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# Delaware Register of Regulations

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Issue Date: August 1, 2013

Volume 17 - Issue 2, Pages 119 - 258

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Regulations:  
Emergency  
Proposed  
Final

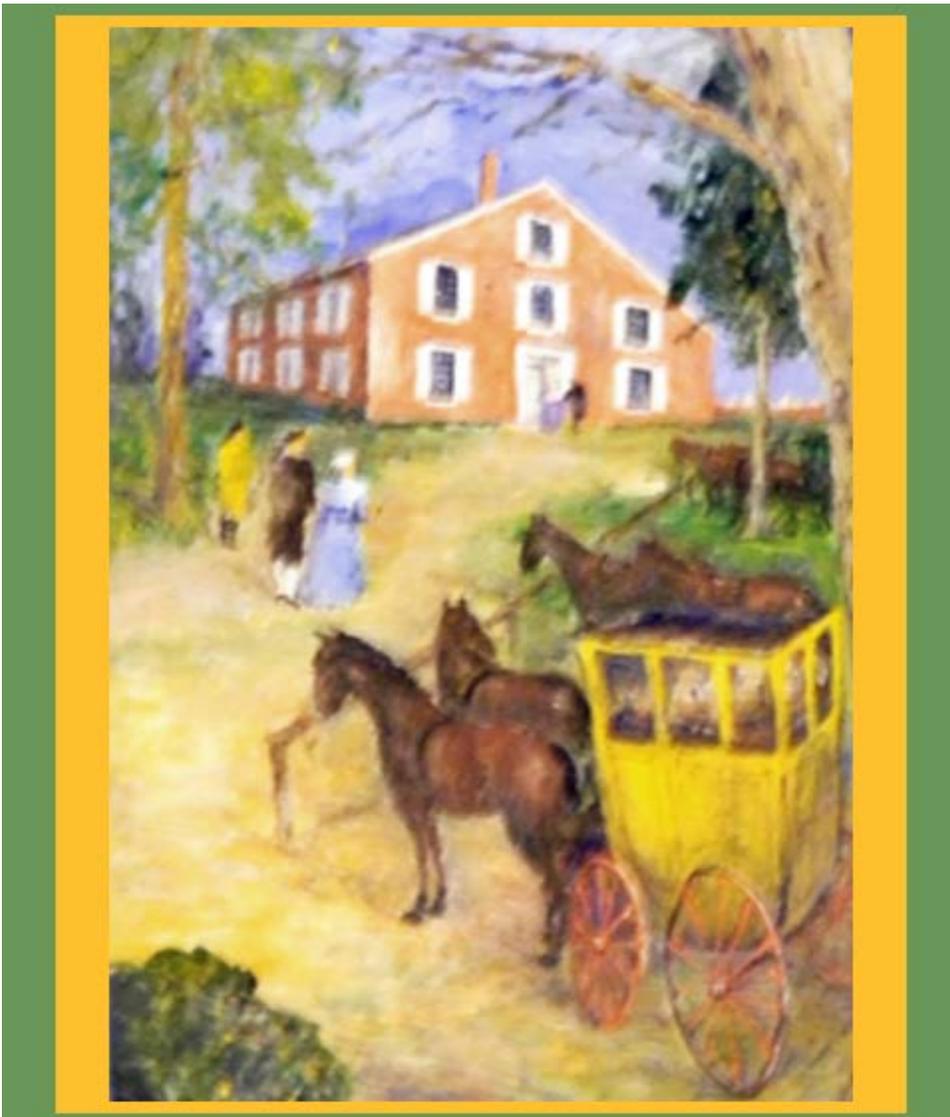
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Appointments

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Calendar of Events &  
Hearing Notices



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



*"Barratt's Chapel,"* by Jack Lewis, 1987

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

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## 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.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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

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

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

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

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

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
September 1	August 15	4:30 p.m.
October 1	September 16	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 16	4:30 p.m.

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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1201 Nutrient Management Certification Regulations.....	17 DE Reg. 28 (Prop.)

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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.

**Emergency Regulations**

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

**§ 10119. Emergency regulations.**

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

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

16 **DE Admin. Code** 14000, 15000, 16000 & 18000

**Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology****PUBLIC NOTICE****NATURE OF THE PROCEEDINGS:**

This emergency regulation is being promulgated to amend the Division of Social Services Manual (DSSM) in preparation for healthcare reform in the State of Delaware. This includes aligning Medicaid and Children's Health Insurance Program (CHIP) eligibility determination rules with the Medicaid eligibility provisions of the Affordable Care Act (ACA), particularly the switch to Modified Adjusted Gross Income (MAGI) methodologies. This emergency regulation adoption is necessary while the proposed rulemaking process is being completed to implement the required provisions of the ACA. Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) finds that federal law for receipt of federal funds requires immediate adoption of these rule revisions to provide Delawareans with the opportunity to apply for and enroll in Delaware's public health benefits programs. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

**NATURE OF PROPOSED AMENDMENT:**

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA extends coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. Beginning January 1, 2014, these provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

The Division of Medicaid and Medical Assistance (DMMA) intends to implement the Modified Adjusted Gross Income (MAGI) provisions of the Affordable Care Act related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) and will begin use of these rules effective October 1, 2013.

### **SUMMARY OF THE PROPOSED AMENDMENT:**

Delaware supports the goals of the Affordable Care Act (ACA) to enhance access to affordable coverage, improve service delivery and control program cost growth.

#### *Description of Rule Changes*

These amendments to the eligibility rules reflect programmatic changes affecting Delaware Medicaid programs as required by the federal Affordable Care Act (ACA). This regulatory action proposes to codify policy and procedural changes to the Medicaid program and Children's Health Insurance Program (CHIP) related to eligibility, enrollment, renewals, public availability of program information, and coordination across Medicaid programs to be consistent with the ACA.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM): DSSM 14000, DSSM 15000, DSSM 16000, and DSSM 18000.

#### **DSSM 14000**

##### *Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 14000*

The proposed changes affect the following general eligibility rules in section 14000 of the Division of Social Services Manual (DSSM).

- 14000 ~~Common Eligibility Information~~ General Eligibility Requirements
- 14100 General Application Information
- 14100.1 ~~Application Filing Date~~ Authorized Representative
- 14100.2 Protected Filing Date
- 14100.3 ~~Face-to-Face Interview Requirement for Some Programs~~ Eligibility Groups
- 14100.4 Disposition of Applications
- 14100.5 ~~Timely Determination of Eligibility~~
- 14100.8 Coordination of Eligibility and Enrollment with Other Insurance Availability Programs
- 14100.8.1 Transfer from Other Insurance Affordability Programs to the State Agency
- 14100.8.2 Evaluation of Eligibility for Other Insurance Affordability Programs
- 14100.8.3 Individuals Undergoing a Medicaid Eligibility Determination on a Basis Other than MAGI
- 14105 Social Security Number
- 14105.1 ~~Exception for Infants to Furnish a Social Security Number~~
- 14110 State Residency
- 14110.1 ~~44110.1 Capable of Indicating Intent to Reside in Delaware and 44110.2 Incapable of Indicating Intent to Reside in Delaware~~ Definitions
- 14110.2 ~~44110.3~~ Placement by State in an Out-of-State Institution
- 14110.3 ~~44110.4~~ Actions which do not Constitute State Placement
- 14110.4 ~~44110.5~~ Lack of Appropriate Facility
- 14110.5 ~~44110.6~~ Criteria Specific to Individuals under Age 21

## EMERGENCY REGULATIONS

14110.6	<del>14110.7</del> <del>Criteria Specific to Individuals Age 21 and Over</del>
14110.7	<del>14110.8</del> <del>Specific Prohibitions and Exceptions</del> and <del>14110.8.1</del> <del>Prohibitions</del> <u>Specific Prohibitions for Denial or Termination of Eligibility</u>
14110.8	<del>14110.8.2</del> <u>Exceptions to General Residency Rules</u>
14800	Verifications <u>of Factors of Eligibility</u>
14810	<del>Continuously Eligible Newborns</del> <u>RESERVED</u>
14820	<del>Reporting</del> Changes in Circumstances

**SECTION 14000 – General Eligibility Requirements:** DMMA proposes to reformat, renumber, rename and reorganize its general eligibility rules. Proposed for adoption are the following specific rule changes in Section 14000 identified and detailed below. The rule name is *italicized* and substantive changes noted.

Section	Description of Changes for DSSM 14000
14000	The name and content of this section details <i>General Eligibility Requirements</i> .
14100	The content of this rule, which details <i>General Application Information</i> , is revised to describe the single streamlined application process to ensure a coordinated eligibility and enrollment system for all insurance affordability programs in accordance with the requirements under the Affordable Care Act. The application processes must be accessible for all individuals and maximize the submission options for individuals being evaluated for eligibility under a modified adjusted gross income (MAGI) category and a non-MAGI category.
14100.1	This content of this rule is moved to 14100. This section is renamed <i>Authorized Representative</i> with new content. This rule details the minimum requirements for authorized representative acting on behalf of individual applicants.
14100.2	The content of this rule, which details the requirements of the <i>Protected Filing Date</i> , is revised to delete language about the receipt of an application in a Division of Social Services (DSS) office or in the mail. The submission modes for an application are described in section 14100, General Application Information. The examples are deleted as they are procedural depictions.
14100.3	Language in this rule, <i>Interview Requirement for Some Eligibility Groups</i> , referring to face-to-face requirement is being updated to add the prohibition of an in-person interview requirement for individuals whose eligibility is based on the financial methodology, modified adjusted gross income (MAGI). The rule is also revised to rephrase the in-person interview requirement for some Long Term Care eligibility determinations.
14100.4	The content of this rule, which details the <i>Disposition of Applications</i> , is revised to delete language about the verification process. The verification process is described in section 14800, Verifications of Factors of Eligibility. New content is added to comply with the requirement for the reinstatement of a withdrawn application in cases where the individual submits an application via the Federally Facilitated Marketplace (FFM).

14100.5	This rule is renamed <i>Determination of Eligibility</i> with new content and moves the existing content to revised section 14100.5.1, <i>Timely Determination of Eligibility</i> . The new content details the requirement to make a modified adjusted gross income (MAGI) based eligibility determination for each applicant and beneficiary.
14100.5.1	This rule, <i>Timely Determination of Eligibility</i> , is renumbered with new content to include time standards for a determination of eligibility when an application is submitted via the Federally Facilitated Marketplace (FFM).
14100.8	The number and content of this rule, <i>Coordination of Eligibility and Enrollment with Other Insurance Affordability Programs</i> , is new and addresses the requirement for a coordinated eligibility and enrollment system for insurance affordability programs in accordance with the Affordable Care Act. The content of this rule provides definitions for “coordinated content”, “electronic account” files, “insurance affordability program”, and “secure electronic interface”.
14100.8.1	The number and content of this rule, <i>Transfer from Other Insurance Affordability Programs to State Agency</i> , is new and addresses the requirement to accept the electronic account for an individual who has been assessed by the Federally Facilitated Marketplace (FFM) as potentially eligible for Medicaid; to promptly complete a determination of eligibility without requiring another application; and, to notify the FFM of the individual’s eligibility or ineligibility.
14100.8.2	The number and content of this rule, <i>Evaluation of Eligibility for Other Insurance Affordability Programs</i> , is new and addresses the requirement to assess eligibility for another insurance affordability program for individuals determined to be ineligible for Medicaid; to transfer the individual’s electronic account to the Federally Facilitated Marketplace (FFM) as appropriate; to notify the individual of the electronic transfer.
14100.8.3	The number and content of this rule, <i>Individuals Undergoing a Medical Eligibility Determination on a Basis other than MAGI</i> , is new and addresses the requirement to assess an individual’s eligibility for another insurance affordability program and to transfer an individual’s electronic account to the Federally Facilitated Marketplace (FFM) while the individual is undergoing a Medicaid eligibility determination on a basis other than modified adjusted gross income (MAGI).
14105	The content of this rule, <i>Social Security Number</i> , which details social security number requirements, is revised to comply with the requirement to verify the Social Security number of an applicant with the Social Security Administration via the Federal Data Services Hub (FDSH) in accordance with the Affordable Care Act.
14105.1	The name and content of this rule, <i>Exceptions to SSN</i> , details the following exceptions to the social security number (SSN) requirements: the individual: is not eligible to receive a SSN; does not have a SSN and may only be issued a SSN for a valid non-work reason; or, refuses to obtain a SSN because of well-established religious objections; or is an infant under age one.
14110	This rule, <i>State Residency</i> , is revised to rephrase the requirement that an individual must be a Delaware resident.

## EMERGENCY REGULATIONS

14110.1	The content of 14110.1 and 14110.2, which details the criteria for being capable/incapable of indicating intent to reside in Delaware, is combined into one rule and is renamed and renumbered accordingly as 14110.1, <i>Definitions</i> . Definitions are provided for “incapable of indicating intent to reside in Delaware” and “institution”.
14110.2	This rule, previously numbered 14110.3, addresses <i>Placement by State in an Out-of-State Institution</i> , is renumbered as 14110.2.
14110.3	This rule, previously numbered 14110.4, details <i>Actions which do not Constitute State Placement</i> , is renumbered as 14110.3.
14110.4	This rule, previously numbered 14110.5, explains <i>Lack of Appropriate Facility</i> and is renumbered 14110.4.
14110.5	This rule (previously numbered 14110.6), which details eligibility criteria specific to <i>Individuals Under Age 21</i> , is renumbered 14110.5 to reflect the above-referenced numbering changes. The content is revised to strike the references to the SSI and AFDC programs and the cross-reference to 45 CFR 233.40(a); to strike the note about an institution which is now included in 14110.1; to align the residency rules for individuals who are emancipated or married with the residency rules for adults; and, to combine and consolidate the residency rules for un-emancipated individuals under age 21.
14110.6	This rule (previously numbered 14110.7), which details eligibility criteria specific to <i>Individuals Age 21 and Over</i> , is renumbered to reflect the above-referenced numbering changes. The content is revised to base the residency for a non-institutionalized adult upon where the individual is living and has intent to reside. The content for an institutionalized individual who became incapable of indicating intent before age 21 and an institutionalized individual who became of indicating intent at or after age 21 are not being changed. The content is revised to base the residency of any other institutionalized individual on the state where the individual is living.
14110.7	This rule, which addresses criteria specific to prohibitions, is renumbered to reflect the above-referenced numbering changes and renamed <i>Specific Prohibitions for Denial or Termination of Eligibility</i> . This rule combines content located in previous sections 14110.8 and 1410.8.1.
14110.8	This rule, which addresses criteria specific exceptions to the general residency policy, is renumbered to reflect the above-referenced numbering changes and renamed to <i>Exception to General Residency Rules</i> .
14800	This rule, which addresses verifications, is renamed <i>Verification of Factors of Eligibility</i> with new content. The content is revised to accept attestation of most of the information needed to determine eligibility and accept such attestation by the individual, an adult in the individual’s household, an authorized representative, or someone acting responsibly for a minor or an incapacitated individual.
14810	This rule, <i>Continuously Eligible Newborns</i> , is deleted and its contents moved to new section 15210. The content of this rule regarding “retroactive coverage” is deleted here and described in current section 14920, <i>Retroactive Coverage</i> . The number 14810 remains in place as “RESERVED”.

14820	The name and content of this rule, which addresses <i>Changes in Circumstances</i> , is revised to require the agency to accept the reporting of changes via the agency’s self-service web site, by telephone, via mail, in person, and through other commonly available electronic means, and to add language about the existing procedures to redetermine eligibility promptly when information about a change in circumstances is received.
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**DSSM 15000**

*Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 15000*

Historically, Medicaid eligibility is based on several factors, including linkage to a specific coverage group and income eligibility, including allowable deductions. The State currently provides coverage to uninsured adults at 100% FPL under the 1115 Demonstration Waiver.

Delaware is taking the option to expand eligibility to adults at 133% of the Federal Poverty Level (FPL).

The proposed changes affect the eligibility rules in section 15000 of the Division of Social Services Manual (DSSM). The rules in DSSM 15000 are stricken in their entirety to consolidate several existing and mandatory groups and place related rules near each other in the organizational scheme to avoid duplication of content. Every effort has been made to ensure that the content and meaning of the rules remain the same. This section is also amended to add a new mandatory eligibility group, former foster care children aged 18 or older and under age 26; and, as an optional expansion, the low-income adult group, aged 19 or older and under age 65.

Modified Adjusted Gross Income (MAGI) and household income are defined in section 36B(d)(2)(A) and (B) of the Internal Revenue Code (IRC). The MAGI-based financial methodology under the Medicaid statute includes certain unique income counting and household composition rules reflected in the Centers for Medicare and Medicaid Services (CMS) regulations at 42 CFR 435.603 and discussed in section III.B. of the preamble to the eligibility final rule published in the Federal Register on March 23, 2012, (77 FR 17144, pages 17150-59; available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf>.)

This proposed section includes the new net income limits for eligibility groups that are subject to the modified adjusted gross income (MAGI) methodology described in Section 16000, *Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI)*. Provisions under the ACA require states to convert current net income limits to MAGI-equivalent income limits.

The following eligibility groups are subject to MAGI-based methodology:

<b>Section</b>	<b>Eligibility Group</b>
15000	Parent/Caretaker Relative Group
15200	Pregnant Woman Group
15300	Children Group
15400	Adult Group
15510	Foster Children Group
15540	Infants Awaiting Adoption Group
15700	Family Planning Group
18000	Delaware Healthy Children Program

The current rules in DSSM 15000 become obsolete with adoption of these proposed changes and as such are not listed in table form here. These rules can be found at: <http://regulations.delaware.gov/AdminCode/>

To accurately reflect the revised content of revised section 15000, ~~AFDC TANF Related Programs~~ is renamed Family and Community Medicaid Eligibility Groups.

**SECTION 15000 - Family and Community Medicaid Eligibility Groups:** The following table presents the assignment of new numbers and shorter names for each rule, section, and subsection in the renamed section 15000, Family and Community Medicaid Eligibility Groups. The rule name is *italicized* and substantive changes noted.

## EMERGENCY REGULATIONS

Section	Description of Revised DSSM 15000
15000	This section describes the eligibility requirements for family and community Medicaid eligibility groups.
15100	This rule describes the <i>Parent/Caretaker Relative Group</i> , formerly section 15120, Low Income Families with Children Under Section 1931.
15100.1	This rule, <i>Definitions</i> , provides definitions for the following words and terms: “caretaker relative” and “dependent child”.
15100.2	This rule describes <i>Parent/Caretaker Relative General Eligibility Requirements</i> .
15100.3	This rule describes <i>Parent/Caretaker Relative Technical Eligibility</i> requirements.
15100.4	This rule describes <i>Parent/Caretaker Relative Financial Eligibility</i> requirements using MAGI-based financial methodologies.
15110	This rule describes the <i>Transitional Group</i> eligibility requirements. In the second paragraph, language referring to the “twelve-month extension period”, which is based on federal authorization/federal funding, is added.
15110.1	This rule describes the <i>Transitional Group General Eligibility Requirements</i>
15110.2	This rule describes the <i>Three out of Six Months Requirement</i> for the Transitional Group.
15110.3	This rule describes eligibility criteria based on <i>Increase in Earned Income or Hours of Employment</i> .
15110.4	This rule describes the <i>Child Living in the Home</i> (as defined in section 15100.1) criteria.
15110.5	This rule describes the criteria for household <i>Composition of a Transitional Group Family Unit</i> .
15110.6	This rule describes the criteria <i>First Month of Transitional Group Eligibility</i> .
15110.7	This rule describes <i>Transitional Group Eligibility during First Six-Month Period</i> .
15110.8	This rule describes <i>Transitional Group Eligibility during Second Six-Month Period</i> .
15110.8.1	This rule, <i>Child Living in the Home</i> , describes the requirement that a dependent child must be living in the home during the second six-month period.
15110.8.2	This rule, <i>Employment of Caretaker Relative</i> , describes “good cause” exceptions to the requirement that a parent/caretaker relative must be employed.
15110.8.3	This rule describes the <i>Limit on Gross Monthly Earned Income</i> .
15110.9	This rule describes the criteria for <i>Twelve-Month Period of Transitional Group Eligibility</i> .
15110.10	This new rule describes the criteria for <i>Four-Month Period of Transitional Group Eligibility</i> .

