separate budget groups.~~

NOTE: When income is included in any of the above situations, it is possible that some of the recipients would be denied by maintaining separate budget groups, but all recipients could remain eligible if the groups are combined. In those situations the budget groups can be combined if the caretaker so chooses.

(Refer to Administrative Notice A-18-99 for more details.)

(Break in Continuity of Sections)

4004.3 Earned Income Disregards in GA

The following disregards are deducted from gross earned income in the GA budgeting process. Disregards are applied to each earner's wages.

1. Standard allowance for work connected expenses \$50.

~~2. Dependent care expenses as paid up to \$160 per month for each child who resides in the home and receives GA.~~

(Break in Continuity of Sections)

4007.1 Standards of Need/Payment Standard - GA

This policy applies to all General Assistance applicants and recipients.

1. The Payment Standard is equal to the Standard of Need.
2. The Division of Social Services determines the Standard of Need.
3. ~~The Division of Social Services may establish different Standards of Need for children and adults.~~
4. The Division of Social Services will issue an administrative notice detailing Standard of Need changes at least 30 days prior to an implementation of a Standard of Need change.
5. The Division of Social Services will issue an administrative notice annually detailing the current Standard of Need.

13 DE Reg. 1333 (04/01/10)

(Break in Continuity of Sections)

4009 Determining Financial Eligibility and Grant Amounts in GA

Follow the steps listed below to determine financial eligibility and grant amounts in the GA program. Refer to DSSM 4004.3 for information regarding GA earned income disregards.

1. Subtract \$50.00 from earned income.
2. ~~Subtract payment for dependent care from earned income.~~
3. ~~Compare the sum of remaining earned income plus other income to the applicable GA standard. Deny assistance if income exceeds the standard.~~
4. If income is less than the standard, subtract income from the applicable GA standard to determine the grant amount. Round remainders by dropping the cents.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 7105 (18 Del.C. §§311, 7105)
18 DE Admin. Code 1404

1404 Long-Term Care Insurance

ORDER

Proposed amendments to Regulation 1404 relating to Long-Term Care Insurance was published in the *Delaware Register of Regulations* on August 1, 2010. The comment period remained open until September 7, 2010. There was no public hearing on proposed amendments to Regulation 1404. Public notice of the proposed amended Regulation 1404 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received from the State Council for Persons with Disabilities (SCPD) and from America's Health Insurance Plans (AHIP). While the major purpose of the proposed amendments are to prohibit post-claim underwriting in long-term care insurance, SCPD did not comment on those proposed changes. SCPD directed its comments to suggested changes in the original Regulation 1404, not the proposed amendments. While the comments are well reasoned and valid, they are directed to updating, modernizing the substantial part of the existing regulation not being amended. What the Department of Insurance advertised as proposed amendments to the regulation is the only subject open for comment. SCPD's observation are well taken and will be considered for future changes to the regulation.

ACLI wrote to express support for the proposed amendment's rescission sections. The ACLI suggested that rather than incorporate some sections of the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) the Delaware Department of Insurance should adopt the Model Regulation whole. The Department has chosen to adopt sections of the Model Regulation that it feels are needed in this State. The ACLI pointed out errors in terminology that were not changed throughout the document, including the change from the use of "agent" to that of "Producer". Those non-substantive changes are made in the final document. The ACLI also noted sections of the Model Language that should be adopted in the future for purposes of clarity. That advice will be seriously considered in future updates.

FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

The requirements of the proposed amendments to Regulation 1404 best serve the interests of the public and of insurers and comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§314, 1111 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt amended Regulation 1404 as may more fully and at large appear in the version attached hereto to be effective on October 11, 2010.

TEXT AND CITATION

The text of the proposed Regulation 1404 last appeared in the *Register of Regulations* Vol. 14, Issue 2, pages 92-93.

IT IS SO ORDERED this 8th day of September 2010.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1404 Long-Term Care Insurance

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

[1404 Long-Term Care Insurance](#)

FINAL REGULATIONS

**DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION**Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 **Del.C.**, §2432A(h))**102 Debt Management Services****ORDER**

A public hearing was held to receive comments related to the Delaware Uniform Debt Management Services Act authorized under 6 **Del.C.**, §2432A(h). Notice was provided as required under the Administrative Proceedings Act in the *Register of Regulations* at 14 DE Reg. 93-102 (08/1/2010) as well as in the *News Journal* and *Delaware State News* on August 19, 2010 and August 6, 2010, respectively. 29 **Del.C.**, §10115. In addition, notice was mailed to licensees and posted on the Consumer Protection web page.

The Director of Consumer Protection conducted the public hearing held at 10 a.m. on September 9, 2010 in the Carvel State Office Building, 6th floor, 820 N. French St., Wilmington, DE 19801.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written or verbal comment was received.

RECOMMENDED FINDINGS OF FACT

The proposed rules clarify the procedures used in order to efficiently manage licensure applications and implement administrative enforcement. The changes are needed to protect the public through effective licensing and enforcement. There was no objection to the proposals.

RECOMMENDED ACTION

After considering the provisions in the Delaware Uniform Debt Management Services Act including the mandate for uniformity of application in 6 **Del.C.**, §2438A and without public objection, it is the recommendation of the Director of Consumer Protection that the Attorney General make the proposed findings and adopt the proposed rules as published pursuant to his authority in 6 **Del.C.**, §2432A(h) as published.

DEPARTMENT OF JUSTICE

Ian R. McConnel

Director of Consumer Protection

Date: September 9, 2010

ORDER AND EFFECTIVE DATE

After review of the law and the recommendation of the Director of Consumer Protection, I hereby adopt the recommended Findings of Facts and the Rules as proposed in 14 DE Reg. 93-102 (8/1/2010) to become effective October 11, 2010.

DEPARTMENT OF JUSTICE

Joseph R. Biden III

Attorney General

Date: September 15, 2010

102 Debt Management Services

*Please note that no changes were made to the regulation as originally proposed and published in the August 2010 issue of the *Register* at page 93 (14 DE Reg. 93). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[102 Debt Management Services](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1124

Secretary's Order No.: 2010-A-0030

7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 11.0, "Mobile Equipment Repair and Refinishing"

Date of Issuance: September 17, 2010

Effective Date of the Amendment: October 11, 2010

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

Background and Procedural History

This Order considers proposed regulation amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 11.0, "Mobile Equipment Repair and Refinishing". The purpose of these proposed amendments is to conform to a new model rule developed by the Ozone Transport Commission (OTC). The other OTC states are in the process of adopting a similar regulation. This proposed revision to Delaware's existing Regulation No. 1124 reduces the volatile organic compound (VOC) contents of currently regulated coatings, regulates additional coating categories, requires the use of coating application equipment that provides for high transfer efficiency, and requires that surface cleaning solvent contain no more than 25 grams of VOC per liter.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2009-34. The Department published the proposed regulatory amendments in the May 1, 2010 *Delaware Register of Regulations* and held a public hearing on June 10, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 9, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. The Department received public comments, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

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 these regulatory amendments, Delaware will conform to a new model rule developed by the Ozone Transport Commission (OTC), and will mirror the other OTC states who are in the process of adopting similar regulations as well.

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 a public hearing;
- 3.) The Department held a public hearing on June 10, 2010 on the proposed Amendments in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the May 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to a new model rule developed by the Ozone Transport Commission (OTC); (2) the Department's revisions to Section 11.0 of 7 **DE Admin. Code** 1124 will reduce the volatile organic compound (VOC) contents of currently regulated coatings, regulate additional coating categories, require the use of coating application equipment that provides for high transfer efficiency, and require that surface cleaning solvent contain no more than 25 grams of VOC per liter; and (3) the regulation amendments are well supported by documents in the record; and that
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