15120	This rule describes the eligibility requirements for the <i>Prospective Group</i> . Language in this rule referring to child support extension is being eliminated because income from child support is not counted under MAGI-based financial methodologies.
15120.1	This rule describes <i>Prospective Group General Eligibility Requirements</i> .
15120.2	This rule describes <i>Three out of Six Months Requirement</i> for the Prospective Group.
15120.3	This rule describes the <i>Collection of Spousal Support</i> requirement for the Prospective Group.
15120.4	This rule, <i>Child Living in the Home</i> , describes the requirement that a dependent child must be living in the home, as defined in 15100.1.
15120.5	This rule, <i>First Month of Prospective Group Eligibility</i> , describes when prospective group eligibility begins.
15120.6	This rule describes the criteria for household <i>Composition of Prospective Group Family Unit</i> .
15200	This rule describes the eligibility requirements for the <i>Pregnant Woman Group</i> .
15200.1	This new rule, <i>Definitions</i> , provides a definition for “pregnant woman” which mirrors the definition of pregnant woman in the Affordable Care Act.
15200.2	This rule describes <i>Pregnant Woman Group General Eligibility Requirements</i> .
15200.3	This rule describes Pregnant Woman Group <i>Technical Eligibility</i> requirements.
15200.4	This rule describes Pregnant Woman Group <i>Financial Eligibility</i> requirements using MAGI-based financial methodologies.
15200.5	This rule describes <i>Continuous Eligibility</i> throughout the pregnancy and the postpartum period.
15200.6	This rule describes the <i>Postpartum Period</i> which includes a change from 90-days of postpartum coverage to 60-days of postpartum coverage. NOTE: The authorization for 90-day postpartum coverage was in the 1115 Demonstration Waiver.
15210	This rule describes the eligibility requirements for the <i>Deemed Newborn Group</i> .
15210.1	This rule describes <i>Deemed Newborn Group General Eligibility Requirements</i> .
15210.2	This rule describes Deemed Newborn Group <i>Financial Eligibility</i> requirements.
15300	This rule describes the eligibility requirements for the <i>Children Group</i> .
15300.1	This rule describes <i>Children Group General Eligibility Requirements</i> .
15300.2	This rule describes Children Group <i>Technical Eligibility</i> requirements.
15300.3	This rule describes Children Group <i>Financial Eligibility</i> requirements using MAGI-based financial methodologies.
15300.4	This rule describes <i>Mandatory Continuation of Eligibility for Children</i> .

## EMERGENCY REGULATIONS

15400	This new rule describes eligibility requirements for the low-income <i>Adult Group</i> . NOTE: The uninsured adults at 100% of the Federal Poverty Level (FPL) are moving from the 1115 Demonstration Waiver to the Medicaid state plan as the new 133% FPL adult group.
15400.1	This new rule, <i>Definitions</i> , provides a definition for the following term: "minimum essential coverage".
15400.2	This new rule describes <i>Adult Group General Eligibility Requirements</i> .
15400.3	This new rule describes <i>Technical Eligibility</i> for the Adult Group.
15400.4	This new rule describes <i>Financial Eligibility</i> requirements for the Adult Group using MAGI-based financial methodologies.
15500	This rule describes eligibility requirements for the <i>Title IV-E Foster Children Group</i> .
15500.1	This rule describes <i>Title IV-E Foster Children Group General Eligibility Requirements</i> .
15500.2	This rule describes <i>Technical Eligibility</i> requirements for the Title IV-E Foster Children Group.
15500.3	This rule explains that the <i>Eligibility Determination</i> for the Title IV-E Foster Children Group is the responsibility of the Delaware Department of Services for Children, Youth, and their Families (DSCYF).
15510	This rule describes eligibility requirements for the <i>Foster Children Group</i> .
15510.1	This rule describes <i>Foster Children Group General Eligibility Requirements</i> .
15510.2	This rule describes <i>Technical Eligibility</i> requirements for the Foster Children Group.
15510.3	This rule describes the <i>Financial Eligibility</i> requirements for the Foster Children Group using MAGI-based financial methodologies.
15510.4	This rule describes the <i>Effective Date of Coverage</i> for the Foster Children Group.
15520	This rule describes the eligibility requirements for the <i>Adoption Assistance Group</i> .
15520.1	This rule describes the <i>Adoption Assistance Group General Eligibility Requirements</i> .
15520.2	This rule describes the <i>Technical Eligibility</i> requirements for the Adoption Assistance Group.
15520.3	This rule explains that <i>Eligibility Determination</i> for the Title IV-E Foster Children Group is the responsibility of the Delaware Department of Services for Children, Youth, and their Families (DSCYF).
15530	This rule describes the eligibility requirements for the <i>Adoption Subsidy Group</i> .
15530.1	This rule describes the <i>Adoption Subsidy Group General Eligibility Requirements</i> .
15530.2	This rule describes the <i>Technical Eligibility</i> requirements for the Adoption Subsidy Group.

15530.0	This rule, <i>Financial Eligibility</i> , explains that there is no income or resource test for the Adoption Subsidy Group.
15540	This rule describes eligibility requirements for the <i>Infants Awaiting Adoption Group</i> .
15540.1	This rule describes <i>Infants Awaiting Adoption Group General Eligibility Requirements</i> .
15540.2	This rule describes the <i>Technical Eligibility</i> requirements for the Infants Awaiting Adoption Group.
15540.3	This rule describes <i>Financial Eligibility</i> for the Infants Awaiting Adoption Group using MAGI-based financial methodologies.
15540.4	This rule describes the <i>Effective Date of Coverage</i> for the Infants Awaiting Adoption Group.
15540.5	This rule explains that <i>Termination of Eligibility</i> for Infants Awaiting Adoption Group occurs when the infant is placed with the prospective adoptive parents even if the adoption is not final.
15550	This new rule describes the eligibility requirements for the <i>Former Foster Children Group</i> .
15550.1	This new rule describes the <i>Former Foster Children Group General Eligibility Requirements</i> .
15550.2	This new rule describes the <i>Technical Eligibility</i> requirements for the Former Foster Children Group.
15550.3	This new rule, <i>Financial Eligibility</i> , explains that there is no income or resource test for the Former Foster Children Group.
15600	This rule describes the eligibility requirements for the <i>Breast and Cervical Cancer Group</i> .
15600.1	This rule, <i>Definitions</i> , provides a definition for the following <i>Breast and Cervical Cancer Group</i> term: "comprehensive health insurance".
15600.2	This rule describes the <i>Breast and Cervical Cancer Group General Eligibility Requirements</i> .
15600.3	This rule describes the <i>Technical Eligibility</i> requirements for the Breast and Cervical Cancer Group.
15600.4	This rule, <i>Financial Eligibility</i> , explains that there is no income or resource test for the Breast and Cervical Cancer Group.
15600.5	This rule describes the <i>Presumptive Eligibility</i> criteria for the Breast and Cervical Cancer Group.
15600.6	This rule describes the <i>Eligibility Period</i> for the Breast and Cervical Cancer Group.
15600.7	This rule, <i>Benefits</i> , explains that a woman eligible under the Breast and Cervical Cancer Group is entitled to full Medicaid coverage and that coverage is not limited to breast and cervical cancer.
15600.8	This rule describes <i>Termination of Eligibility</i> under the Breast and Cervical Cancer Group.

15700	This rule describes the eligibility requirements for the <i>Family Planning Group</i> .
15700.1	This rule describes the <i>Family Planning Group General Eligibility Requirements</i> .
15700.2	This rule describes the <i>Technical Eligibility</i> requirements for the Family Planning Group.
15700.3	This new rule describes the <i>Financial Eligibility</i> for the Family Planning Group using MAGI-based financial methodologies.
15700.4	This rule, <i>Benefits</i> , explains that Medicaid coverage is limited to family planning and related services only.
15700.5	This rule explains that <i>Termination of Eligibility</i> occurs at the end of the 24-month period.

**DSSM 16000***Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 16000*

The proposed changes affect the eligibility rules in section 16000 of the Division of Social Services Manual (DSSM). The rules in DSSM 16000 are stricken in their entirety to implement the Modified Adjusted Gross Income (MAGI) financial eligibility methodologies. As mandated by the Affordable Care Act (ACA), these new rules provide that eligibility for most children, pregnant women, parents and caretaker relatives, the new low-income adult group, aged 19 or older and under age 65 and, the Delaware Healthy Children Program are determined using MAGI-based financial methodologies. Please note that although authorized under the 1115 Demonstration Waiver, MAGI-based financial methodologies will be used to determine eligibility for the family planning group.

These rule amendments implement a streamlined eligibility determination process required for all insurance affordability programs and the requirement to verify information to establish income using federal and state data matching sources providing real-time Medicaid eligibility decisions.

To accurately reflect the revised content of section 16000, ~~Federal Poverty Level Related Programs~~ is renamed Financial Methodologies – Application of Modified Adjusted Gross Income (MAGI).

The following table presents the current rules in the Federal Poverty Level Related Program section that are obsolete, have been moved or are eliminated. They are identified by their current numbers. The rule name is *italicized* and substantive changes noted.

Section	Current Rules in DSSM 16000
16100	This section, <i>Pregnant Women, Infants and Children</i> , is moved to 15200.
16100.1, 16100.1.1, 16100.1.2, 16100.1.3, 16100.1.4	This rule, <i>Presumptive Eligibility for Pregnant Women</i> , and its subsections, <i>Application Procedures</i> , <i>Initial Eligibility Determination</i> , <i>Final Eligibility Determination and Limitations</i> , are being eliminated because attestation will be accepted for verification of pregnancy and income. Managed care enrollment will occur earlier with better birth outcomes.
16100.1.5	This section, <i>Continuously Eligibility for Newborns</i> , is moved to 15210.
16110	This section, <i>Adult Expansion Population</i> , is redefined and becomes the new eligibility group, Adult Group. See section 15400.
16120	This section, <i>General Assistance (GA) Recipients</i> , becomes the new eligibility group, Adult Group, and is moved to 15400.
16200	This rule, <i>Application Process</i> , is deleted because its content is covered by revised rule 14100.
16200.1	This rule, <i>Protected Filing Date</i> , is deleted because its content is covered by revised rule 14100.2.

16210	This rule, <i>Limitations on Retroactive Coverage</i> , is deleted because its content is covered by current rule 14920.
16220	The content of this rule, <i>Technical Eligibility</i> , is deleted and becomes obsolete as requirements for “technical eligibility” are covered in each eligibility group rule in section 15000.
16220.1	The content of this rule, <i>Waiver of Social Security Number Requirement for Infants</i> , is deleted as this requirement is covered in section 14105.1.
16220.2	The content of this rule, <i>Age Requirement</i> , is deleted as this requirement is covered in each eligibility group rule in section 15000.
16220.2.1	This rule, <i>Adult</i> , is deleted because its content is covered in 15400.3.
16220.2.2	The content of this rule, <i>Minor</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.2.3	The content of this rule, <i>Emancipated Minor</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.3	This rule, <i>Pregnancy</i> , is deleted because its content is covered by revised rule 15200.3.
16220.4	This rule, <i>Uninsured Requirement of Adult Expansion Population</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.4.1	This rule, <i>Definition of Comprehensive Health Insurance</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.5	This rule, <i>Enrollment in Managed Care – Special Requirement for Adult Expansion Population</i> , is deleted and becomes obsolete with adoption of these rule changes.
16230, 16230.1, 16230.1.2, 16230.1.3, 16230.1.4, 16230.2, 16230.3	These rules, <i>Financial Eligibility, Earned Income, Wages, Self-Employment Income, Roomer/Boarder Income, Deductions from Earned Income, Unearned Income and Excluded Income</i> are deleted and become obsolete with the adoption of MAGI-based financial methodologies.
16240, 16240.1, 16240.2, 16240.3	These rules, <i>Composition of Budget Units, Individuals to Include, Individuals to Exclude and Individuals in Separate Budget Units</i> are deleted and become obsolete with the adoption of MAGI-based financial methodologies.
16250	This rule, <i>Eligibility Determination</i> , is deleted and becomes obsolete as requirements for “determining eligibility” are covered in section 14100.5 and in each eligibility group rule in section 15000.
16260	This rule, <i>Effective Date of Coverage for Adult Expansion Population</i> , is deleted and becomes obsolete with adoption of these rule changes.
16270	This rule, <i>Continuous Eligibility of Pregnant Women</i> , is deleted because its content is covered by revised rule 15200.5.
16270.1	This rule, <i>Postpartum</i> , is deleted because its content is covered by revised rule 15200.6.
16280	This rule, <i>Deemed Eligibility of Newborns</i> , is deleted because its content is covered by revised rule 15210.

16280.1	This rule, <i>Continuous Eligibility of Newborns</i> , is deleted because its content is covered by revised rule 15210.2.
16290	This rule, <i>Mandatory Continuation of Coverage for Children</i> , is deleted because its content is covered by revised rules 15300, 15300.2, 15300.3 and 15300.4.
16300	This rule, <i>Redetermination of Eligibility</i> , is deleted because its content is covered by rule 14100.5.
16310	This rule, <i>Termination of Eligibility</i> , is deleted because its content is covered by revised rule 14100.5.
16310.1	This rule, <i>Pregnant Women</i> , is deleted because its content is covered by revised rules 15200.6 and 15700.2.
16310.2	This rule, <i>Children</i> , is deleted because its content is covered by revised rules 15300, 15300.2, 15300.3 and 15300.4.
16310.3	This rule, <i>Adults</i> , is deleted and becomes obsolete with adoption of these rule changes.
16500	This rule, <i>Family Planning</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.1	This rule, <i>Eligibility Requirements</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.2	This rule, <i>Procedures for Determining Eligibility</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.3	This rule, <i>Redetermination of Eligibility</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.4	This rule, <i>Benefits</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.5	This rule, <i>Termination of Eligibility</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.

### **SECTION 16000 – Financial Methodologies – Application of Modified Adjusted Gross Income (MAGI)**

The Affordable Care Act will expand Medicaid eligibility and consolidate existing eligibility categories and will change how financial eligibility is determined for Medicaid. As of January 1, 2014, financial eligibility will be based on modified adjusted gross income (MAGI) methods, as defined in the Internal Revenue Code. The move to MAGI-based methodology will result in some changes from current Medicaid rules related to calculating family size and household income and will largely align Medicaid financial eligibility determinations with the standards used to determine eligibility for advance payments of premium tax credits and cost-sharing reduction through the Federally Facilitated Marketplace (FFM).

Medicaid financial eligibility for most categories will be based on the MAGI definition of household income. Certain categories are exempt from the use of MAGI-based methodology and will continue to have financial eligibility determined based on existing Medicaid rules. Eligibility determinations for categories subject to MAGI-based methodology will no longer be based on the existing deductions from income. The existing deductions from income are replaced with a standard 5% income disregard. An amount equivalent to 5% of the Federal Poverty Level (FPL) for the applicable family size is deducted from household income.

The rules for the revised content of section 16000 are identified and detailed below with their new rule number. The rule name is *italicized* and substantive changes noted.

Section	Description of Revised DSSM 16000
16000	This section implements 1902(e)(14) of the Social Security Act and describes the financial methodology, modified adjusted gross income (MAGI).
16100	This rule, <i>Definitions</i> , provides definitions for the following words and terms used in the context of MAGI-based methodology: "child", "family size", "Federal Poverty Level", "household income", "modified adjusted gross income (MAGI)", "parent", "sibling", and "tax dependent".
16200	This rule describes the <i>Application of MAGI income and household size</i> .
16300	This rule describes <i>MAGI-based Determination of Eligibility</i> .
16400	This rule describes <i>Household Composition</i> .
16400.1	This rule describes the <i>Basic rule for taxpayer not claimed as a tax dependent</i> .
16400.2	This rule describes the <i>Basic rule for tax dependents</i> .
16400.3	<i>Rule for individuals who neither file a tax return nor are claimed as a tax dependent</i> is described in this section.
16400.4	<i>Rule for married couples</i> is described in this section.
16500	This rule describes <i>MAGI-based Income</i> .
16500.1	This rule, <i>Counted Income</i> , describes the income calculated to determine MAGI.
16500.2	This rule, <i>Excluded Income</i> , describes the exceptions to counted income.
16500.3	This rule, <i>Deductions</i> , describes deductions from income allowed in determining MAGI-based income.
16600	This rule, <i>Income Disregard</i> , describes the five-percent disregard in determining MAGI eligibility.
16700	This rule, <i>Budget Period</i> , explains that the budget period is based on current monthly household income and family size.
16800	This rule, <i>Eligibility Determination</i> , explains that household income must not exceed the income standard for the applicable eligibility group to the individual.

**DSSM 18000***Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 18000*

The proposed changes affect the eligibility rules in section 18000 of the Division of Social Services Manual (DSSM). The ACA revises the household composition and income evaluation methodologies related to Children's Health Insurance Program (CHIP) eligibility determinations, as well as determinations for advanced premium tax credits. The rules in DSSM 18000 are stricken in their entirety and revised, reformatted, renumbered and reorganized to implement the Modified Adjusted Gross Income (MAGI) financial methodologies.

The following table presents the current rules in the Delaware Healthy Children Program section that are obsolete, have been moved or are eliminated. They are identified by their current numbers. The rule name is *italicized* and substantive changes noted.

## EMERGENCY REGULATIONS

Section	Current Rules in DSSM 18000
18000	The content of this introductory section has been renumbered, renamed and edited to improve clarity.
18100	This rule, <i>General Eligibility Requirements</i> , is deleted and its content moved to revised section 18200.
18100.1	This rule, <i>Alien Status</i> , is deleted and its content is covered by revised rule 18200.
18100.2	This rule, <i>Limitations on Retroactive Coverage</i> , is eliminated and its content moved to 18200.
18200	This rule, <i>Technical Eligibility</i> , is deleted and its content moved to revised section 18300.
18200.1	This rule, <i>Age Requirement</i> , is deleted and its content moved to revised section 18300.
18200.2	This rule, <i>Uninsured Requirement</i> , is deleted and its content moved to revised section 18300. Language about "comprehensive health insurance within the six months preceding the month of application" is deleted.
18200.2.1	This rule, <i>Definition of Comprehensive Health Insurance</i> , is deleted and its content moved to revised section 18100.
18200.2.2	This rule, <i>Good Cause for Loss of Health Insurance</i> , is deleted because the six-month waiting period for loss of health insurance is being eliminated.
18200.3	This content of this rule, <i>Children of Public Agency Employees</i> , is deleted and becomes obsolete with adoption of these rule changes. See revised section 18300.
18200.4	This rule, <i>Residents of Institutions</i> , is deleted and its content is covered by revised rule 18300.
18200.4.1	This rule, <i>Patient in an Institution for Mental Disease</i> , is deleted and its content is covered by revised rule 18100.
18200.4.2	This rule, <i>Inmate of a Public Institution</i> , is deleted and its content is covered by revised rule 18100.
18300	This rule, <i>Composition of Budget Unit</i> , is deleted and its content is covered by revised 18400.
18400	This rule, <i>Financial Eligibility</i> , is deleted and its content is covered by revised rule 18400.
18500	This rule, <i>Eligibility Determination</i> , is deleted and its content is covered by revised rule 18400.
18600	This rule, <i>Managed Care Enrollment Requirements</i> , is deleted and its content is covered by revised rule 18600.
18700	This rule, <i>Premium Requirements</i> , is deleted and its content is covered by revised rule 18700.
18700.1	This rule, <i>Initial Premium</i> , is deleted and its content is covered by revised rule 18700.

18700.2	This rule, <i>Premiums to Continue Coverage</i> , is deleted and its content is covered by revised rule 18700.
18700.3	This rule, <i>Advance Payment of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18700.4	This rule, <i>Refund of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18700.5	This rule, <i>Cancellation of Coverage for Nonpayment of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18700.6	This rule, <i>Good Cause for Nonpayment of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18800, 18800.2	18800.1, The name and number of this rule, <i>Continuous Eligibility</i> , remains in place. The content is revised to combine the content of current section 18800.1, <i>Termination of Eligibility</i> , and current section 18800.2, <i>Changes in Family Income</i> .
18800.3	This rule, <i>Continuously Eligible Newborns</i> , is deleted because its content is covered by revised rule 15210.2.
18800.4	This rule, <i>Redetermination of Eligibility</i> , is deleted because its content is covered by existing rule 14100.6. NOTE: DSSM 14100.6, Redetermination of Eligibility and DSSM 14100.7, Fair Hearings will be revised in future rulemakings.

The rules for the revised content of section 18000 are identified and detailed in the table below with their new rule number. The rule name is *italicized* and substantive changes noted.

**SECTION 18000 – Delaware Healthy Children Program**

<b>Section</b>	<b>Description of Revised DSSM 18000</b>
18000	This updated section describes the statutory authority for Delaware’s CHIP program, the Delaware Healthy Children Program.
18100	This rule, <i>Definitions</i> , provides definitions for the following words and terms: “comprehensive health insurance”, “inmate of a public institution” and “institution for mental disease”.
18200	This rule, <i>General Eligibility Requirements</i> , explains that an individual must meet the general eligibility requirements described in revised section 14000.
18300	This rule describes <i>Technical Eligibility</i> requirements for the Delaware Health Children Program.
18400	This rule describes <i>Financial Eligibility</i> requirements for the Delaware Health Children Program.
18500	The requirements for <i>Protection of Former Medicaid Children</i> are described in this new section.
18600	This rule describes <i>Managed Care Enrollment Requirements</i> .
18700	This rule describes <i>Premium Requirements</i> .
18800	This rule describes <i>Continuous Eligibility</i> .

DMMA intends to request authority to begin use of these rules beginning October 1, 2013.

While the March 23, 2012 rule reflects final policies, CMS has stated that it will issue additional regulatory and subregulatory guidance on related policy and operational issues.

Eligibility rules and State plan amendments (SPAs) will be further amended to implement other ACA provisions. DMMA will work with CMS to identify and formulate these rules and SPAs.

This proposed regulation is also published concurrently herein under "Emergency Regulations".

#### Fiscal Impact

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356
Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

This emergency regulation is also published concurrently herein under "Proposed Regulations" to allow for public comment.

#### FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to codify policy and procedural changes to the Medicaid and CHIP programs related to eligibility, enrollment, and renewals to implement the provisions of the ACA. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

**THEREFORE, IT IS ORDERED**, to assure compliance with relevant Federal Medicaid rules, that the proposed revisions to the Division of Social Services Manual (DSSM) aligning Medicaid and Children's Health Insurance Program (CHIP) eligibility determination rules with the Medicaid eligibility provisions of the Affordable Care Act (ACA), particularly the switch to Modified Adjusted Gross Income (MAGI) methodologies be adopted on an emergency basis without prior notice or hearing.

Rita M. Landgraf, Secretary, DHSS

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

**Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology**

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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.

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## DELAWARE RIVER BASIN COMMISSION

### PUBLIC NOTICE

**Summary:** The Delaware River Basin Commission ("DRBC" or "Commission") will hold a **public hearing** to receive comments on proposed amendments to the Commission's *Water Quality Regulations*, *Water Code* and *Comprehensive Plan* to revise the water quality criteria for polychlorinated biphenyls ("PCBs") in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects. The Commission will simultaneously solicit comment on a draft implementation strategy to support achievement of the criteria.

**Dates:** The **public hearing** will be held starting at 1:00 P.M. on Tuesday, September 10, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, September 20, 2013. Additional information regarding the procedures for the hearing and comments is provided below.

**Addresses:** The **public hearing** will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

**Oral Testimony and Written Comments:** Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows:

- If by email, to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us);
- if by fax, to Commission Secretary at 609-883-9522;
- if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360;
- and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Comments also may be delivered by hand at any time during the Commission's regular office hours (Mon. through Fri., 8:30 a.m. through 5:00 p.m. except on national holidays) until the close of the comment period at 5:00 p.m. on Friday, September 20. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "PCB Rulemaking" in the subject line.

**For Further Information:** The basis and background document and the draft Implementation Strategy are available on the DRBC website, DRBC.net. A May 10, 2012 PowerPoint presentation that illustrates PCB loading reductions achieved through the implementation of the Commission's PMP Rule is also posted on the website. For further information, please contact Commission Secretary Pamela M. Bush, 609-883-9500 ext. 203.

**Supplementary Information**

*Re-Proposal.* A notice of proposed rulemaking to amend the current PCB criteria and to invite comment on an implementation plan was published in the Delaware Register of Regulations on August 1, 2009 (13 DE Reg. 154 – 158 (08/01/2009)), as well as in the Federal Register on August 14, 2009 (74 FR 41100). The Commission deferred action on the proposal, however, pending the refinement of implementation strategies for point sources. Today, the uniform criterion of 16 picograms per liter is re-proposed, and a draft implementation strategy that has been revised for point sources is simultaneously published for comment.

*Current Criteria.* The human health water quality criteria for PCBs currently in effect in Zones 2 through 5 of the Delaware Estuary were established by the Commission in 1996 (see 61 FR 58047 and incorporation by reference at 18 C.F.R. Part 410). The 1996 criterion applicable to the lower portion of Zone 5 was extended to Zone 6, Delaware Bay, in 2010, effective the following year (see 76 FR 16285). The development of these PCB criteria predated the collection of site-specific bioaccumulation data for the Estuary and Bay and site-specific fish-consumption data for Zones 2 through 4 that are relevant to the development of human health water quality criteria. They are also inconsistent with current guidance issued by the U.S. Environmental Protection Agency (“EPA”) for the development of such criteria, and they vary by water quality zone, adding undue complexity to application of the criteria in these tidal waters.

*Development of New Criteria.* By Resolution No. 2003-11 on March 19, 2003 the Commission directed the executive director to initiate rulemaking on a proposal to revise the Commission’s water quality criteria for PCBs for the protection of human health from carcinogenic effects to reflect site-specific data on fish consumption, site-specific bioaccumulation factors, and current EPA guidance on development of human health criteria. Amendment of the PCB criteria was delayed, however, pending ongoing work by the Commission’s Toxics Advisory Committee (“TAC”) to develop the new criterion and a simultaneous initiative by the Commission and diverse stakeholders to develop an implementation plan. The TAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers and environmental organizations that advises the Commission on technical matters relating to the control of toxic contaminants in shared waters of the Basin.

Rigorously applying the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current EPA methodology for the development of human health criteria for toxic pollutants (see EPA-822-B-00-004, October 2000), the TAC in July 2005 completed development of a revised PCB water quality criterion for the protection of human health from carcinogenic effects for the Delaware Estuary and Bay, recommending adoption of a uniform criterion of 16 picograms per liter for Water Quality Management Zones 2 through 6. By Resolution No. 2005-19 on December 7, 2005, the Commission again directed the executive director to conduct rulemaking, specifically to replace the existing criteria for PCBs with the uniform criterion of 16 picograms per liter.

Over the course of the next three-and-a-half years, the Commission continued to work with co-regulators on an implementation strategy for point and non-point sources to accompany the proposed uniform criterion. A notice of proposed rulemaking to amend the current PCB criteria and to invite comment on an implementation plan was issued in August 2009 (see 74 FR 41100). The Commission deferred action on the proposal, however, pending the refinement of implementation strategies for point sources. The updated, uniform criterion of 16 picograms per liter is now re-proposed, and a draft implementation strategy that has been revised for point sources is simultaneously published for comment.

*Water Quality Impairment for PCBs.* Because high levels of PCBs have resulted in state-issued fish consumption advisories for certain species caught in the Estuary and Bay, these waters are listed by the bordering states as impaired under Section 303(d) of the federal Clean Water Act (“CWA”), and a total maximum daily load (“TMDL”) is required to be established for them. A TMDL expresses the maximum amount of a pollutant that a water body can receive and still attain water quality standards. Once the TMDL is calculated, it is allocated to all sources in the watershed – point and nonpoint. In order to ensure the attainment and maintenance of water quality standards, a source must not discharge a load in excess of its allocated share of the TMDL.

The EPA established TMDLs for PCBs on behalf of the states in December of 2003 for the Delaware Estuary and in December of 2006 for the Delaware Bay (“Stage 1 TMDLs”). Upon adoption of revised human health water quality criteria for PCBs in the Delaware Estuary and Bay, it is anticipated that EPA will establish new TMDLs (“Stage 2 TMDLs”) corresponding to the updated criteria.

*Implementing PCB Load Reductions.* To initiate PCB reductions, by Resolution No. 2005-9 in May 2005, the Commission amended its Water Quality Regulations (“WQR”) to establish a requirement for PCB Pollutant Minimization Plans (“PMPs”) (see Section 4.30.9 of the WQR, incorporated by reference at 18 C.F.R. Part 410)

("the PMP Rule"). In accordance with the PMP Rule the largest point source dischargers of PCBs to the Delaware Estuary and Bay undertook the development and implementation of PMPs, including a variety of track-down and load reduction strategies. Ambient and effluent data collected between 2005 and 2011 show that their efforts over the past 12 years (and in some cases longer) have substantially reduced point source PCB loadings to the Estuary and Bay. However, because PCBs persist in the environment, including in soils that drain to municipal and industrial discharge facilities, most dischargers will require more time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations.

The draft document entitled *Implementation Strategy for Polychlorinated Biphenyls for Zones 2 - 6 of the Delaware River Estuary* ("Implementation Strategy") builds on the approach embodied by the PMP Rule. Among other things, it attempts to better integrate PMP requirements with the National Pollutant Discharge Elimination System (NPDES) permit program administered by the Estuary states of Delaware, New Jersey and Pennsylvania pursuant to the CWA.

Notably, the 2003 Delaware Estuary TMDL report projected that "due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades." (EPA 2003, Executive Summary, p. xiii). Adoption of an updated, uniform criterion for the Delaware Estuary and Bay and implementation of the criterion by means of the proposed strategy will not alter this prognosis. However, the proposed criterion and Implementation Strategy are intended to align the Commission's water quality criteria with current science and to ensure that increasingly protective pollutant levels in fish and ambient water are achieved at an aggressive pace until the protected use – fishable waters – is restored.

*Subjects on Which Comment is Expressly Solicited.* Public comment is solicited on all aspects of the proposed rule. These include but are not limited to the assumptions applied in developing the criterion, as set forth in a basis and background document that is available on the DRBC website, DRBC.net. Comment on the proposed Implementation Strategy for the new criterion, also posted on the website, is simultaneously requested.

Dated: July 5, 2013  
PAMELA M. BUSH, ESQ.  
Commission Secretary

#### Text of proposed amendments:

It is proposed to amend the Comprehensive Plan, Article 3 of the Water Quality Regulations (WQR) and Article 3 of the Water Code (WC) as set forth below. Editor's instructions are denoted by underscore thus. Added text is denoted by boldface **thus**.

Amend Table 6 of Section 3.30 of Article 3 of the WQR and WC as follows:

For the parameter "PCBs (Total)", in the column headed "Freshwater Objectives (ug/l): Fish & Water Ingestion," remove the number "0.0000444" and insert "**0.000016**"; in the column headed "Freshwater Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000448" and insert "**0.000016**"; and in the column headed "Marine Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000079" and insert "**0.000016**".

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## DEPARTMENT OF AGRICULTURE DELAWARE FOREST SERVICE

Statutory Authority: 3 Delaware Code, Section 1101 (3 Del.C. §1011)  
3 DE Admin. Code 401

### PUBLIC NOTICE

### 401 Forest Service Erosion and Sedimentation Regulations Background

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or

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unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

## Public Comment Period

The Department of Agriculture will take written comments on the proposed Regulations from August 1, 2013, to August 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations  
2320 South DuPont Highway, Dover, DE 19901  
(302) 698-4500  
daniel.shortridge@state.de.us

## 401 Forest Service Erosion and Sedimentation Regulations

### *(Break in Continuity of Sections)*

#### 5.0 Regulatory Procedures

### *(Break in Continuity Within Section)*

- 5.5 The Delaware Forest Service will approve, approve with modifications, or deny all applications within ~~five (5)~~ three (3) working days of their receipt. In cases where denial of the application is issued, the Delaware Forest Service will provide technical assistance to the landowner, buyer and/or operator to develop modification(s) necessary to bring the application into compliance.

### *(Break in Continuity of Sections)*

#### 7.0 Procedures and Penalties

### *(Break in Continuity Within Section)*

#### 7.3 Informal Field Visits

### *(Break in Continuity Within Section)*

- 7.3.4 If no WQ problem exists, the landowner and operator are notified on site, if possible, and in writing within ~~five (5)~~ three (3) business days following the inspection.

### *(Break in Continuity of Sections)*

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

**401 Forest Service Erosion and Sedimentation Regulations**

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## PESTICIDES SECTION

Statutory Authority: 3 Delaware Code, Sections 1216-1223 (3 Del.C. §§1216-1223)  
3 DE Admin. Code 601

## PUBLIC NOTICE

**601 Delaware Pesticide Rules and Regulations**

## Background

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or

unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

## Public Comment Period

The Department of Agriculture will take written comments on the proposed Regulations from August 1, 2013, to August 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shorridge, Chief of Community Relations  
2320 South DuPont Highway, Dover, DE 19901  
(302) 698-4500  
daniel.shorridge@state.de.us

## 601 Delaware Pesticide Rules and Regulations (Break in Continuity of Sections)

### 4.0 Registration

#### (Break in Continuity Within Sections)

#### 4.2 Employee Registration

- 4.2.1 Licensees shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within ~~30~~ 45 days after employment. The fee for registering an employee shall be \$25.00. However, the employee registration fee shall be waived if the employee is certified under the LAW.
- 4.2.2 Licensees shall be responsible for insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. This training shall be completed within ~~30~~ 45 days of employment and before the employees are registered with the Department.
- 4.2.2.1 The Department will not approve any training program that does not include the following subjects:
- 4.2.2.1.1 Pesticide Law and Regulations;
  - 4.2.2.1.2 Label comprehension;
  - 4.2.2.1.3 Safety and emergency procedures;
  - 4.2.2.1.4 Proper pesticide handling, storage and disposal;
  - 4.2.2.1.5 Pest identification and control procedures;
  - 4.2.2.1.6 Pesticide application techniques;
  - 4.2.2.1.7 Environmental and health concerns; and
  - 4.2.2.1.8 Integrated pest management principles
- 4.2.2.2 Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.
- 4.2.3 The name and address of employees who have been trained according to this Section shall be provided to the Department by the licensee. The Department shall issue a registration card bearing the employee's name and the licensee's name, address and license number. The employee registration shall become null and void upon termination of employment with the licensee. This card is to be carried by the employee during working hours and is to be displayed upon request.
- 4.2.4 The licensee shall provide the Department written notification of a registered employee's employment termination within ~~30~~ 45 days of the effective date of termination.

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- 4.2.5 The Department, after due notice, and opportunity for a hearing may deny, suspend or revoke an employee registration, if the Department finds the registered employee has committed any violations of the LAW.
- 4.2.6 The Department, after due notice and opportunity for a hearing, may deny an application for employee registration, if the applicant has committed any violations under the LAW.

*(Break in Continuity of Sections)*

## 8.0 Standards For Certification Of Commercial Applicators

### 8.1 Determination Of Competency

*(Break in Continuity Within Sections)*

- 8.1.5 Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicant may apply for one (1) reexamination scheduled at least ~~thirty (30)~~ forty-five (45) days after their initial examination. No person shall be permitted to be examined in the same category or subcategory more than twice in any twelve (12) month period.

*(Break in Continuity of Sections)*

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

**601 Delaware Pesticide Rules and Regulations**

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 501

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

**501 State Content Standards**

### 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 501 State Content Standards to adopt the Next Generation Science Standards (NGSS) as the content standards for science. The NGSS were developed in partnership with 26 states, including Delaware. The timeline for full implementation, including aligned curriculum and assessments, will be developed by the Department. The Department recognizes the need to update the science standards, but is also cognizant of the processes and work needed to ensure the professional development, alignment of curriculum and assessments are done in a structured manner.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2013** to Susan Haberstroh, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment adopts the Next Generation Science Standards (NGSS) as the science standards. These updated standards were developed in partnership with 25 other states. The curriculum, assessments and

professional development related to this adoption should result in improved student achievements as measured against these new standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment adopts the Next Generation Science Standards (NGSS) as the science standards, and does not specifically address that all students receive an equitable education. The adoption is for the entire public education system resulting in the expectation that all students will receive an equitable education related to this amendment.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment adopts the Next Generation Science Standards (NGSS) as the science standards, and does not change any requirements around health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendment adopts the Next Generation Science Standards (NGSS) as the science standards, and does not change any requirements related to students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendment adopts the Next Generation Science Standards (NGSS) as the science standards and does not change the authority and flexibility at the local board and school levels.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendment does not place any unnecessary reporting and administrative requirements on decision makers. The change in science standards does change what will be required to be taught and assessed.

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 entity responsible for the decision making and 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 amended regulation is consistent with 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 will be costs to the state and local school boards for compliance; however, the anticipated implementation timeline will be designed to mitigate any costs.

## **501 State Content Standards**

### **1.0 Instructional Programs**

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, World Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Skilled and Technical Sciences Content Standards and the Family and Consumer Sciences Content Standards.

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.1.1 Effective with the 2010-2011 school year, Delaware Content Standards in English language arts and mathematics shall be comprised of the Common Core Standards developed in partnership with the National Governors Association and the Council of Chief State School Officers.

1.1.1.2 Effective with the 2013-2014 school year, the Next Generation Science Standards (NGSS) developed in partnership with twenty-six (26) states, including Delaware, shall be adopted as the Delaware Content Standards in science. For purposes of this subsection,

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“adopted” shall mean to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.