1124 Control of Volatile Organic Compound Emissions

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

[1124 Control of Volatile Organic Compound Emissions](#)

DIVISION OF AIR AND WASTE MANAGEMENT

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

Secretary's Order No.: 2010-A-0028 and 2010-A-0029

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Date of Issuance: September 17, 2010

Effective Date of the Amendment: October 11, 2010

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

Background and Procedural History

This Order considers the proposed regulatory amendment to 7 **DE Admin. Code** 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 13.0, "Area Source Methylene Chloride Paint Stripping Operations" and Section 15.0, "Area Source Motor Vehicle or Mobile Equipment Surface Coating Operations". The proposed new Section 13.0 will affect facilities that perform paint stripping operations using chemical strippers that contain methylene chloride. The proposed new Section 15.0 will affect motor vehicle (auto-body shops) or mobile equipment surface coating operations that spray-apply coatings which contain any compounds of cadmium, chromium, lead, manganese or nickel. This proposed new section is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart HHHHHH as well as existing requirements in similar area source standards found throughout Regulation 1138. It should be noted that this proposed amendment does not apply to non-motor vehicle or non-mobile equipment surface coating operations, as the Department addressed these sources with the adoption of Section 14 of Regulation 1138 in april 2010.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to methylene chloride. Additionally, methylene chloride is classified as probable human carcinogens by the EPA.

The Department's Division of Air Quality (DAQ) commenced the regulatory development process with Start Action Notices 2009-08 and 2009-17. The Department published the proposed regulatory amendment in the May 1, 2010 *Delaware Register of Regulation* and held a public hearing on June 10, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 9, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment 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 expert developed the record and drafted the proposed Amendment. Throughout the entire regulatory development process regarding this promulgation, the Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's DAQ expert fully developed the record to support adoption of this Amendment. With the adoption of the regulation amendment to 7 **DE Admin. Code** 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 13.0, "Area Source Methylene Chloride Paint Stripping Operations" and Section 15.0, "Area source Motor Vehicle or Mobile Equipment Surface Coating Operations", Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH and provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to methylene chloride, cadmium, chromium, lead, manganese, or nickel compounds, which are classified as a probable human carcinogens by the EPA.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed Amendment as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on June 10, 2010 on the proposed Amendment in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendment does not reflect any substantive change from the proposed regulation Amendment as published in the May 1, 2010, *Delaware Register of Regulations*;

6.) The recommended Amendment should be adopted as final regulation Amendment because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to methylene chloride, cadmium, chromium, lead, manganese, or nickel compounds, which are classified as a probable human carcinogen by the EPA. Moreover, the regulation amendment is well supported by documents in the record; and

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

Collin P. O'Mara, Secretary

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Section	Title	Related federal rule at 40 CFR Part 63
	Table of Contents	
1.0	Overview	
2.0	Reserved	
3.0	General Provisions	Subpart A
4.0	Requirements for Case-By-Case Control Technology Determinations for Major Sources	Subpart B
5.0	Perchloroethylene Air Emission Standards for Dry Cleaning Facilities	Subpart M
6.0	Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	Subpart N
7.0	Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers	Subpart Q
8.0	Emission Standards for Halogenated Solvent Cleaning	Subpart T
9.0	Emission Standards for Hospital Ethylene Oxide Sterilizers	Subpart WWWW
10.0	Emission Standards for Hazardous Air Pollutants for Area Source Plating and Polishing Operations	Subpart WWWW
11.0	Emission Standards for Hazardous Air Pollutants for Area Source Lead Acid Battery Manufacturing Plants	Subpart P
12.0	Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production	Subpart RRR
13.0	Reserved <u>Emission Standards for Hazardous Air Pollutants for Area Source Paint Stripping Operations</u>	<u>Subpart HHHHHH</u>
14.0	Emission Standards for Hazardous Air Pollutants for Area Source Miscellaneous Parts or Products Surface Coating Operations	Subpart HHHHHH
15.0	<u>Emission Standards for Hazardous Air Pollutants for Area Source Motor Vehicle or Mobile Equipment Surface Coating Operations</u>	<u>Subpart HHHHHH</u>