- 1.1.2 Integration of the content standards shall be provided for within and across the curricula.
- 1.1.3 Instructional materials and curricula content shall be kept current and consistent with provisions of 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards and 14 **DE Admin. Code** 503 Instructional Program Requirements.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 851

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

#### 851 K to 12 Comprehensive Health Education Program

#### 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** 851 K to 12 Comprehensive Health Education Program to require cardiopulmonary resuscitation (CPR) awareness and use of an automated external defibrillator (AED) and awareness of organ/tissue donating in high school. It would be at the discretion of the district or charter school the high school grade level each would be provided and the curricular materials to be used. The addition of these curricular areas would commence in schools no later than the 2014-2015 school year. The Department will work with the districts and schools to identify potential curricular resources that may be used.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2013** to Susan Haberstroh, Department of Education at 401 Federal Street, Suite 2, Dover, Delaware 19904. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments add to the program material to be covered during the high school health program.
2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not change whether all students have an equitable education. The expectation is that all students will have access to these new program requirements.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not affect all students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not affect 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 amendments preserve the necessary authority and flexibility of decision making at the local board and school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do not place any unnecessary reporting or administrative requirements upon the decision makers. The amendments do require additional program material to be covered in the high school.
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 with the amendments.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The Department is cognizant of the program change and is providing time for the integration into the health program.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The Department does not anticipate additional costs to the State or to the local school boards for compliance.

### **851 K to 12 Comprehensive Health Education Program**

#### **1.0 Program Requirements**

- 1.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:
  - 1.1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level. Each charter school shall identify a person to coordinate the program for the charter school.
  - 1.1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the Consolidated Application Planning Committee.
  - 1.1.3 The use of the state content standards for health education for grades K to 12 to address the core concepts: tobacco, alcohol and other drugs, injury prevention and safety, nutrition and physical activity, family life and sexuality, personal health and wellness, mental health and community and environmental health with minimum hours of instruction as follows:
    - 1.1.3.1 In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug and alcohol education.
    - 1.1.3.2 In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education.
    - 1.1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug and alcohol education must be provided in the other grade.
    - 1.1.3.4 In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. In addition, no less than two (2) hours of this 1/2 credit course shall cover cardiopulmonary resuscitation (CPR) awareness, use of an Automated External Defibrillator (AED) as well as a component on the life saving and life enhancing effects of organ and tissue donation. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students. CPR awareness, use of an AED and organ/tissue donation awareness shall be integrated into each high school Health Education Program no later than the 2014-2015 school year.
  - 1.1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high risk behaviors.
  - 1.1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through Family and Consumer Science courses.

- 1.1.6 Inclusion of research-based fire safety education in grades kindergarten through grade 6.
- 1.1.7 Inclusion of an evidence-based tobacco, alcohol, drug and interpersonal violence prevention program.
- 1.1.8 The use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.
- 1.1.9 A description of the method(s) used to implement and evaluate the effectiveness of the program ~~which shall be reported in the District/School Success Plan~~ upon request of the Department.

## OFFICE OF THE SECRETARY

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

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

#### PUBLIC NOTICE

#### 917 Accelerated Academic Programs

#### A. Type of Regulatory Action Required

New Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to add a new regulation to be identified as 14 DE Admin. Code 917 Accelerated Academic Programs. Senate Bill 27 of the 147<sup>th</sup> General Assembly created a new program of start-up grants to public schools for the purpose of initiating new programs to offer specialized educational services to students who are capable of performing accelerated academic work, or renewing existing programs of the same description whose funding sources are expiring. Senate Bill 27 expressly requires the Department of Education to promulgate regulations creating an explicit formula for evaluating proposals for these grants, and this proposed regulation is promulgated to comply with that statutory requirement. The criteria outlined in this proposed regulation are those required by Senate Bill 27.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **September 5, 2013** to Susan Haberstroh, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve student achievement as measured against state achievement standards, especially for students capable of performing accelerated coursework.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is intended to ensure that all students receive an equitable education.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not address the health and safety of students.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation is intended to ensure all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation preserves the necessary authority and flexibility of decision making at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place any additional mandates upon local boards and schools. Application for a grant under this regulation is voluntary.

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 new 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 new regulation is consistent with 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? The funding for these grants is provided by the State and subject to the availability of funding as provided by the General Assembly.

### **917 Accelerated Academic Programs**

#### **1.0 Definitions**

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

“Academic work” means work in the areas of writing, reading, science, math, or engineering, or work in other areas (including history, social studies and visual and/or performing arts) that specifically incorporates one of those academic areas.

“Accelerated academic work” shall have the same meaning as “advanced academic work.”

“Advanced academic work” means academic work that would meet the content standard dictated by 14 DE Admin. Code 501 or its successor at least one semester earlier than anticipated by the standard. For example, a course targeted at having students meet content standards in academic work by the middle of their school year which they otherwise would not be expected to meet until the end of their school year would consist of advanced academic work.

#### **2.0 Applications for Accelerated Academic Program Grants**

- 2.1 By August 1 of each calendar year, the Department of Education shall determine if the state has allocated funds for grants under this regulation and 14 Del.C. §3113. If such grants have been allocated, the Department shall ensure that applications for such grants are delivered by September 1 of the same calendar year to each public school in the state.
- 2.2 Applications for grants under this regulation shall be due by October 1 of each calendar year, and decisions regarding grants shall be made by November 1 of each calendar year.
- 2.3 All decisions regarding the awarding of grants shall be made according the numeric scoring rubric outlined in Section 3.0 of this regulation, and the scoring sheets used to determine grantees shall be preserved and considered public information.
- 2.4 Grants under this regulation and 14 Del.C. §3113 shall be for a one-year period. Absent some affirmative showing by the Department as to why a grant awarded under this regulation should not be renewed, it will be renewed for a second year to a recipient that complies with the conditions of the grant. Grants under this regulation shall not be awarded for more than two years.
- 2.5 Only programs that offer educational services specifically targeted at students who are capable of performing advanced academic work may receive grants under this regulation and 14 Del.C. §3113. Proposed programs may include programming in areas that are not academic work as defined by this regulation, including visual and performing arts, provided that the stated purpose of the program and effect of its curriculum is improved student performance in academic work.
- 2.6 Only programs that propose a method for assessing the impact of the proposed program on participating students’ academic growth may receive grants under this regulation and 14 Del.C. §3113.
- 2.7 Proposed programs that do not meet the requirements of subsection 2.5 and 2.6 cannot receive grant funds and will not be scored under the rubric established by Section 3.0.

2.8 Grants under this regulation and 14 Del.C. §3113 are limited to new programs and existing programs whose funding sources are expiring. Grants shall not be awarded to supplant existing funds for current programs. Any proposal for an existing program to receive funds must specify the existing funding source for the program, specify the reason that the existing funding source is expiring, and explain why the proposed grant would not be supplanting existing funds.

### **3.0 Scoring of Applications**

All applications for grants under this regulation shall receive a specific numerical score from the panel of persons assigned by the Department to rate the applications. Those programs receiving the top possible scores shall receive grants to the extent that funds are available. Scoring shall be done on formal score sheets.

3.1 Quality of proposed curriculum (zero to 20 points). What is the proposed curriculum for the program, from what sources is the curriculum derived, and how likely is it to enable students to learn the advanced academic work that is the subject of the proposed program? A proposed program that is not based upon a reliable source and is not likely to enable students to learn the advanced academic work that is the subject of the proposed program should receive zero points under this measure. A proposed program that is based upon a reliable source but does not adequately explain how that curriculum will enable students to learn the advanced academic work that is the subject of the proposed program should receive five points under this measure. A proposed program that is based upon a reliable source and adequately explains how that curriculum will enable students to learn the advanced academic work that is the subject of the proposed program should receive fifteen points under this measure. The Department shall have the discretion to award up to five additional points for proposed curriculums that have exceptional features which the Department can articulate.

3.2 Qualifications of instructors (zero to 20 points). Who are the persons who will teach the proposed curriculum, what is their experience generally and specifically with respect to teaching material similar to the proposed curriculum, are there any objective criteria that qualify them as outstanding instructors? A proposed program that offers no specific information regarding the instructors who will teach students in the proposed program should receive zero points under this measure. A proposed program that demonstrates subject matter expertise among the teachers for the proposed program that is directly aligned with the subject matter of the program should receive ten points under this measure. A proposed program that demonstrates both subject matter expertise and additional indicia of high teacher quality, which may include licensures, certifications, recommendations, accreditations, or other equivalent criteria, should receive fifteen points under this measure. The Department shall have the discretion to award up to five additional points for proposed programs that will use instructors who demonstrate extraordinary credentials or qualifications which the Department can articulate.

3.3 Integration with existing school programs (zero to 8 points). How will this new program be integrated with the existing programming at the school, both to ensure that the program is logistically feasible and to ensure that participating students are able to participate in other school activities outside the program? A proposed program that does not demonstrate how it will be integrated with existing school programming should receive zero points under this measure. A proposed program that demonstrates that it is logistically coordinated with other activities occurring within the school where the program is sited should receive four points under this measure. A proposed program that demonstrates that its curriculum is integrated in a substantive way with other school activities which are available to participating students should receive eight points under this measure.

3.4 Sustainability (zero to 8 points). Has the applicant described how it will sustain the proposed program after the requested grant expires in one to two years, either by showing how the program can be sustained with existing state and local funds or by identifying the funding sources that will be used to sustain the program? A program that does not identify how it will be sustained should receive zero points under this measure. A program that provides information and/or commitments making it likely that the program can be sustained after expiration of the requested grant should receive four points under this measure. A program that provides information and/or commitments providing a high level of certainty that the program can be sustained after expiration of the requested grant should receive eight points under this measure.

- 3.5 Transportation issues (zero to 8 points). Is the program offered during the normal school day where bus transportation is available, and if not, how does the program propose to provide transportation to participating students? If the program is not offered during the normal school day and does not propose to provide transportation to participating students, the program should receive zero points under this measure. If the program is either (a) offered during the normal school day or (b) specifies how it will provide transportation for participating students, the program should receive eight points under this measure.
- 3.6 Incorporation of successful program designs (zero to 8 points). Does the proposed program incorporate elements of existing programs targeted at students capable of doing advanced academic work, or adequately explain why it has considered existing models and decided to use a different model? If the proposed program does not incorporate elements of any existing programs and fails to indicate why it has examined existing programs targeted at students capable of doing advanced academic work and elected to choose a different design, the proposed program should receive zero points under this measure. If the proposed program does not incorporate elements of any existing programs but satisfactorily explains its decision, after examining existing programs, to not incorporate elements of those programs, the proposed program should receive four points under this measure. If the proposed program specifically incorporates elements of existing programs, it should receive eight points under this measure.
- 3.7 Efficiency of spending (zero to 6 points). Does the proposed program target the maximum possible percentage of its funds on activities that will directly impact students? Professional development and program assessment are considered activities that will directly impact students. If the proposed program does not address the degree to which the funds it requests will be dedicated to activities that directly impact students, the program should receive zero points under this measure. If the proposed program demonstrates that more than 85% of the requested funds will be dedicated to activities that directly impact students (which include professional development, purchase of books and supplies, and program assessment), the proposed program should receive three points under this measure. If the proposed program demonstrates that more than 95% of the requested funds will be dedicated to activities that directly impact students (which include professional development, purchase of books and supplies, and program assessment), the proposed program should receive six points under this measure.
- 3.8 Encouragement of participation by students from diverse backgrounds (zero to 8 points). Does the proposed program encourage students from diverse backgrounds, including students with disabilities, low-income students, African-American students, and ESL students, to participate in the program provided that they are capable of doing advanced academic work? To the extent that accommodations are needed for students with disabilities who are otherwise capable of doing advanced academic work, does the proposed program provide for such accommodations? A proposed program that does not specifically describe any efforts that will be made to encourage participation by students from diverse backgrounds should receive zero points under this measure. A proposed program that proposes credible steps that will be taken to encourage participation by students from diverse backgrounds should receive four points under this measure. A proposed program that proposes credible steps that will be taken to encourage participation by students from diverse backgrounds and demonstrates advance consideration of accommodating otherwise-qualified students with disabilities should receive eight points under this measure.
- 3.9 Identification of eligible students (zero to 8 points). Does the proposed program have a transparent, reliable, fair, and robust method to determine which students are eligible to participate? A proposed program that does not specify the means by which students will be determined to be eligible for the program should receive zero points under this measure. A proposed program that specifies a single, reliable method for determining eligibility for the proposed program, tied specifically to the proposed curriculum, should receive four points under this measure. A proposed program that demonstrates multiple reliable methods for determining eligibility for the proposed program, tied specifically to the proposed curriculum, should receive eight points under this measure.
- 3.10 Program evaluation (zero to 6 points). How reliable and accurate is the program evaluation component of the applicant's proposal? A program that proposes a single, reliable method for

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# PROPOSED REGULATIONS

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evaluating the success of the proposed program after students have completed the program should receive three points under this measure. A proposed program that proposes multiple reliable methods for evaluating the success of the proposed program after students have completed the program should receive six points under this measure.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE/ DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

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

### PUBLIC NOTICE

#### 1915(c) Home and Community-Based Services Waiver

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) / Division of Developmental Disabilities Services (DDDS) gives notice to the public that a 1915(c) Home and Community-Based Services Waiver (HCBS) waiver amendment has been submitted to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*.

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 August 31, 2013.

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

### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA)/Division of Developmental Disabilities Services (DDDS) has submitted a 1915(c) Home and Community-Based Services (HCBS) Waiver amendment to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, Group Supported Employment.

#### Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

#### Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The waiver to provide home and community-based services to developmentally disabled adults was developed by the Division of Developmental Disabilities Services (DDDS) and the Division of Social Services (DSS) in 1982,

received approval from the Center for Medicare and Medicaid Services (CMS), and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS/DD) shall not exceed the cost of care of the Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

DDDS is the agency that has primary responsibility for administering the HCBS/DD waiver as well as providing, or contracting for the provision of, most of the services. Providers of Pre-Vocational Training, Supported Employment and Residential Habilitation services are certified by DDDS and contract directly with the Delaware Medical Assistance Program (DMAP).

### **Summary of Proposal**

Currently, the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community Based Services (HCBS) Medicaid waiver allows consumers to receive Supported Employment with a one-to-one staffing ratio. Many states also allow Supported Employment to be provided in a group to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site staff.

DDDS proposes to amend its 1915(c) HCBS waiver to offer consumers the opportunity to choose a group setting as opposed to receiving a one-on-one service. What was formerly called "Supported Employment" under the waiver will now be called "Individual Supported Employment" and the service definition will be amended so that the language is consistent with the new definition for Group Supported Employment. A new reimbursement methodology for Group Supported Employment is proposed herein for which public notice of the change must be made in accordance with 42 CFR 447.205.

Furthermore, DDDS proposes to change the unit of reimbursement for Day Habilitation, Pre-vocational Service and Supported Employment under the waiver from an hourly billable unit to a fifteen (15) minute billable unit. This change is necessary in order to align the billing units with the increments in which services are actually delivered.

Finally, DDDS proposes to change the frequency of the case manager contact schedule to review the plan of care with the consumer from a monthly face to face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan by the case manager without the consumer and four face to face visits per year to review the plan with the consumer/family/guardian, of which two must be in the consumer's home.

Pursuant to the notice requirements of 42 CFR 447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS), hereby affords the public notice of its intention to solicit public comment on the Department's intent to request a 1915(c) Home and Community-Based Services (HCBS) (HCBS) Waiver amendment to add a new core service, Group Supported Employment. If implemented as proposed, the waiver amendment will have the following effect on October 1, 2013:

- 1) Defining and adding "Group Supported Employment" as a waiver service in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 2) Adding reimbursement methodology for Group Supported Employment;
- 3) Adding provider qualifications for Group Supported Employment (the qualifications will be the same as for Individual Supported Employment);
- 4) Revising and renaming the service definition of "Supported Employment" to "Individual Supported Employment" in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 5) Clarifying that staff to consumer ratio must be one to one;
- 6) Changing the currently hourly billable unit for Day Habilitation, Supported Employment and Pre-vocational service to fifteen (15) minutes; and,
- 7) Revising the frequency of the case manager review of the plan of care from a monthly face-to-face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan with documentation and four (4) face-to-face visits per year to review the plan with the consumer / family/guardian.

### *Draft of Proposed Waiver Amendment Application*

A draft of Delaware's waiver amendment application is currently available for review on the Division of

Developmental Disabilities Services website at <http://www.dhss.delaware.gov/ddds/>

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

**Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

Supported Employment in a group setting is being offered as an alternative for individuals who are most likely already receiving Supported Employment Services or Pre-Vocational Services, so there is no expected additional cost.

**DMMA PUBLIC NOTICE #13-24 ATTACHMENT**

DDDS Waiver Amendment  
Public Notice Attachment

Current Definition of Supported Employment

Supported employment services consists of intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who, because of their disabilities, need supports, to perform in a regular work setting. Supported employment may include assisting the participant to locate a job or develop a job on behalf of the participant. Supported employment is conducted in a variety of settings, particularly work sites where persons without disabilities are employed. Supported employment includes activities needed to sustain paid work by participants, including supervision and training. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by participants receiving waiver services as a result of their disabilities but does not include payment for the supervisory activities rendered as a normal part of the business setting.

Documentation is maintained in the file of each participant receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.).

Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

1. Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
2. Payments that are passed through to users of supported employment programs; or
3. Payments for training that is not directly related to an individual's supported employment program.

Transportation is not included in supported employment services.

Proposed Definition of Individual Supported Employment (new)

Individual Supported Employment Services are provided to participants, at a one to one staff to consumer ratio, who because of their disabilities, need ongoing support to obtain and maintain an individual job in competitive or customized employment, or self-employment position, in an integrated work setting in the general workforce for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce, in a job that meets personal and career goals in order to promote community inclusion.

Supported individual employment may also include support to establish or maintain self-employment, including home-based self-employment. Supported employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, on the job employment supports, social skills training, benefits support, training and planning, transportation, asset development and career advancement services,

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implementation of assistive technology, and other workforce support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

## Provider Qualifications Group Supported Employment

The Provider Qualifications for Group Supported Employment will be the same as are currently approved in the DDS waiver for Supported Employment.

## Proposed Definition of Group Supported Employment (new)

Supported Employment Small Group Employment Support are services and training activities provided in regular business, industry, and community settings for groups of two (2) to eight (8) workers with disabilities. Examples include mobile crews and other employment work groups. Small group employment support must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. The outcome of this service is sustained paid employment and work experience leading to further career development and individual integrated community based employment for which an individual is compensated, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Supported employment small group employment supports may be a combination of the following services: vocation/job related discovery or assessment, person center employment planning, job placement, job development, social skills training, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits supports, training and planning, transportation and career advancements services.

Other workplace support services may include services not specifically related to job skill training that enable the waiver participant to be successful in integrating in to the job setting.

## Proposed Reimbursement Methodology for Group Supported Employment (new)

The payment rate for Group Supported Employment will be based on the rate for Individual Supported Employment, which is a one-to-one staff-to-consumer ratio. The payment rate for the addition of each consumer in the group shall be computed by dividing the payment rate for Individual Supported Employment by the number of participants in the group (up to a maximum of 8) and applying a gross up factor to account for additional incremental costs related to the provision of group supported employment that would not have been captured in the base Individual Supported Employment rate. Group Supported Employment will be paid in 15 minute billable units.

## Case Manager Review of the Plan of Care - Appendix D: Participant-Centered Planning and Service Delivery, D-1: Service Plan Development

### Current Waiver Language

The DDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis. This monitoring includes a direct interview with the participant to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

### Proposed Waiver Language

The DDS State Case Manager monitors the contracted agency's implementation of the participant's plan of care (the ELP) on a monthly basis. In addition to the monthly paper monitoring, this includes a direct interview with the participant four times per year, two of which must be in the participant's home, to review the plan with the participant and his/her family or guardian to assess their satisfaction with the services provided and to review how the participant is progressing with the attainment of his/her state priority outcomes. In effect, the participant has a known advocate with the state, which maintains contractual authority over the provider agency.

### Current Performance Measure D-d-2

The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care on at least a monthly basis/the number of

participants whose services and supports were reviewed by OQM.)

Proposed Performance Measure D-d-2

The percentage of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least four times per year, of which two visits must be in the participant's home. (The number of participants whose State Case Managers have visited with them for the purpose of reviewing the Plan of Care at least every four months (two of which must be in the home)/the number of participants whose services and supports were reviewed by OQM.)

**DMMA PUBLIC NOTICE #13-24**

In accordance with the public notice requirements of 42 CFR 447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), Division of Developmental Disabilities Services (DDDS) gives notice that it has submitted a waiver application to the Centers for Medicare and Medicaid Services (CMS) to request an amendment to add a new core service, Group Supported Employment.

Currently, the Division of Developmental Disabilities Services (DDDS) 1915(c) Home and Community Based Services (HCBS) Medicaid waiver allows consumers to receive Supported Employment with a one-to-one staffing ratio. Many states also allow Supported Employment to be provided in a group to individuals who work as a team, generally at a single worksite of a host community business or industry, with initial training, supervision, and ongoing support provided by on-site staff.

DDDS proposes to amend its 1915(c) HCBS waiver to offer consumers the opportunity to choose a group setting as opposed to receiving a one-on-one service. What was formerly called "Supported Employment" under the waiver will now be called "Individual Supported Employment" and the service definition will be amended so that the language is consistent with the new definition for Group Supported Employment. A new reimbursement methodology for Group Supported Employment is proposed herein for which public notice of the change must be made in accordance with 42 CFR 447.205.

Furthermore, DDDS proposes to change the unit of reimbursement for Day Habilitation, Pre-vocational Service and Supported Employment under the waiver from an hourly billable unit to a fifteen (15) minute billable unit. This change is necessary in order to align the billing units with the increments in which services are actually delivered.

Finally, DDDS proposes to change the frequency of the case manager contact schedule to review the plan of care with the consumer from a monthly face to face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan by the case manager without the consumer and four face to face visits per year to review the plan with the consumer/family/guardian, of which two must be in the consumer's home.

Pursuant to the notice requirements of 42 CFR 447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS), hereby affords the public notice of its intention to solicit public comment on the Department's intent to request a 1915(c) Home and Community-Based Services (HCBS) (HCBS) Waiver amendment to add a new core service, Group Supported Employment. If implemented as proposed, the waiver amendment will have the following effect on October 1, 2013:

- 1) Defining and adding "Group Supported Employment" as a waiver service in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 2) Adding reimbursement methodology for Group Supported Employment;
- 3) Adding provider qualifications for Group Supported Employment (the qualifications will be the same as for Individual Supported Employment);
- 4) Revising and renaming the service definition of "Supported Employment" to "Individual Supported Employment" in accordance with CMS Medicaid Waiver Technical Guide Version 3.5;
- 5) Clarifying that staff to consumer ratio must be one to one;
- 6) Changing the currently hourly billable unit for Day Habilitation, Supported Employment and Pre-vocational service to fifteen (15) minutes; and,
- 7) Revising the frequency of the case manager review of the plan of care from a monthly face-to-face visit with the consumer and their family or guardian to review the plan to a monthly "paper" review of the plan with documentation and four (4) face-to-face visits per year to review the plan with the consumer / family/guardian.

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See attached “DDDS Waiver Amendment Public Notice Attachment” for proposed definition of “individual supported employment”; proposed definition of “group supported employment”; proposed reimbursement methodology for group supported employment; revised waiver language for case manager review of the plan of care; and, proposed performance measures.

## **Draft of Proposed Waiver Amendment Application**

A draft of Delaware’s waiver amendment application is currently available for review on the Division of Developmental Disabilities Services web address:

<http://www.dhss.delaware.gov/ddds/medicaidwaiver.html>

Hard copies are available for review at the following three (3) locations from 8:00 a.m. – 4:30 p.m.:

- 1) Division of Developmental Disabilities Services  
Fox Run Office  
2540 Wrangle Hill Road  
2<sup>nd</sup> Floor  
Bear, Delaware 19701  
(Visitor parking is designated by signs and is close to the entrance of the building)
  
- 2) Division of Developmental Disabilities Services  
Woodbrook Professional Center,  
1056 South Governor’s Avenue  
Suite 101  
Dover, Delaware 19904  
(Visitor parking is designated by signs and is close to the entrance of the building)
  
- 3) Division of Developmental Disabilities Services  
Community Services Administrative Office - Stockley Center  
101 Boyd Boulevard  
26351 Patriots Way  
Georgetown, Delaware 19947  
(Visitor parking is designated by signs and is close to the entrance of the building)

The proposed draft will also be presented to the Medicaid Medical Care Advisory Committee meeting on September 11, 2013 at the following time and location:

9:00 a.m. - 11:00 a.m.

Easter Seals

61 Corporate Circle

New Castle, Delaware 19720

(Visitor parking is designated by signs and is close to the entrance of the building)

In addition, three (3) public hearings were held on July 8<sup>th</sup>, July 9<sup>th</sup> and July 11<sup>th</sup> to allow for a presentation of the proposed waiver amendment by agency staff and public input.

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

## **Public Comments**

The public is invited to review and comment on the State’s proposed waiver amendment request. Written

comments may be sent 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 via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on August 31, 2013. Please identify in the subject line: Proposed Division of Developmental Disabilities Services 1915(c) Home and Community-Based Services Waiver Amendment, Group Supported Employment.

**Fiscal Impact Statement**

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver. Supported Employment in a group setting is being offered as an alternative for individuals who are most likely already receiving Supported Employment or Pre-Vocational Service, so there is no expected additional cost.

Stephen M. Groff, Director, Division of Medicaid and Medical Assistance  
July 9, 2013

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 14000, 15000, 16000 & 18000

**PUBLIC NOTICE****Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, 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 implementation of the Modified Adjusted Gross Income (MAGI) methodology provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) under the Affordable Care Act.

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 August 31, 2013.

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

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that the Division of Medicaid and Medical Assistance (DMMA) is proposing to amend rules in Division of Social Services Manual (DSSM) to implement the Modified Adjusted Gross Income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program). The Patient Protection and Affordable Care Act of 2010 mandates significant changes in how eligibility is determined for medical assistance programs for children, parent/caretaker relatives and pregnant women beginning January 1, 2014.

**Statutory Authority**

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations (Family Planning)*
- 42 CFR 435.4, *Definitions and use of terms*
- 42 CFR 435.110, *Parents and other caretaker relatives*

- 42 CFR 435.112, *Families with Medicaid eligibility extended because of increased earnings or hours of employment*
- 42 CFR 435.115, *Families with Medicaid eligibility extended because of increased collection of spousal support*
- 42 CFR 435.116, *Pregnant women*
- 42 CFR 435.117, *Deemed newborn children*
- 42 CFR 435.118, *Infants and children under age 19*
- 42 CFR 435.119, *Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL*
- 42 CFR 435.145, *Children with adoption assistance, foster care, or guardianship care under title IV-E*
- 42 CFR 435.150, *Former foster care children*
- 42 CFR 435.170, *Pregnant women eligible for extended or continuous eligibility*
- 42 CFR 435.172, *Continuous eligibility for hospitalized children*
- 42 CFR 435.213, *Optional eligibility for individuals needing treatment for breast or cervical cancer*
- 42 CFR 435.222, *Optional eligibility for reasonable classifications of individuals under age 21*
- 42 CFR 435.227, *Optional eligibility for individuals under age 21 who are under State adoption assistance agreements*
- 42 CFR 435.403, *State residence*
- 42 CFR 435.603, *Application of modified adjusted gross income (MAGI)*
- 42 CFR 435.907, *Application*
- 42 CFR 435.908, *Assistance with application and renewal*
- 42 CFR 435.910, *Use of Social Security number*
- 42 CFR 435.911, *Determination of eligibility*
- 42 CFR 435.912, *Timely determination of eligibility*
- 42 CFR 435.923, *Authorized Representatives*
- 42 CFR 435.940, *Basis and scope*
- 42 CFR 435.945, *General requirements*
- 42 CFR 435.948, *Verifying financial information*
- 42 CFR 435.949, *Verification of information through an electronic service*
- 42 CFR 435.952, *Use of information and requests of additional information from individuals*
- 42 CFR 435.956, *Verification of other non-financial information*
- 42 CFR 435.1200, *Medicaid agency responsibilities for a coordinated eligibility and enrollment process with other insurance affordability programs*
- 42 CFR 457.10, *Definitions and use of terms*
- 42 CFR 457.80, *Current State child health insurance coverage and coordination*
- 42 CFR 457.110, *Enrollment assistance and information requirements*
- 42 CFR 457.300, *Basis, scope, and applicability*
- 42 CFR 457.301, *Definitions and use of terms*
- 42 CFR 457.310, *Targeted low-income child*
- 42 CFR 457.315, *Application of modified adjusted gross income and household definition*
- 42 CFR 457.320, *Other eligibility standards*
- 42 CFR 457.330, *Application*
- 42 CFR 457.340, *Application for and enrollment in CHIP*
- 42 CFR 457.348, *Determinations of Children's Health Insurance Program eligibility by other insurance affordability programs*
- 42 CFR 457.350, *Eligibility screening and enrollment in other insurance affordability programs*
- 42 CFR 457.370, *Alignment with Exchange initial open enrollment period*
- 42 CFR 457.380, *Eligibility verification*

## **Background**

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA extends coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

To provide coordinated guidance on the eligibility determination process for insurance affordability programs and health plan coverage through an exchange, the Centers for Medicare and Medicaid Services (CMS) published the proposed rule "Medicaid Program: Eligibility Changes Under the Affordable Care Act of 2010" on August 17, 2011, in conjunction with the Department of Health and Human Services' (HHS) proposed rule on exchange eligibility determinations and the Internal Revenue Services' "Health insurance premium tax credit" proposed rule. CMS issued a final/interim final rule incorporating significant changes on March 23, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf>.

The March rule's intent is to align Medicaid and CHIP eligibility determinations for parents/caretaker relatives, other adults, pregnant women, and children with determinations for health plan coverage by the exchanges and determinations for advance payments of premium tax credits and cost-sharing subsidies by the IRS. The rule modifies the Code of Federal Regulations to enable an entity to determine eligibility for all insurance affordability programs using a single streamlined application, IRS income rules, and a shared electronic verification service.

The most significant actions of the March 2012 rule on Medicaid eligibility changes as of January 1, 2014 include:

- Creates eligibility groups for adults ages 19 through 64 who are not otherwise eligible for Medicaid as a parent/caretaker relative of a dependent child, pregnant woman, disabled individual, or Medicare beneficiary.
- Establishes a minimum eligibility level of 133 percent of the FPL (effectively 138 percent of the FPL when a 5 percent disregard is taking into account) for individuals in these categories.
- Prohibits states from considering assets in determining eligibility for individuals in these categories.
- Requires that states use the IRS' methodology for determining Modified Adjusted Gross Income (MAGI), with certain exceptions, to determine household composition, family size, and income eligibility, thereby eliminating most income deductions and disregards.
- Provides increased federal financial participation for "newly eligible" adults who would not have been covered under the state's policies and procedures in effect as of December 2009.
- Mandates that all states use a standard, streamlined application form developed by HHS for all insurance affordability programs, or an approved alternative that is no more burdensome, and accept it via an internet Web site and other electronic means, telephone, mail, and in person. (States may use a multi-benefit program application in addition to the standard application form.)
- Mandates that states make available Web sites in accessible, plain language with information regarding application for and receipt of Medicaid and other insurance affordability program benefits.
- Requires states to rely to the extent possible upon electronic data, including a shared electronic service (or federal data hub) established by HHS, to verify financial and non-financial information.
- Establishes that Medicaid agencies must accept and transfer via secure electronic interface eligibility information, including eligibility determinations, from other insurance affordability programs.
- Permits entities other than the Medicaid or welfare agency, including nongovernmental exchange entities, to determine eligibility.

In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today: Aged, Blind or Disabled individuals; Foster Care children; and SSI cash recipients.

## Summary of Proposal

Delaware supports the goals of the Affordable Care Act (ACA) to enhance access to affordable coverage,

improve service delivery and control program cost growth.

## *Description of Rule Changes*

These amendments to the eligibility rules reflect programmatic changes affecting Delaware Medicaid programs as required by the federal Affordable Care Act (ACA). This regulatory action proposes to codify policy and procedural changes to the Medicaid program and Children's Health Insurance Program (CHIP) related to eligibility, enrollment, renewals, public availability of program information, and coordination across Medicaid programs to be consistent with the ACA.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM): DSSM 14000, DSSM 15000, DSSM 16000, and DSSM 18000.

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

**Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology**

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 9705 (p)(1) (16 Del.C. §9705 (p)(1))  
16 DE Admin. Code 4303

### PUBLIC NOTICE

#### 4303 Delaware Early Defibrillation Program

Office of Emergency Medical Services & Preparedness Section, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the State of Delaware Regulations Governing Automatic External Defibrillation. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

These regulations have been amended to:

- Streamline the registration process by eliminating several redundant steps.
- Eliminated the tri-annual re-registration requirement.
- Eliminate several requirements previously delineated for agencies possessing AEDs due to the advances made in AED technology.
- Eliminate the requirement to follow a specific set of written protocols.
- Specify that AED users are to follow the current American Heart Association/Emergency Cardiac Care Committee guidelines.

On August 1, 2013, the Department plans to publish proposed amendments to the Delaware Regulations Governing Automatic External Defibrillation and hold them out for public comment per Delaware law. Copies of the proposed regulations are available for review in the August 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Emergency Medical Services at (302) 223-1720.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Tuesday, September 3, 2013 at:

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

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

**4303 Delaware Early Defibrillation Program**

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**DEPARTMENT OF INSURANCE**

**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311, 2533 and 29 Delaware Code, Chapter 101  
(18 **Del.C.** §§311 and 2533 and 29 **Del.C.** Ch. 101)  
18 **DE Admin. Code** 802

**PUBLIC NOTICE**

**802 Delaware Workplace Safety Regulation**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 802 relating to Delaware Workplace Safety [Formerly Regulation 65]. The docket number for this proposed amended Regulation is 2226.

The proposed amended Regulation supports the Delaware Workplace Safety Program (18 **Del.C.** §2533) and follows new requirements passed under House Bill 175, for the 147<sup>th</sup> General Assembly, enacted on June 27, 2013. The Delaware Code authority for the change is 18 **Del.C.** §311 and §2533; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended Regulation. The proposed amended Regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, August 30, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-5566  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

**802 Delaware Workplace Safety Regulation**

**1.0 Authority**

This regulation is adopted and promulgated by the Insurance Commissioner pursuant to 18 **Del.C.** §344 311, §2533 and promulgated under 29 **Del.C.** Ch.101.

**2.0 Purpose**

The purpose of this regulation is to:

- 2.1 Enhance the health and safety of workers in the State of Delaware.
- 2.2 Provide lower insurance premiums for qualifying employers who currently pay \$3,161 or more of annual Delaware Workers' Compensation premiums.

- 2.3 Establish both testing and inspection procedures to determine an employer's qualification for a premium credit under the Workplace Safety Program.

### 3.0 Scope

All employers who comply with the criteria set forth in this regulation are eligible for participation in the Workplace Safety Program. Only Delaware work sites will be eligible for this program and safety credit applies to only Delaware premiums in multi-state policies.

### 4.0 Eligibility and Premium Credit

An employer is eligible for the Safety Program if its annual premium is \$3,161 or more. Workplace Safety credit eligibility is based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau will test each employer by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium size.

### 5.0 Notice of Employer Eligibility

Employers meeting the premium requirement will be notified by the Delaware Department of Insurance seven months in advance of their policy renewal date. This notification will include(s) instructions for qualifying for a safe workplace credit.

### 6.0 Eligibility Period

The Department will notify the employer of eligibility, and inform the employer that he must elect at least five (5) months in advance of the date of policy renewal to participate in the Safety Program. Failure to notify the Department within this time period of an intent to renew participation may preclude the employer's participation in the Program for the next year. Election to participate shall commence by contacting the Delaware Department of Insurance.

### 7.0 Inspections and Cost

- 7.1 There are three options for Workplace Safety Inspections to be conducted. To obtain the Workplace Safety Program premium discount, all inspection procedures and inspection reports must be in compliance with the requirements and standards set forth by this regulation. In the event of multiple applications, only the first application received will be accepted.

All inspections must include a thorough review of the following items, which are to be maintained by the employer and made available for the inspector to review:

- Any workplace injuries that have occurred within the three years prior to the application.
- The outcome of those injuries, including specific details of the injuries.
- Confirmation of Modification Duty Availability Reports for all injuries, as applicable.
- Any findings or fines relating to workplace safety resulting from the injuries.
- A list of possible assignments for injured workers.
- Any safety measures taken by the employer as a result of the injuries.

NOTE: A recommendation by the inspector based on the above information as to whether or not the employer should receive the workplace safety credit must also be included.

- 7.1.1 All inspections shall be made by a representative from an independent safety expert company under contract to the Insurance Department will follow this procedure. The Insurance Department will notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of two inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance will notify the Bureau when an employer successfully completes each scheduled and/or nonscheduled inspection. Failure to pass a scheduled inspection will result in a denial of an employer's eligibility to participate in the Workplace Safety Program. However, the employer, after

# PROPOSED REGULATIONS

failing an inspection can request another inspection, after successful completion of which will make them eligible for participation in the Workplace Safety Program.

7.1.2 The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

7.2 The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance. Insurers issuing workers compensation insurance in Delaware may submit their own workplace safety inspection procedures for review by the Insurance Department. The Insurance Department shall permit the insurer's inspection to satisfy the inspection requirements of paragraph 7.1.1 if the inspection procedures are at least as rigorous as those employed by the Insurance Department and its independent safety experts. An insurer's safety inspection procedures must be re-certified on a bi-annual basis to maintain status as an acceptable substitute.

7.3 If the annual workers compensation insurance premium is between \$3,161 and \$10,000 for an eligible employer, the employer may opt to undergo an inspection conducted by a qualified inspector from the Delaware Department of Labor at a cost determined by the Department of Labor but not to exceed the maximum fee as per the inspection charges maintained by the Insurance Department.

## 8.0 Renewals and Eligibility

An employer must apply for the Workplace Safety Program each year. For each year after the initial qualification, the inspection requirement will consist of one unannounced inspection. The Department will maintain a list of inspection charges for inspections conducted pursuant to paragraph 7.1, which will be sent to interested parties upon request.