***Please Note: Due to the size of the final 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](#)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER TWENTY

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: MORE EFFECTIVELY UTILIZING INFORMATION TECHNOLOGY RESOURCES TO DRIVE COST SAVINGS IN STATE GOVERNMENT

WHEREAS, as Governor, I am committed to making State government more efficient and cost-effective;

WHEREAS, every Department and Agency within the Executive Branch (collectively, "Executive Branch Agencies") and the services they provide should be integrated as an enterprise, working together to support Delaware citizens as one organization with overall goals and objectives;

WHEREAS, information technology ("IT") is fundamental to many aspects of state government including strengthening economic development, expanding education opportunities and providing the most efficient delivery of services to the citizens of Delaware;

WHEREAS, historically the State's IT resources have been largely decentralized, in part, due to the concern from agencies that their needs would not be met by a more consolidated or centralized approach;

WHEREAS, consolidating the State's information technology operations and services must not result in diminished IT service and capacity for Executive Branch Agencies that deliver important services to Delaware citizens;

WHEREAS, consolidating the State's information technology operations and services will allow the State to leverage investments, combine data collection, develop shared applications, accelerate the use of electronic forms, use enterprise-wide licensing software, and create other efficiencies; and

WHEREAS, by reducing redundancy, improving service delivery, and reducing IT costs, consolidation of the State's information technology resources will provide enhanced and more cost-effective services to Delaware's citizens.

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

1. The Department of Technology and Information ("DTI") shall conduct a detailed review of each Executive Branch Agency ("Agency"), in collaboration with each Agency, for the purposes of evaluating opportunities to consolidate the State's IT services and operations. Any consolidation shall be subject to federal or state law and shall otherwise provide for on-site and functional support of unique Agency applications, combining technology infrastructure for shared use and maximum efficiency while ensuring the continued support of business functions and processes. To help ensure that consolidating the State's information technology operations and services does not result in diminished IT service and capacity for Agencies that deliver important services to Delaware citizens, a Memorandum of Understanding between DTI and each Agency shall be developed which enumerates the expectations and performance measures related to IT services for that Agency.

2. Information technology resources to be considered for consolidation include, but are not limited to, data centers, infrastructure, hardware, project management, telecommunications, web development, application development, help desk services, information security, and database administration. The consideration for consolidation will be based on several factors including, federal and state law, statewide cost savings, efficiency increases, and

best practices.

3. In conjunction with the Office of Management and Budget, DTI shall conduct an analysis of all technology-related expenditures for the purpose of centralizing IT funding for services identified for consolidation. This centralization of funding evaluation shall consider all available funding sources including those outside the State's General Fund.

4. In close consultation with the other Agencies, DTI shall develop a set of policies and procedures designed to manage external IT vendors, consultants, and contractors, including the development of a state-wide rate card.

5. To help maximize efficiencies and improve the quality of IT related purchases, any information technology related purchase in excess of \$10,000 shall be sent to DTI prior to issuance of a purchase order or execution of a contract. In addition, DTI shall be consulted regarding the use of contractual resources for information technology initiatives and support in excess of \$50,000 prior to the work commencing.

6. The Department of Technology and Information shall provide written status reports on consolidation to the Technology Investment Council and the Governor's Office on a regular basis. After DTI enters into a Memorandum of Understanding with an Agency, the status reports will also be provided to the affected Cabinet Secretaries for review and response.

7. No provision of this Order shall be intended to create any individual right or legal cause of action, which does not currently exist under State or Federal law.

APPROVED this 27th day of August, 2010

Jack Markell

Governor

14 DE Reg. 323 (10/01/10)

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY PUBLIC NOTICE

Personal Finance Content Standards Adoption

On September 16, 2010, the Secretary of Education with the consent of the State Board of Education adopted Personal Finance Content Standards for students in grades 9-12. The Personal Finance Content Standards are attached in *Exhibit B*.