## 9.0 Premium Size Ranges and Corresponding Credits

Safety credits will be granted according to the following formula:

$$20\% \times [1.0000 - C]$$

where "C" is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the Safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the Safety credit, "C" will be set at 0.050. Safety credit packages will be rounded to the nearest whole percent.

## 10.0 Effect upon Mutual Rates and Schedule Rating Credits

10.1 Workers' Compensation manual rates shall be adjusted because of implementation of this program. A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the Workplace Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.

10.2 Schedule rating plan credits given to policyholders for "competitive" reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the Workplace Safety Program premium credit.

10.3 A Merit Rating Plan shall be implemented which will provide incentives for employers paying less than \$3,161 of annual Delaware Workers' Compensation premiums to maintain safe workplaces.

## 11.0 Effective Date

~~The amended portions of this regulation shall become effective on July 1, 1999. This Regulation shall become effective 10 days after being published as a final regulation.~~

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 2610 and 29 Delaware Code, Chapter 101 (18 Del.C. §§311 and 2610 and 29 Del.C. Ch. 101)

### PUBLIC NOTICE

#### 804 Workers Compensation Ratepayer Advocate

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 804 relating to Workers Compensation Ratepayer Advocate. The docket number for this proposed regulation is 2226.

The purpose of this regulation is to implement the provisions of 18 Del.C. §§2610 (e), (f), and (g) (enacted June 27, 2013, by HB 175) regarding the Ratepayer Advocate who shall represent the interests of Delaware workers compensation insurance rate-payers in connection with the filing of an application by an advisory organization with the Commissioner relating to rates or prospective loss costs. The Delaware Code authority is 18 Del.C. §311 and §2610 and 29 Del.C. Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, August 30, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West  
Delaware Department of Insurance  
841 Silver Lake Boulevard  
Dover, DE 19904  
Phone: (302) 674-7379  
Fax: (302) 739-5566  
Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

#### 804 Workers Compensation Ratepayer Advocate

##### **1.0 Authority**

This regulation is adopted and promulgated in accordance with 18 Del.C. §311 and §2610 and promulgated under 29 Del.C. Ch. 101.

##### **2.0 Definitions**

“Advisory Organization” means the advisory organization designated by the Department pursuant to 18 Del.C. §2607.

“Attorney General” means the Attorney General of this State, or the Attorney General's designee.

“Commissioner” means the Insurance Commissioner of this State, or the Commissioner's designee.

“Department” means the Insurance Department of this State.

“Ratepayer Advocate” means a member of the Delaware bar appointed pursuant to 18 Del.C. §2610(e) and this regulation.

##### **3.0 Purpose**

The purpose of this regulation is to implement the provisions of 18 Del.C. §§2610 (e), (f), and (g) regarding the

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# PROPOSED REGULATIONS

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Ratepayer Advocate who shall represent the interests of Delaware workers compensation rate-payers in connection with the filing of any application by the Advisory Organization with the Commissioner relating to rates or prospective loss costs.

## **4.0 Filings By The Advisory Organization Related To Rates Or Prospective Loss Costs**

At least forty-five (45) days in advance of filing an application with the Commissioner relating to rates or prospective loss costs, the Advisory Organization shall advise the Commissioner in writing of the Advisory Organization's intention to make such a filing and the anticipated date of the filing.

## **5.0 Selection of the Ratepayer Advocate.**

- 5.1 Within ten (10) days after receiving the notice prescribed in Section 4.1 hereof, the Commissioner, in consultation with the Attorney General, shall prepare and post on the Department of Insurance website a Request for Proposals ("RFP") for a Ratepayer Advocate with a closing date no more than fourteen (14) days after the date of initial posting of the RFP on the Department of Insurance website. The Commissioner may post the RFP in such other places as the Commissioner deems appropriate. The Attorney General may post the RFP on the Attorney General's website or in such other places as the Attorney General deems appropriate.
- 5.2 The RFP shall prescribe the professional qualifications that are necessary or desirable for persons seeking to serve as the Ratepayer Advocate. At a minimum, such qualifications shall include: (a) admission to the Delaware bar; (b) significant experience in matters related to insurance company regulation; (c) preferably experience in insurance rate proceedings; and (d) compliance with the Delaware Lawyers Rules of Professional Conduct guidelines on conflicts of interest. The RFP may specify other qualifications for the Ratepayer Advocate and contain such other provisions as the Commissioner, in consultation with the Attorney General, deems appropriate. In addition to any website or other postings of the RFP, the Commissioner and the Attorney General may encourage Delaware lawyers or law firms with offices in Delaware to submit timely responses to the RFP.
- 5.3 The Commissioner shall invite the Attorney General to participate in the review of any responses to the RFP, in interviews of applicants, and in negotiation of terms of retention of the Ratepayer Advocate. The Commissioner, with the consent of the Attorney General, shall enter into an agreement retaining the Ratepayer Advocate no less than 30 days prior to any hearing on the Advisory Organization's filing relating to rates or prospective loss costs.
- 5.4 The cost of the Ratepayer Advocate shall be borne by the Advisory Organization. The Ratepayer Advocate shall be entitled to charge a reasonable hourly rate acceptable to the Commissioner and the Attorney General, and to be reimbursed for reasonable expenses. Regardless of the approved hourly rate, the total amount charged by the Ratepayer Advocate for fees and expenses, during the course of the application (including any amendments thereto) and any appeals, shall be limited to \$40,000. Such amount may be adjusted by the Attorney General for inflation on an annual basis. The Ratepayer Advocate shall submit a statement or statements for fees and expenses to the Commissioner, who shall forward each statement to the Advisory Organization for payment.

## **6.0 Representation Of The Ratepayers By The Ratepayer Advocate**

- 6.1 The Ratepayer Advocate shall represent the interests of Delaware workers compensation rate-payers during the Commissioner's consideration of the application.
- 6.2 The Ratepayer Advocate shall select an actuary to work with him or her in review of the filing and to testify in any rate-setting proceeding. The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis ("Report"). The Ratepayer Advocate shall provide a complete copy of the Report to the Commissioner, the Advisory Organization and any other party upon receipt of the Report from the actuary.

- 6.2.1 The cost of this actuary shall be borne by the Advisory Organization. The actuary shall submit a statement or statements for fees and expenses to the Commissioner, who shall forward each statement to the Advisory Organization for payment.
- 6.3 Applications by the Advisory Organization relating to rates or prospective loss costs shall be subject to the case decision provisions of Title 29, Chapter 101, Subchapter III, of the Delaware Code, and the Ratepayer Advocate shall be considered a party to the case.
- 6.4 The Advisory Organization shall provide to the Commissioner and the Ratepayer Advocate such documents and information as they may reasonably request in order to allow them to properly participate in review of the filing and in any hearing thereon. The Advisory Organization shall provide such information to the Commissioner and the Ratepayer Advocate within seven days of any request. The Advisory Organization shall provide such information in electronic format or by providing a link to information available on the internet, unless doing so would cause the Advisory Organization to incur undue expense.
- 6.5 If the Commissioner or any other party retains an actuary who prepares a written report regarding the filing, the Commissioner or other party shall provide a complete copy of the written report upon receipt from the actuary to all other parties.
- 6.6 Pursuant to HB 175, Section 8 (enacted June 27, 2013) (the "Act"), the Advisory Organization "shall, within 90 days after June 27, 2013 [i.e.no later than September 25, 2013], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act or Senate Bill 238 of the 146<sup>th</sup> General Assembly, as well as any regulatory changes proposed by the Health Care Advisory Panel within 60 days of the enactment of this Act. Any order issued by the Department of Insurance relating to said filing shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section." In furtherance of this directive, and to assist the Commissioner in formulating the findings required by the Act, any report prepared by an actuary retained by the Department of Insurance or the Ratepayer Advocate "shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section."
- 6.7 The parties may enter into agreements to protect confidential or proprietary information.
- 6.8 Any disputes regarding requests for information shall be presented to the Hearing Officer, if one has been appointed, or otherwise to the Commissioner, for resolution.
- 6.9 The Hearing Officer, if one has been appointed, or otherwise the Commissioner, may conduct such pre-hearing or other meetings and make such rulings as appropriate to simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, and aid in the prompt disposition of the matter.
- 6.10 The parties on their own initiative may submit pre-filed testimony for some or all witnesses. The parties shall submit pre-filed testimony if directed to do so by the Hearing Officer, if one has been appointed, or by the Commissioner.
- 6.11 Nothing in these regulations shall preclude the parties from resolving any matter by voluntary agreement.

## **7.0** Effective Date

This Regulation shall become effective 10 days after being published as a final regulation.

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**PROPOSED REGULATIONS**

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**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 901(b); (7 Del.C., §901(b))  
7 DE Admin. Code 3507

**REGISTER NOTICE  
SAN#: 2013-20****3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas****1. TITLE OF THE REGULATIONS:**

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (12.0, 12.1 & 12.2)

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

The purpose of this action is to formally adopt the provisions of the federal Final Rule for the recreational black sea bass fishery and remain compliant with Addendum XXIII to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass by amending Tidal Finfish Regulation 3507 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas (12.0, 12.1 & 12.2).

Addendum XXIII requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration (NOAA) published a Final Rule in the Federal Register on June 21, 2013 (Federal Register/Vol. 78, No. 120) specifying recreational management measures for black sea bass in federal waters. The Final Rule set the recreational black sea bass fishing season as May 19 through October 14 and November 1 through December 31, with a recreational possession limit of 20 black sea bass during those periods. The minimum size limit will remain 12.5 inches (excluding the caudal filament).

The proposed action will close Delaware's January 1 through February 28 recreational black sea bass season and adjust the black sea bass possession limits from 25 to 20 fish for the open seasons of May 19 through October 14 and November 1 through December 31. The minimum size limit will remain 12.5 inches.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

N/A

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. §§901 (c), 901(d), 903(e)(2)a, & 903 (e)(3)

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to the black sea bass regulation will be open August 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on August 21, 2013 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Stewart Michels Stewart.Michels@state.de.us (302)739-9914  
David E. Saveikis, Director

**3500 Tidal Finfish  
Bass (Striped Bass; Black Sea Bass)****3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.  
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
  - 9.1 A maximum of one transfer per year per person.
  - 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
  - 10.1 A maximum of one transfer per year per person.

# PROPOSED REGULATIONS

- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01a.m. ~~March~~ January 1, and ending midnight May 18, and beginning at 12:01 a.m. October 15 and ending mid-night October 31.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than ~~25~~ 20 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 19 through October 14 and during the period November 1 through December 31.
- ~~12.2 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period January 1 through February 28.~~

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(b) and 903(e)(2)a (7 **Del.C.** §901(b)  
§903(e)(2)a)  
**7 DE Admin. Code 3900**

**Secretary's Order No.: 2013-21**

### 1. TITLE OF THE REGULATION:

3900 Amend Wildlife Regulation

### 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

This action is needed to:

- a. Create a definition for the terms "Cable Restraint", "Foothold Trap", "Jaw Spread", and "Waterline".
- b. Require written permission before trapping on private or public property.
- c. Make it unlawful to set traps near exposed meat to prevent capture of raptors.
- d. Make it unlawful to tend or disturb another person's traps without their permission.
- e. Prohibit the use of toothed or serrated jawed foothold traps.
- f. Define the types and sizes of foothold traps permitted to be set both above and below the waterline.
- g. Allow the use of foot encapsulating traps.
- h. Require identification tags on all trap types.
- i. Set a maximum height in which cable restraints may be set above the ground.
- j. Establish a fox trapping season.
- k. Authorize a new method in which hunters can validate a harvested deer.
- l. Make it unlawful to possess a live coyote or nutria without a permit and establish hunting and trapping seasons for coyotes and a trapping season for nutria.
- m. Require reporting of harvested coyotes and nutria.
- n. Make it unlawful to release swine into the wild and require individuals to notify the State if swine escape and can't be recaptured and make it illegal to kill feral swine unless authorized by the Division.
- o. Makes it illegal to recreationally hunt feral swine or charge a fee to hunt feral swine.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**Title 7 **Delaware Code**, Chapter 1 §102 and §103 (7 **Del.C.** §102-103) and Chapter 7 §801 and §802 (7 **Del.C.** §801-802)**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to the 3900 Amended Wildlife Regulation will be open August 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on September 4, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Rob Hossler Robert.Hossler@state.de.us (302) 735-3602  
David E. Saveikis, Director

**3900 Wildlife****1.0 Definitions**

For purposes of Regulations 1.0 through 223.0, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

***(Break in Continuity Within Section)***

**“Cable Restraint”** formerly referred to as **“snare”**, shall be considered a trapping device made of stranded steel cable with a minimum diameter of 5/64 inches. Cable restraints must be equipped with a relaxing-type lock. The cable may not exceed 7 feet in length from the anchor point to the relaxing lock and must be equipped with at least one swivel device, which allows for 360° rotation, between the loop and the anchor. The cable restraint must have stops affixed to the cable to ensure that the cable that makes up the loop may not have a circumference greater than 38 inches when fully open, or a circumference less than 6 ¼ inches when fully closed. Cable restraints with a maximum loop circumference of 12 ½ inches do not require cable stops. Cable restraints must be maintained in good condition so that all components operate properly.

**“Deer”** shall mean white-tailed deer (*Odocoileus virginianus*) and/or Sika deer (*Cervus nippon*).

**“Director”** shall mean the Director or Acting Director of the Division.

**“Division”** shall mean the Division of Fish and Wildlife of the Department.

**“Established Blind”** shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner’s duly authorized agent.

**“Established Road”** shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

**“Foothold Trap”** formerly referred to as **“leghold trap”**, shall refer to a type of trap with a mechanism that is designed to catch and hold a mammal by one of its feet or legs.

**“Jaw Spread”** shall mean the distance between the inside of both jaws, when measured across the trap jaws on a line perpendicular to a line drawn through the jaw pivot points when the trap is in the set position.

***(Break in Continuity Within Section)***

# PROPOSED REGULATIONS

“**Season**” shall mean that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

“**Vehicle**” shall include any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

“**Waterline**” shall refer to beneath the surface of the water or below the mean high tide line in an area ordinarily subject to the rise and fall of the tide.

“**Wildlife**” shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.

## 2.0 Method of Take

(Penalty Section 7 **Del.C.** §103(d))

### 2.1 General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

- 2.1.1 Crossbows may be used during all deer seasons;
- 2.1.2 A muzzle-loading rifle with a barrel length of at least twenty inches and loaded with black powder may be used to hunt deer during muzzleloader and shotgun deer seasons;
- 2.1.3 A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;
- 2.1.4 A hook, spear or gig may be used to take frogs; and
- 2.1.5 Snapping turtles may be taken by hand or by using a spear, gig, fyke net or turtle trap. Turtle traps can have only one throat or funneling device.
- 2.1.6 A single shot ~~an~~ antique or authentic reproduction black powder Sharps rifle of 45 to 60 caliber shall be lawful for use during shotgun deer seasons using paper patched bullets.
- 2.1.7 No person shall place in the field any set or unset equipment associated with the trapping of game animals until the opening day of any state approved trapping season.
- 2.1.8 Any person who sets or makes use of any trap, ~~snare~~ cable restraint or other approved wildlife capture device during any lawful trapping season, shall remove all trapping equipment by the last day of the approved trapping season.
- 2.1.9 It shall be unlawful to set a trap on public or private property without first acquiring written permission from the landowner or managing agency and having said permission in possession while tending traps.
- 2.1.10 It shall be unlawful to bait a trap with meat or animal products if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissue is not restricted.
- 2.1.11 Without first acquiring specific advance permission, it shall be unlawful for any person other than the rightful owner of a trap, to move, take, or damage any trap, or take, or attempt to take, wildlife from any trap.

### 2.2 Archery and Crossbow.

- 2.2.1 General. No person shall use or have in his or her possession, while hunting, any: poison arrow, arrow with and explosive tip, or any longbow with a minimum pull less than 35 pounds.
- 2.2.2 Crossbows used for deer hunting must have a minimum pull weight of 125 pounds, be manufactured after 1980, and have a mechanical safety. Crossbows may be equipped with a scope.
  - 2.2.2.1 It shall be unlawful to transport a crossbow on or within any vehicle while the crossbow is in the cocked position.

### 2.3 Hunting from Boats.

- 2.3.1 Distance from Blinds. During the season for the hunting of migratory waterfowl, it shall be unlawful for any person to hunt from a boat of any kind that is within 1500 feet of an established blind, except that:
  - 2.3.1.1 Any person may use a boat to tend lawfully set traps for fur-bearing wildlife;
  - 2.3.1.2 Any person may retrieve crippled waterfowl by the use of a boat in accordance with federal regulations;
  - 2.3.1.3 Any person may use a boat for transportation to and from an established blind lawfully used by such person;
  - 2.3.1.4 Any person may hunt from a boat that is firmly secured and enclosed in an established blind.
- 2.3.2 Notwithstanding the provisions of subsection 2.23.1 of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.
- 2.3.3 Gunning Rigs.
  - 2.3.3.1 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 900 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Appoquinimink River and the Smyrna River, without written permission of the closest adjoining landowner(s).
  - 2.3.3.2 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 1500 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Smyrna River and the Murderkill River, without written permission of the closest adjoining landowner(s).
- 2.3.4 Tender Boats. It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 1500 feet from the rig or to conduct any activity, except to pick up downed birds or service the rig.
- 2.3.5 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt from a boat, or a floating or fixed blind in the Little River in areas bounded on both sides by land administered by the Division, except as permitted in writing by the Director.
- 2.4 Leghold Foothold Traps.
  - 2.4.1 Notwithstanding statutes § 703 and 788 of Title 7, it shall be unlawful for any person to set a leghold-foothold trap at any time in this State, except from December 1 through March 4~~0~~ 20 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded or offset jaws, with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded or have offset jaws.
  - 2.4.2 Notwithstanding subsection 2.4.1 of this section, it shall be lawful to trap raccoons with leghold traps in New Castle County or Kent County from the southerly boundary of New Castle County Route 380 and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year, except on Sundays. Notwithstanding the foregoing, this subsection shall not apply to lands in Kent County lying east of the center line of Rt. 113, north of the Sussex County line and south of the St. Jones River. It shall be unlawful for any person to set foothold traps with a jaw spread larger than 6 ½ inches above the waterline. The jaw spread of traps set below the waterline shall not exceed 7 ¾ inches.
  - 2.4.3 It shall be unlawful for any person to set long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 in any location, except:
    - 2.4.3.1 In any marsh ordinarily subject to the rise and fall of the tide;
    - 2.4.3.2 In a diked marsh that was formerly tidal;
    - 2.4.3.3 Below the mean high tide line in a river ordinarily subject to the rise and fall of the tide;
    - 2.4.3.4 On an island surrounded by tidal marsh or diked marsh that was formerly tidal; or
    - 2.3.4.5 In the areas described in subsection 2.4.2 of this section.

# PROPOSED REGULATIONS

The term "diked marsh" shall not include millponds or any stream running into a millpond.

- 2.4.4 In addition to the areas listed in subsection 2.4.3 of this section, traps described in said subsection may be set for river otter and/or beavers in tax ditches, millponds and streams leading into such ponds only by underwater sets.
- 2.4.53 It shall be unlawful for any person to set or make use of long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 any foothold, except coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less, without first permanently attaching a metallic tag on each trap, bearing:
- 2.4.53.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or
- 2.4.53.2 The owner's name and address.
- 2.4.6 It shall be unlawful for any person to set a long-spring trap, "Stop-Loss" trap, jump trap No. 1½ or smaller or a coil-spring trap No. 1 or smaller in any location in this State, except in the areas described in subsections 2.4.3 and 2.4.4 of this section and in the following locations:
- 2.4.6.1 A ditch;
- 2.4.6.2 A stream; or
- 2.4.6.3 On land not subject to cultivation of crops due to a normally marshy condition.
- 2.4.7 For the purposes of subsection 2.4.6 of this section, the term "ditch" shall mean a long, narrow channel dug into the earth as a trough for drainage or irrigation of the soil that normally contains flowing water.
- 2.4.8 For the purposes of subsection 2.4.6 of this section, the term "normally marshy condition" shall mean land with one or more of the following associated plant groupings growing upon it: cordgrass, sedges, rushes, cattails, threesquare or phragmites.
- 2.4.94 When information is furnished to a Fish and Wildlife Agent the Division from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he or she resides or controls, upon investigation, that Fish and Wildlife Agent the Division may issue a permit to such person or his or her agent for the use of leghold foothold traps to control said species of wildlife. Said permit may be issued at any time of the year.
- 2.4.405 The setting of each trap in violation of this section shall be a separate offense.
- 2.4.6 Foot encapsulating traps shall be considered foothold traps.
- 2.5 Gray Squirrel.  
Hunting gray squirrels with a .17 through .22 caliber rimfire or pellet firearm with a rifled barrel, or muzzle-loading rifle not larger than .36 caliber is permitted south of the Chesapeake and Delaware Canal.
- 2.6 Muskrats.  
It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.
- 2.7 Otters.  
Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.
- 2.8 Red Fox.
- 2.8.1 Red foxes may be killed or trapped in accordance with § 788 of Title 7 and the regulations found within this Section with the following: longbow and crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, or a muzzle-loading rifle, foothold trap, cable restraint, or box trap.
- 2.8.2 Notwithstanding subsection 2.8.1 of this section, during any deer firearms season, it shall be unlawful to hunt red fox with any firearm that is not also legal for deer hunting.
- 2.8.3 Notwithstanding subsection 2.8.1 of this section, it shall be unlawful to kill a red fox that is being pursued by dogs.
- 2.9 Snapping Turtles

- 2.9.1 Turtle traps must have either an escape hole below water measuring a minimum of 7.5" in all directions or floats inserted inside the trap or attached to the trap or be set in such a way so that the trap provides sufficient breathing space for all captured turtles at all times.
- 2.9.2 Each trap shall be marked with a metallic tag bearing the trapper's name and address. The tag shall be attached to the trap in a manner that allows it to remain visible, at all times.
- 2.9.3 All turtle traps must be lifted and emptied of catch at least once every 24 hours.
- 2.9.4 An annual permit must be obtained from the Division in order to trap snapping turtles. This permit is free.

#### **2.10 Cable Restraints**

2.10.1 It shall be unlawful for any person to set or make use of any cable restraint without first permanently attaching a metallic tag on each cable restraint, bearing:

2.10.1.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.10.1.2 The owner's name and address.

2.10.2 It shall be unlawful to set a cable restraint with the bottom of the loop any higher than 12 inches above the ground.

#### **2.11 Box/Cage Traps**

2.11.1 It shall be unlawful for any person to set or make use of any box/cage trap without first permanently attaching a metallic tag on each trap, bearing:

2.11.1.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.11.1.2 The owner's name and address.

***(Break in Continuity of Sections)***

### **4.0 Seasons**

(Penalty Section 7 Del.C. §103(d))

***(Break in Continuity Within Section)***

#### **4.9 Pheasant.**

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with §718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

~~4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.~~

~~4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.~~

***(Break in Continuity Within Section)***

#### **4.13 Red Fox.**

4.13.1 Harvest Season. Red fox may be killed in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from November 1 through the last day of February, excluding Sundays. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.13.2 Trapping Season. Red fox may be trapped with foothold, cable restraint, or cage/box traps from December 1 through March 10.

# PROPOSED REGULATIONS

*(Break in Continuity of Sections)*

## 7.0 Deer

(Penalty Section 7 Del.C. §103(d))

### 7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any license year;

7.1.1.2 ~~Kill or take four antlerless deer in any license year without at least two of the four deer being female deer; or~~

~~7.1.1.3 Possess or transport an antlered deer that was unlawfully killed.~~

7.1.1.4 Possess or transport an antlerless deer that was unlawfully killed.

7.1.1.5 Kill any antlered deer without first purchasing a Delaware Resident Combination Hunter's Choice Deer tag and Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, or a Non-Resident Quality Buck Deer Tag except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.1.6 No hunter may harvest more than two antlered deer during a license year between July 1<sup>st</sup>. and June 30<sup>th</sup> of the next calendar year.

*(Break in Continuity Within Section)*

### 7.2 ~~Tagging, and Designated Checking Stations~~ Deer Harvest Report Cards, and Registering Harvested Deer.

7.2.1 ~~Attaching Tags or Punching Deer Harvest Report Cards.~~ Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer or punch/cut the appropriate section of their approved Deer Harvest Report Card and record in ink the date of harvest on the tag or Deer Harvest Report Card. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, license exempt number (LEN), address and reason for not having a valid Delaware hunting license or punch/cut the appropriate section of their Deer Harvest Report Card.

7.2.2 Retention of Tag. If required, ~~the~~ tag required by subsection 7.2.1 of this section shall remain attached to the deer until the deer is processed for consumption.

7.2.3 Registering Deer. Each person who hunts and kills a deer shall, within 24 hours of killing said deer, register their deer by phone or over the internet through systems authorized by the Division. Deer taken to a processor or taxidermist must be registered before the animal is delivered, even if this occurs within the 24-hour timeframe. After registering a deer, hunters will be given a deer registration number. This number must be recorded in ink on the approved tags or the hunter's approved Deer Harvest Report Card listed in subsection 7.2.1 of this section. It shall be unlawful to knowingly enter incorrect information when registering a deer.

7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been registered using the phone or internet system authorized by the Division.

7.2.5 Deer Registration Number. The Deer Registration number provided by the automated phone/internet system must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

*(Break in Continuity Within Section)*

### 7.6 Carcass Importation Ban.

- 7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state, Canadian province, country or any portion of the aforementioned jurisdictions thereof as determined by the Division, in which Chronic Wasting Disease has been found in free-ranging or captive Cervids. Notwithstanding the foregoing, the following parts may be imported into the state:

***(Break in Continuity of Sections)***

## **23.0 Non-native/Invasive Wildlife**

(Penalty Section 7 **Del.C.** §103(d))

### 23.1 Non-native Wildlife

#### 23.1.1 Coyotes

- 23.1.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live coyote to or from another person unless permitted by the Director of the Division of Fish and Wildlife.
- 23.1.1.2 Coyotes may be killed or trapped in accordance with the regulations found within this Section with the following: longbow, crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, a muzzle-loading rifle, foothold trap, cable restraint, or box trap. Notwithstanding the foregoing, coyotes may be killed in accordance with § 802 of Title 7.
- 23.1.1.2.1 Notwithstanding subsection 23.1.1.2 of this section, during any deer firearms season, it shall be unlawful to hunt coyotes with any firearm that is not also legal for deer hunting.
- 23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from November 1 through the last day of February.
- 23.1.1.4 Trapping Season. Coyotes may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping coyotes: from December 1 through March 10 using foothold, cable restraints, or cage/box traps.
- 23.1.1.5 Reporting Harvest. After harvesting a coyote, a hunter and/or trapper must report the harvest via the Division of Fish and Wildlife's established reporting system(s).

### 23.2 Invasive Wildlife

#### 23.2.1 Nutria (*Myocastor coypus*)

- 23.2.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live nutria to or from another person unless permitted by the Director of the Division of Fish and Wildlife.
- 23.2.1.2 Nutria may only be trapped during the lawful season to trap muskrats. Notwithstanding the foregoing, nutria may be killed in accordance with §802 of Title 7.
- 23.2.1.2.1 Any nutria captured within a trap must be killed and may not be released back into the wild.
- 23.2.1.3 Anyone capturing a nutria must notify the Division of Fish & Wildlife within 24 hours of the capture.

#### 23.2.2 Feral Swine

- 23.2.2.1 It shall be unlawful for any person to release swine into the wild. If swine kept in captivity escape and cannot be recaptured within 72 hours the Delaware Division of Fish & Wildlife and the Delaware Department of Agriculture must be contacted.
- 23.2.2.2 It shall be unlawful for any person to kill feral swine without first obtaining a permit from the Division.
- 23.2.2.2.1 It shall be unlawful to recreationally hunt feral swine.
- 23.2.2.2.2 It shall be unlawful for a landowner to charge a fee for the purpose of killing feral swine.

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

**3900 Wildlife**

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**OFFICE OF HIGHWAY SAFETY**

Statutory Authority: 21 Delaware Code, Section 4101(d) (21 Del.C. §4101(d))  
**2 DE Admin. Code 1205**

**PUBLIC NOTICE**

**1205 Electronic Red Light Safety Program (ERLSP)**

**Background**

The Secretary of the Department of Safety and Homeland Security (hereinafter referred to as "Secretary") intends to promulgate regulations that will regulate the administration of the Electronic Red Light Safety Program (hereinafter referred to as "Program") in unincorporated areas of the State of Delaware. The Program through the use of traffic light signal monitoring systems will impose monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals.

Notice for public comment and a public hearing were properly noticed and a public hearing was held on November 22, 2004 in the second floor conference room of the Department of Safety and Homeland Security Building, Dover, DE. No comments were received either in writing or at the public hearing.

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations. As a result of Executive Order No. 36, The Department of Safety and Homeland Security in cooperation with the Department of Transportation has updated administration Regulation 1205 to incorporate programmatic changes to the Electronic Red Light Safety Program. The proposed regulatory changes set forth below are the result of the above process.

**Public Comment Period**

The Department of Safety and Homeland Security will take written comments on the proposed Regulations until August 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Jana Simpler, Director of the Office of Highway Safety  
P.O. Box 1321, Dover, DE 19901  
(302) 744-2740  
Jana.Simpler@state.de.us

**1205 Electronic Red Light Safety Program (ERLSP)**

**1.0 Statement of Purpose**

The purpose of these regulations are is to provide for the establishment and administration of a program in unincorporated areas of the State of Delaware imposing monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals an Electronic Red Light Safety Program (ERLSP) at qualifying intersections across the State of Delaware. The Delaware Department of Transportation (DelDOT) and/or the governing body of any city or county may install and operate traffic light signal violation monitoring systems and assess fines accordingly. The Program shall use recognized safety and crash criteria in determining whether and where to add any new enforcement locations to the Program, and in any event shall continue to confirm that any

such new locations are not objected to by the incumbent state Senator and Representative for the districts in which such locations are proposed. These regulations are being promulgated in accordance with 21 Del.C. §4101(d) and 73 Del. Laws, c. 350, sec. 92.

## **2.0 Locations of Traffic Light Signal Monitoring Systems**

There shall be up to 10 locations in unincorporated areas of the State of Delaware where traffic light signal monitoring systems shall be installed and operated. DelDOT is specifically directed to identify intersections with high crash incidents as potential candidates for the placement of electronic red light camera systems. If a camera installation is performed on state-maintained streets or roads by an entity other than DelDOT, the Department must first approve such installation. In addition, the Department must approve the engineering of any new cameras installed. All intersections using a traffic control photographic system or other traffic light signal violation monitoring system must adhere to the exact duration of the yellow light change interval. This time period must be no less than the yellow light change interval duration specified in the design manual developed by the Department of Transportation.

## **3.0 ~~Nestor Traffic Systems, Inc.~~ System Vendor**

The Department of Transportation has selected Nestor Traffic Systems, Inc. to provide traffic light signal monitoring systems for unincorporated areas of the State of Delaware and to assist in administering the Electric Red Light Safety Program in unincorporated areas of the State of Delaware. Nestor Traffic Systems, Inc. and its employees may participate in the administration of the Electronic Red Light Safety Program. The Department of Transportation utilizes a supporting vendor to provide enforcement monitoring systems and assist in administering the ERLSP. System vendors are selected through an open competitive procurement process which allows for the government and the taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, no person involved in the administration or enforcement of the Program shall own any interest or equity in the vendor used by the department to support the administrative elements of the Program. Any such person with an ownership or equity interest in such vendor must divest from this ownership or investment no later than ninety days after the effective date of this act. This restriction applies to anyone with either direct involvement in the administering or enforcement of the Program and those in any supervisory capacity above such persons.

## **4.0 Fines**

The owner or operator of a vehicle that commits a violation by failing to comply Violation notices are sent to the registered owner of the vehicle that fails to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal monitoring system, and shall be subject to a civil assessment in the amount of \$75.00 offense rather than a criminal offense. At the time of this revision, the present violation fine of \$112.50 is calculated using two components: a base fine of \$75.00 and a surcharge of \$37.50. The \$75.00 fee is authorized by 21 Del.C. §4101(d)(2). The \$37.50 surcharge originates from 11 Del.C. §410, which requires fines or fees levied for violations of Title 21 to include an additional 50% surcharge assessment.

## **5.0 Violation Criteria**

For a violation to occur, the front of a vehicle must be behind the stop line marked on the pavement at the time the traffic light signal turns red and must then continue into the intersection while the traffic light signal is red.

## **6.0 Determination of Violation**

An employee of the Delaware State Police shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred. If a determination is made that a violation has occurred, a Notice of Violation shall be sent to the registered owner of the vehicle that committed the violation. The technology for electronic enforcement utilizes a specialized camera, coupled with a traffic signal. The device detects the movement of vehicles into the intersection after a signal turns red. The technology video tapes this movement while simultaneously taking a picture of the violator's license plate to identify the vehicle. A trained technician, such as a law enforcement officer, employed by a state agency or entity designated by a state agency for this purpose inspects the evidence. Using this information, a violation notice is generated and sent to the registered owner of the vehicle.

## 7.0 Exemptions

- 7.1 The following vehicles are exempt from receiving a notice of violation:
- 7.1.1 Emergency vehicles with active emergency lights;
  - 7.1.2 Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
  - 7.1.3 Vehicles under police escort; and
  - 7.1.4 Vehicles in a funeral procession.

## 8.0 Notice of Violation Content

- 8.1 A Notice of Violation shall contain:
- 8.1 A civil violation number;
- 8.21.1 The name and address of the registered owner of the vehicle that committed the violation;
  - 8.31.2 The registration number of the motor vehicle involved in the violation;
  - 8.41.3 The violation charges;
  - 8.51.4 The location where the violation occurred;
  - 8.61.5 The date and time of the violation;
  - 8.71.6 ~~The date the notice of violation is mailed~~ Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation;
- 8.8 ~~Four images that demonstrate proof of a violation. This shall include:~~
- 8.8.1 ~~An image showing the vehicle behind the stop line, light is red;~~
  - 8.8.2 ~~An image showing vehicle within intersection, light is red;~~
  - 8.8.3 ~~An image showing a close up of the license plate; and~~
  - 8.8.4 ~~An image showing the rear of vehicle, with license plate;~~
  - 8.91.7 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;
  - 8.401.8 ~~Information advising an owner or operator of a vehicle regarding the manner, time and place by which liability as alleged in a Notice of Violation may be contested and warning that the failure to pay the civil assessment or to contest liability within 30 days of the mailing of the Notice of Violation is an admission of liability and may result in a judgment being entered against the owner or operator and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and~~ Information advising the summonsed person of the manner, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and/or the denial of the registration or the renewal of any of the owner's vehicles; and
  - 8.411.9 ~~Notice concerning a person's ability to rebut the presumption that he or she was the operator of the vehicle at the time of the alleged violation and the means for rebutting the presumption. Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.~~

## 9.0 Affidavits

- 9.1 If the registered owner of a vehicle whom has received a notice of violation contends that he/she was not the operator of the vehicle at the time of the violation, he/she ~~will be required to submit an affidavit denying that he/she was an operator and shall provide the name and address of the operator at the time of the violation. must furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:~~
- 9.21.1 If the registered owner is a leasing company that rents/leases vehicles, that leasing company must provide by affidavit the name and address of the person or entity who rented/leased or otherwise had care, custody, or control of the vehicle at the time of the violation. Furnishes an affidavit by

regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates had been reported to the police as stolen prior to the time of the alleged violation; or

9.31.2 If a vehicle, or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying he/she was an operator and provide a certified copy of the police report/log reflecting such theft. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the traffic signal either in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession.

9.42 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 30 days of the mailing issue date of the Notice of Violation.

9.53 Upon receipt of an affidavit by the State of Delaware or ~~Nestor Traffic Signals, Inc.~~ the system vendor, the newly implicated person will be mailed a notification informing him/her of the violation.

## 10.0 Payment of Civil Assessment

A person electing to pay a ~~the~~ civil assessment should ~~make payment by check or money order to ERLSP. Payment should be made by mail to: P.O. Box 2018, Winchester, VA 22604 or at such other address as specified on the Notice of Violation~~ follow the process as outlined on the Notice of Violation.

## 11.0 Procedures to Contest a Violation

~~A hearing to contest a violation will be heard in the Justice of the Peace Court for the State of Delaware. A person receiving a Notice of Violation may request a hearing to contest a violation by sending such request to the address provided with or on the Notice of Violation within 30 days of the date the Notice of Violation was sent to the owner or operator of the vehicle. If a request for a hearing is not made within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle, that person or entity has waived the right to contest the violation. A person receiving a Notice of Violation may request a hearing to contest the violation by notifying in writing the entity designated on the summons, within 30 days of the issue date. Upon timely receipt of a hearing request, a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.~~

## 12.0 Failure to Pay Civil Assessment

~~If the owner or operator of a vehicle does not pay a civil assessment within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle or does not successfully contest a violation, the Division of Motor Vehicles may refuse to register and/or deny the renewal of the registration of any of the owner's vehicles. Additionally, the Department of Transportation may pursue a civil action, including seeking judgment and execution on a judgment against the owner or operator of the vehicle. If the owner or the operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.~~

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# PROPOSED REGULATIONS

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## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

### DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

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

#### PUBLIC NOTICE

#### **105 Residential Child Care Facilities and Day Treatment Programs**

##### Summary

The Office of Child Care Licensing is again submitting the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs for public comment as a result of a change in the definition of "Child" and to incorporate public comments received from two organizations.

##### Comments

A copy of the proposed regulations is being published in the August 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on August 31, 2013.

##### Adoption of Proposed Regulations

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

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

#### **105 Residential Child Care Facilities and Day Treatment Programs**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### CONTROLLED SUBSTANCE ADVISORY COMMITTEE

Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

#### **Uniform Controlled Substances Act Regulations**

#### PUBLIC NOTICE

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. Rule 2.0 is revised to add the requirement that all practitioners registered under Chapter 47 of Title 16 of the **Delaware Code** must complete continuing education in order to qualify for continued registration. The amendment will enhance practitioner competence for greater protection of the public.

A public hearing will be held on August 28, 2013 at 9:30 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the

above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 12, 2013, which is 15 days following the public hearing.