Notice of the proposed new content standards was published in the *News Journal* and the *Delaware State News* on July 28, 2010 in the form hereto attached as *Exhibit A*. The Department received 20 comments, with a majority of the comments supporting the new content standards. Further information on the adoption may be found in the September 16, 2010 State Board of Education minutes.

Exhibit B PERSONAL FINANCE

Limited financial resources compel responsible individuals to make decisions by weighing the benefits against the opportunity cost of each alternative. All financial decisions have short, intermediate and long term consequences. A citizen that lives within his or her income has more control over his or her life while expanding choices. Individuals engage in savings and investing to achieve short, intermediate, and long term financial goals. Having the knowledge and skills to understand and evaluate various types of goods and services, and how to pay for them, can help prevent or limit financial loss.

Personal Finance Standard One [Financial Planning and Decision-Making]

An individual's goals affect how they value the benefits and costs of alternative choices. A financial plan is a strategy to accomplish an individual's or household's financial goals that will change as an individual's or household's situation changes. Effective financial plans incorporate the possibility of unexpected expenditures.

- 9-12a: Students will apply problem-solving strategies and cost benefit analysis to assess the consequences of financial decisions.
- 9-12b: Students will create an overall financial plan for spending and saving in order to achieve personal goals.

Personal Finance Standard Two [Money Management]

When purchasing goods and services, individuals must choose among payment options to maximize benefits. Prudent individuals limit borrowing based on their ability to repay.

- 9-12a: Students will analyze the benefits and costs of various payment options while applying the mechanics of money management.
- 9-12b: Students will examine how ability to pay and personal credit history influences an individual's financial opportunities and choices.

Personal Finance Standard Three [Saving and Investing]

Every savings and investment decision has a trade-off in terms of giving up goods and services today. Savings options and investments vary in their potential risks, liquidity, and rate of return. Individuals and households invest by purchasing assets that may earn income and/or appreciate in value over time.

9-12a: Students will demonstrate that personal savings and investment compound over time and contribute to meeting financial goals.

9-12b: Students will evaluate the costs and benefits of major savings and investing options.

Personal Finance Standard Four

[Risk Protection]

Risks are associated with life and unplanned events can have serious or catastrophic financial consequences over which an individual may have little control. A citizen with the knowledge and skills to evaluate financial products can prevent or limit loss.

9-12a: Students will understand how to evaluate financial products and services to minimize financial risks.

9-12b: Students will analyze how state and federal laws and regulations protect consumers.

DEPARTMENT OF AGRICULTURE
NUTRIENT MANAGEMENT PROGRAM
1201 Nutrient Management Certification Regulations
PUBLIC NOTICE

Nutrient Management Certification Regulation Amendments: Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulatory amendments address field staging and stockpiling of poultry manure.

Comments on the proposed changes will be accepted from October 1, 2010 until October 31, 2010. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: Mark Davis

The revised regulations are being amended to clarify the Delaware Nutrient Management Commission's and the Delaware Department of Agriculture's regulatory position related to the temporary outdoor storage of manure. The amended regulations will also now be aligned with the new confined animal feeding operation regulations.

The proposed regulations are posted on the Delaware Department of Agriculture website (www.dda.delaware.gov) Hard copies of the proposed regulations may be obtained from the Delaware Department of Agriculture. Comments may be submitted in writing and/or e-mail to the Mark Davis, (mark.davis@state.de.us), at the Delaware Department of Agriculture, on or before October 31, 2010. A public hearing on these regulations will **NOT** be held unless the Secretary of Agriculture and the Delaware Nutrient Management Commission (in accordance with 3 **Del.C.**, Section 2221) receive a request within 30 days from this notice, or if the Secretary determines that a public hearing is in the public interest. A request for a hearing shall be in writing and shall state the nature of the issues to be raised at the hearing. It must show familiarity with the proposal and a reasoned statement of the proposed regulations impact. It is requested that written comments, or requests for a hearing be addressed to:

Mark Davis
Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901
Mark.davis@state.de.us

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, September 16, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Durable Medical Equipment (DME) Provider Specific Policy Manual
PUBLIC NOTICE

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 31, 2010.

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

DIVISION OF PUBLIC HEALTH**4459A Regulations for the Childhood Lead Poisoning Prevention Act
PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Regulations governing the Childhood Lead Poisoning Prevention Act.

Currently, the State of Delaware requires lead poisoning screening for children at 12 months of age. The Childhood Poisoning Prevention Act requires a formal screening process be developed so that children at high risk for lead exposure can receive an additional screening test at 24 months of age, while children at lower risk will continue to receive only the currently required screening at 12 months of age. The Division of Public Health plans to promulgate regulations governing the Childhood Lead Poisoning Prevention Act that address a new blood lead screening, record retention protocol, and the requirements of compliance, enforcement, and penalties for violators.

The public hearing will be held on October 22, 2010, at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the October 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4705.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by October 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by November 1, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

DEPARTMENT OF INSURANCE**506 Crop Insurance Adjusters and Producers
NOTICE OF PUBLIC COMMENT PERIOD**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 506 relating to Crop Producers and Adjusters. The docket number for this proposed amendment is 1456.

The purpose of the proposed Regulation 506 is to delineate licensing and continuing education requirements for producers and adjusters specifically for Crop Insurance. The text of the proposed amendment is reproduced in the October 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday, November 1, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE**507 Workers' Compensation Insurance Adjusters
NOTICE OF PUBLIC COMMENT PERIOD**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 507 relating to Workers Compensation Adjusters. The docket number for this proposed amendment is 1457.

The purpose of the proposed Regulation 507 is to delineate licensing and continuing education requirements for adjusters specifically for Workers' Compensation Insurance. The text of the proposed amendment is reproduced in the October 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday, November 1, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to mitch.crane@state.de.us.

DEPARTMENT OF JUSTICE**FRAUD AND CONSUMER PROTECTION DIVISION****CONSUMER PROTECTION UNIT****103 CPU Administrative Enforcement Proceedings
PUBLIC NOTICE**

The Attorney General in accordance with 29 **Del.C.** §2521 has proposed to adopt rules and regulations for administrative enforcement of the consumer protection statutes.

A public hearing will be held at 10:00 a.m. on Wednesday, November 3, 2010, in the Attorney General's conference room on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to submit written comments will be at the public hearing.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS****Office of Labor Law Enforcement****1327 Notice of Independent Contractor or Exempt Person Status****PUBLIC NOTICE**

The Delaware Department of Labor, Division of Industrial Affairs, Office of Labor Law Enforcement gives notice that it has created a form for employer to complete which contains guidelines of the notice required to be provided to an individual of their classification as either an independent contractor or an exempt person. The Office of Labor Law Enforcement will receive written public comment as to the notice form beginning Friday, October 1, 2010 and ending on Thursday, October 31, 2010, at the Delaware Department of Labor, 225 Corporate Blvd., Suite 104, Newark, Delaware 19702.

The Office of Labor Law Enforcement proposes to adopt the Notice of Independent Contractor or Exempt Person Status form as presented in this notice. The proposed form is published in the Delaware Register of Regulations. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Francis Chudzik, Supervisor in the Office of Labor Law Enforcement at (302) 451-3401. Persons may submit written comment to the Office of Labor Law Enforcement c/o Francis Chudzik at the address and for the time period set forth above.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT****1125 Requirements for Preconstruction Review****1130 Title V State Operating Permit Program****PUBLIC NOTICE**

The Department proposes to revise Section 3.0 "Prevention of Significant Deterioration of Air Quality "(PSD) of 7 **DE Admin. Code** 1125, and Section 2.0 "Definitions" of 7 **DE Admin. Code** 1130 to clarify how air permitting requirements apply to greenhouse gas emissions. The Department's proposal is based on an Environmental Protection Agency rule, 75 FR 31514 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (June 3, 2010).

The Department will hold a public hearing on these proposed amendments on Thursday, October 28, 2010 beginning at 6:00pm in the Richardson and Robbins Building auditorium, located at 89 King's Highway in Dover. Interested persons may submit comments in writing to Ronald A. Amirikian, Division of Air Quality, 655 South Bay Road, Suite 5N, Dover, DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF AIR AND WASTE MANAGEMENT**1140 Delaware Low Emission Vehicle Program****PUBLIC NOTICE**

The provisions of this regulation establish in Delaware a LEV program, which incorporates the requirements of the California LEV program.

The LEV program shall apply to all model year 2013 and subsequent motor vehicles that are passenger cars and light-duty trucks subject to the California LEV program and delivered for sale in Delaware on or after January 1, 2013.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Friday, October 22, 2010 beginning at 6:00 p.m. in DNREC's R & R Building auditorium, Dover, DE. Interested parties may submit comments in writing to:

Kristoffer Gontkovsky
DNREC Division of Air Quality
BHCC 655 South Bay Road Suite 5N
Dover, DE 19901

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
700 Board of Chiropractic
PUBLIC NOTICE

The Delaware Board of Chiropractic, pursuant to 24 **Del.C.** §706(a)(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing licensed chiropractors in the State of Delaware.

The Board will hold a public hearing on the proposed rule change on November 4, 2010 at 09:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Nancy Fields, Administrator of the Delaware Board of Chiropractic, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION
5200 Board of Examiners of Nursing Home Administrators
PUBLIC NOTICE

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise their rules and regulations. The proposed revisions to the rules are an attempt to better organize and clearly establish the standards governing licensed nursing home administrators in the State of Delaware.

The Board will hold a public hearing on the proposed rule change on November 9, 2010 at 2:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Michele Urbaniak, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

PUBLIC SERVICE COMMISSION
3001 Regulations Governing Service Supplied by Electrical Corporations
PUBLIC NOTICE

That this docket is reopened to consider further revisions to the Commission's *Rules For Certification And Regulation Of Electric Suppliers*, adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised from time to time (the "Regulations"). The proposed revisions are required by the recent amendments to Sections 1001 and 1014 of Title 26. A copy of the Regulations, showing in red-line the proposed revisions, is appended as Exhibit "A" to this Order.

That, pursuant to 29 **Del.C.** §§10113 and 10115, the Commission Secretary shall transmit to the Registrar of Regulations for publication in the October 2010 *Delaware Register of Regulations* a copy of this Order; a copy of the Regulations, showing the proposed changes; and a copy of a notice attached hereto as Exhibit "B." In addition, the Secretary shall cause the notice attached as Exhibit "B" to be published in *The News Journal* and the *Delaware State News* newspapers on or before September 30, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 31, 2010. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Regulations on December 7, 2010, beginning at 1:00 p.m. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments are received to the proposed revisions to the Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

That at such time as these regulations are approved in an order as final by the Commission, tariffs in compliance with the final regulations as approved by the Commission shall be filed by Delmarva Power & Light Company within 45 days of such a final order.

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

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

PUBLIC SERVICE COMMISSION**3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard****PUBLIC NOTICE**

The Public Service Commission proposes to revise its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," originally adopted by PSC Order No. 6931 (June 6, 2006) and published at 10 DE Reg. 151-57 (the "RPS Rules").

That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order, along with copies of the proposed revised RPS Rules (Exhibit "A") and the Notice of Proposed Rule-Making, attached as Exhibit "B." The Secretary shall also cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on or before October 1, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers and rural electric cooperatives; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 31, 2010. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the RPS Rules on November 18, 2010 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments are received to the proposed revisions to the Regulations, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

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

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