## Uniform Controlled Substances Act Regulations

### *(Break in Continuity of Sections)*

#### 2.0 Requirements

- 2.1 Registration shall be on a biennial basis upon forms supplied by the Division of Professional Regulation and/or Secretary of State for that purpose. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or kept for research or analysis. Out-of-State registrants who dispense or distribute controlled substances to patients or facilities in Delaware are required to obtain a registration.
- 2.1.1 All practitioners registered under Title 16, Chapter 47 as of July 1, 2013, must attest to completion of a one hour education course on Delaware law, regulation and programs, acceptable to the Secretary, pertaining to the prescribing and distribution of controlled substances on or before July 1, 2014 in order to qualify for continued registration.
- 2.1.2 All practitioners who obtain new registration under Title 16, Chapter 47 after July 1, 2013 must attest to completion of a one hour education course on Delaware law, regulation and programs, acceptable to the Secretary, pertaining to the prescribing and distribution of controlled substances within the first year of obtaining registration in order to qualify for continued registration.
- 2.1.3 All practitioners must attest to completion of two hours of continuing education biennially in the areas of controlled substance prescribing practices, treatment of chronic pain, or other topics related to the prescribing of controlled substances.
- 2.1.4 The Secretary shall periodically review the requirements of paragraphs 2.1.1, 2.1.2, and 2.1.3 to determine adequacy.
- 2.2 Revocation and Suspension
- 2.2.1 Revocation of registration by the Federal Government will result in automatic revocation of the State registration.
- 2.2.2 Proceedings for denying, suspending or revoking a registration shall be held before the Committee. The Committee will forward their recommendation in writing to the Secretary of State for his/her review and decision. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in answer to the alleged violation.
- 2.2.3 Whenever a registration is denied, suspended, or revoked by the Secretary of State, the Secretary of State or his/her designee will reduce in writing his/her findings and rulings, and the reasons therefore, and forward them to the persons applying for registration or complained against within 15 days of receiving the written recommendation of the Committee. This provision shall in no way stay any such denial, suspension, or revocation. The Secretary of State's decision is final and conclusive. A person aggrieved may file an appeal as provided in 16 **Del.C.** §4786.

### *(Break in Continuity of Sections)*

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

**Uniform Controlled Substances Act Regulations**

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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

### 300 Board of Architecture

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))  
24 **DE Admin. Code** 300

### PUBLIC NOTICE

#### 300 Board of Architects

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise sections 1.0 and 6.2.1 and add new text in 1.0, 4.1.2, 6.22, 6.3, and 6.9. The proposed changes seek to add a section for architect emeritus status, reinstitute a regulation for Intern Development Program Guidelines in order to comply with the National Council of Architectural Registration Boards and amend the current continuing education requirements to allow for proration of credits and become more in line with other states architecture licensing boards.

The Board will hold a public hearing on the proposed regulation change on September 4, 2013 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meaghan Jerman, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 19, 2013 pursuant to 29 **Del.C.** §10118(a).

The proposed rule changes are as follows, additions are indicated in underline, deletions are indicated in strike-through:

#### 300 Board of Architects

### 1.0 Scope: Definitions

**Purpose:** Regulations of the Delaware Board of Architects are set forth for the purpose of clarifying and implementing 24 **Del.C.** Ch. 3 which establishes the Board and confers upon it responsibility for registration of architects and the regulation of the practice of architecture.

**Invalidity:** Any provision found to be invalid shall not affect any other provision and the remaining provisions shall remain in full force and effect.

**Terms Defined by Statute:** Terms defined in 24 **Del.C.** Ch. 3 shall have the same meanings when used in these regulations, except where the context clearly indicates a different meaning.

**Terms Defined Herein:** As used in these regulations, the following terms shall have the following meanings except where the context clearly indicates a different meaning.

**“AIA”** American Institute of Architects

**“Administration of Construction Contracts”** Shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of the construction contract documents; and (iii) notifying an owner and the appropriate building official of any code violations, changes that affect code compliance, the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress, or any deviation from the technical submissions that he or she identifies as constituting a hazard to the public, that he or she observes in the course of performing his or her duties.

**“Applicant”** An individual who has submitted an application for registration to the Board.

**“Architect”** Any person who is authorized to practice architecture as defined in Title 24, Chapter 3 and who holds a current Certificate of Registration.

**“Architect Emeritus”** Honorary title granted to a previously licensed Delaware Architect who has retired from active architecture practice.

**“A.R.E”** The current Architect Registration Examination, prepared by NCARB.

*(Break in Continuity Within Section)*

“**Technical Submissions**” Designs, drawings, specifications, studies and other technical documents prepared in the course of practicing architecture. All technical submissions shall be identified by date and by the name and address of the registered architect or the registered architect’s firm.

“**Training Requirements**” The Intern Development Program (IDP) training requirements established from time to time by NCARB for certification by NCARB, as accepted by the Board from time to time.

“**TU**” Training unit, used to calculate the hours of training earned by IDP applicants

*(Break in Continuity of Sections)*

## 4.0 Registration Standards:

- 4.1 Registration Standards: To be granted registration an applicant must:
  - 4.1.1 Education – meet the Education Requirements as set forth in the NCARB Education Guidelines. Check NCARB’s website, [www.ncarb.org](http://www.ncarb.org) for updates and the most current information regarding the NCARB Education Guideline.
  - 4.1.2 Training – meet the Training Requirements set forth in the NCARB Intern Development Program Guidelines (IDP). Check NCARB’s website, [www.ncarb.org](http://www.ncarb.org) for updates and the most current information regarding the IDP.
    - 4.1.2.1 The IDP is a requirement for all applicants for initial registration in the State of Delaware. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board.
    - 4.1.2.2 The IDP, which is administered by NCARB, will be initiated by completing an application for NCARB/IDP Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006-1310 or [www.ncarb.org](http://www.ncarb.org). Preparation of all components of the IDP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.
  - 4.1.3 Examination – have passed the Architect Registration Examination (ARE) in accordance with the NCARB pass/fail standards current at the time the applicant takes the Examination.
  - 4.1.4 Have complied with all regulations of the Board and 24 **Del.C.** Ch. 3.
  - 4.1.5 Agree with the following conditions of examination:
    - 4.1.5.1 take the ARE at any NCARB-approved test center, whether or not it is located in Delaware.
    - 4.1.5.2 to accept the ARE results as determined by NCARB.
    - 4.1.5.3 if there is any alleged misbehavior on the part of an applicant in connection with taking the examination, the board will investigate the allegation and take appropriate action. Misbehavior may include, without limitation, violation of NCARB’s guidelines or policies, or an applicant’s confidentiality agreements with respect to the examination.

*(Break in Continuity of Sections)*

## 6.0 Registration

- 6.1 Duration - Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.
- 6.2 Continuing Education requirements for renewal.
  - 6.2.1 In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 Continuing Education Hours each calendar year or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements

## PROPOSED REGULATIONS

may result in non-renewal of the architect's registration. For an architect's initial registration period, the continuing education requirements shall be pro-rated at one Continuing Education Hour per month of registration, beginning with the first full month following the month of issuance, through the end of the renewal cycle. In future renewals, Continuing Education Hours may be reused if there is overlap to meet the calendar year requirements.

- 6.2.1.1 Continuing Education Hours. 12 Continuing Education Hours must be completed in Health, Safety, and Welfare Subjects acquired in Structured Educational Activities. Continuing Education Hours may be acquired at any location. Excess Continuing Education Hours may not be credited to a future calendar year.
- 6.2.1.2 Reporting and Record keeping. An architect shall complete and maintain forms as required by the Board certifying that the architect has completed the required Continuing Education Hours. Forms may be audited by the Board for verification of compliance with these requirements. Documentation of reported Continuing Education Hours shall be maintained by the architect for six years from the date of award. If the Board disallows any Continuing Education Hours the architect shall have 60 days from notice of such disallowance either to provide further evidence of having completed the Continuing Education Hours disallowed or to remedy the disallowance by completing the required number of Continuing Education Hours (but such Continuing Education Hours shall not again be used for the next calendar year). If the Board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required Continuing Education Hours, the architect may be subject to disciplinary action in accordance with the Board regulations.
- 6.2.1.3 Exemptions. An architect shall not be subject to these requirements if:
  - 6.2.1.3.1 The architect has been granted emeritus or other similar honorific but inactive status by the Board; or
  - 6.2.1.3.2 The architect otherwise meets all renewal requirements and is called to active military service, has a serious medical condition, or can demonstrate to the Board other like hardship, then upon the Board's so finding, the architect may be excused from some or all of these requirements.

### 6.2.2 The following are acceptable Continuing Education:

#### 6.2.2.1 NCARB monograph programs

#### 6.2.2.2 health, safety, and welfare programs approved by the American Institute of Architects (AIA).

### 6.3 Audits and Attestation of Compliance

#### 6.3.1 Random audits shall be performed by the Board. All registrants shall maintain documentation of continuing education, which shall include proof of attendance and verification that the education was an NCARB monograph course or a health, safety, and welfare course approved by the AIA.

#### 6.3.2 Attestation of compliance must be completed.

#### 6.3.3 Attestation of continuing education shall be submitted to the Division of Professional Regulation prior to July 31<sup>st</sup> of the reporting year.

- 6.4 Hardship Extension: Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period. The Board may, at its discretion, grant an extension of time within which the Continuing Education requirement must be completed. The period of hardship extension granted shall be determined by the Board.

### 6.5 Late Renewal

- 6.5.1 A registrant that has failed to renew on or before July 31<sup>st</sup> renewal date may apply to the Board to renew their registration within four (4) months following the renewal date.

- 6.5.2 All late renewal applications must be accompanied by:

- 6.5.2.1 Renewal fee
- 6.5.2.2 Late renewal fee

- 6.5.2.3 Documentation of compliance with the continuing education requirement prior to the renewal date.
- 6.5.3 A registrant who has failed to complete the Continuing Education requirement of the previous two calendar years by the July 31<sup>st</sup> renewal date may request, in writing, an extension of time of no more than four (4) months following the July 31<sup>st</sup> renewal date to satisfy the immediately preceding two (2) year requirement. The request for an extension must be received by the Board in writing prior to the July 31<sup>st</sup> renewal date.
- 6.5.4 No continuing education completed during the late period may be used to satisfy future renewal requirements.
- 6.6 Not Transferable - A certificate of registration shall not be transferable.
- 6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or nonrenewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board. Civil penalties may be imposed for failure to promptly return the Certificate of Registration, seal and license to the Board. 24 **Del.C.** §317(d).
- 6.8 Reciprocity
- 6.8.1 Registration through reciprocity applications shall be governed by 24 **Del.C.** §309.
- 6.8.2 Applicants for registration through reciprocity who were previously registered as architects in Delaware and had the Certificate of Registration canceled or lapsed shall be required to certify that they have satisfied the minimum Continuing Education Requirement for Renewal provided in Regulation 6.2 and 6.3 for the two year period preceding the new registration, notwithstanding that the Certificate of Registration was canceled or lapsed.
- 6.9 Architect Emeritus
- 6.9.1 To qualify for an Architect Emeritus license, the applicant shall:
- 6.9.1.1 currently be registered as a Delaware Architect; and
- 6.9.1.2 have been registered as a Delaware Architect for at least the immediate preceding ten years; and
- 6.9.1.3 not be the subject of a pending disciplinary action related to architectural licensure in this or any other state; and
- 6.9.1.4 have met all of the annual continuing education requirements of this Board prior to the filing of the application for emeritus status; and
- 6.9.1.5 have filed an Architect Emeritus application on a form prescribed by the Board along with the required fee; and
- 6.9.1.6 be at least 65 years old on the date of application for Architect Emeritus status.
- 6.9.2 A Delaware Architect Emeritus shall:
- 6.9.2.1 not engage in the practice of architecture; and
- 6.9.2.2 not be required to complete the annual continuing education requirements; and
- 6.9.2.3 use the title "Architect Emeritus" in lieu of the title "Architect."
- 6.9.3 A Delaware Architect Emeritus may re-apply for active status as a registered Delaware Architect provided that the individual has completed 12 continuing education hours of the annual continuing education requirement during the calendar year in which the re-application is filed.

*(Break in Continuity of Sections)*

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

**300 Board of Architects**

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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

### 2500 Board of Pharmacy

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

### PUBLIC NOTICE

#### 2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing was held on May 15, 2013, with deliberations conducted on June 19, 2013. As the result of deliberations, the Board decided to make substantive revisions to the proposed amendments originally published in the Delaware *Register of Regulations* on April 1, 2013, Volume 16, Issue 10. Specifically, the Board proposes to strike the language "only to patients that are self-medicating" in Rule 6.4. The balance of the proposed revisions remain as published on April 1, 2013.

A public hearing will be held on August 21, 2013 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 5, 2013 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on September 18, 2013 at 10:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

#### 2500 Board of Pharmacy

## 1.0 Pharmacist Licensure Requirements

### 1.1 Definitions

Words and terms defined in **Delaware Code** Title 1, Section 302 and Title 24, Section 2502 of the **Delaware Code** are applicable to these regulations. The following additional words and terms, when used within these regulations, shall have the following meaning unless the context clearly indicates otherwise or an alternate definition has been given:

"**Automated Data Processing System (ADPS)**" means a system utilizing computer software and hardware for the purposes of recordkeeping.

"**Cell**" means any container that holds the medication for automatic dispensing.

"**Central Prescription Processing**" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, DUR, claims adjudication, refill authorizations, and therapeutic interventions.

"**Common Database**" means a file or database created by an ADPS that enables authorized users to have common access to this file regardless of physical location.

"**Compounding**" means the art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice, including the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. ~~Reconstitution of oral solutions is not considered compounding.~~

*(Break in Continuity of Sections)*

## 6.0 Pure Drug Regulations

### 6.1 Definition

**“Central Nervous System”** Central nervous system stimulants are drugs which increase the activity of some portion of the brain or spinal cord. Drugs which act upon the cerebral cortex and subcortical structures including the thalamus (e.g. methylphenidate, etc.) increase motor activity and enhance mental alertness; those which act upon the sensory areas in the brain (e.g. caffeine and its various combinations) increase alertness, brighten spirits and combat mental fatigue; those which act directly or reflexly on the medulla (e.g. nikethamide, pentylenetetrazol and picrotoxin) stimulate the respiratory center; those which act on the spinal cord (e.g. nux vomica and strychnine) facilitate and exaggerate spinal reflexes.

- 6.2 The Delaware State Board of Pharmacy hereby adopts the rules and regulations officially prescribed for the enforcement of the Federal Food, Drug and Cosmetic Act and Acts amendatory thereof, as far as applicable. This regulation is promulgated to comply with directive in Title 16 **Del.C.** §3315 paragraph b.
- 6.3 Anyone who repacks and labels drugs in convenient quantities for their own subsequent use must maintain a log on the premises showing the date prepacked, the quantity prepacked, the control number, expiration date and name and strength of the drug. Prepacking must be done under the supervision of a registered pharmacist or any other person authorized to dispense under 24 **Del.C.** §2513. Each container must have a label containing the name of the drug, its strength, the manufacturer's control number, the expiration date if applicable, the name of the manufacturer, or the name and strength of the drug and a conference code number which would enable the control number, manufacturer and expiration date to be retrieved from the log. Nothing in this regulation precludes the Federal laws and regulations.
- 6.3.1 Beyond use date for single unit and unit dose containers. The beyond use date for these products shall be one year or less, unless the stability data or the manufacturer's labeling indicates otherwise. To use this date, the dispenser repacking the product must maintain the facility and packaging at controlled room temperature not to exceed 25°C. The plastic material used for repacking must provide better protection against moisture permeation than polyvinyl chloride.
- 6.4 All biologicals, vaccines, drugs, chemicals, preparations and compounds must be packaged, labeled, stored and preserved in compliance with USP/NF and all other State and Federal standards. A pharmacist may, with the permission of the patient or the patient's agent, provide a “Customized Patient Medication Package” ~~only to patients that are self medicating~~. The containers shall meet all of the requirements of the USP/NF standard entitled, “Customized Patient Medication Package.” Packaging of controlled substances in a “Customized Patient Medication Package” is prohibited.
- 6.5 Labeling of Over-the-Counter Central Nervous System Stimulants. Over-the-counter central nervous system stimulants must be labeled and packaged in compliance with state and federal requirements.
- 6.6 Over-the-Counter Medication - Over-the-counter drug is one that can be legally sold without a prescription.

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

*(Break in Continuity of Sections)*

## **11.0 Pharmaceutical Services in Nursing Homes**

- 11.1 Definition: A nursing home is an institution licensed by the Division of Public Health that provides permanent facilities that include in-patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest-Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.
- 11.2 General Requirements
- 11.2.1 Each facility shall provide a cabinet or medication carts for individual patient medications. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for the storage unit shall be carried by or be accessible only to registered nurses, licensed practical nurses, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

## PROPOSED REGULATIONS

- 11.2.2 Internal medications must be stored separately from external medications.
- 11.2.3 Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.
- 11.2.4 Medications which require room temperature storage must be maintained at either USP/NF ranges of 59 to 86 degrees Fahrenheit or the manufacturer's labeled range.
- 11.2.5 No persons except properly authorized personnel shall handle or administer medications.
- 11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, or emergency use medication supplies.
- 11.2.7 There shall be accountability procedures for all controlled substances present. There shall be readily retrievable records maintained showing the receipt and disposition of all controlled substances. These records must be maintained for 2 years.
- 11.2.8 A pharmacy that provides a "Customized Patient Medication Package" system can supply a maximum of 72 hours supply of medication per patient.

*(Break in Continuity of Sections)*

### 14.0 Administration of Injectable Medications, Biologicals and Adult Immunizations

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

#### 14.1 Educational Requirements

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

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

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

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

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

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

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

14.1.4 Documentation of the satisfactory completion of the proper academic and practical training requirements shall be listed in a policy and procedures manual available for inspection by the Board of Pharmacy. ~~Maintaining such a policy and procedures manual shall be the responsibility of each registered pharmacist administering injections~~ documentation shall be the responsibility of the pharmacist-in-charge.

#### 14.2 Practice Requirements

- 14.2.1 The pharmacist-in-charge must maintain a manual with policies consistent with OSHA (Occupational Exposure to Bloodborne Pathogens) and procedures for dealing with acute adverse events.
- 14.2.2 ~~Prescriptions and/or physician approved written protocols will be maintained and available for inspection by the Board of Pharmacy. The administration of injectable medications, biologicals and adult immunizations by registered interns and pharmacy students must be directly supervised by a licensed pharmacist who is approved for injectable administration.~~
- 14.2.3 The pharmacist, registered intern, or pharmacy student, before administering an injectable medication, biological, or immunization, must counsel the patient and/or the patient's representative about contraindications and inform them in writing in specific and readily understood terms about the risks and benefits. A signed copy of the patient's consent shall be filed and available for inspection by the Board of Pharmacy.
- 14.2.4 The pharmacist, registered intern, or pharmacy student must document all injections made and have such documentation available for inspection by the Board of Pharmacy. Documentation shall include:
- 14.2.4.1 Patient's name, address, phone number, date of birth, and gender.
  - 14.2.4.2 Medication or vaccine administered, expiration date, lot number, site of administration, dose administered.
  - 14.2.4.3 Date of original order and the date of administration(s).
  - 14.2.4.4 The name of the prescribing practitioner and the pharmacist, registered intern or pharmacy student administering the dose.
- 14.2.5 The pharmacist, registered intern or pharmacy student must document fully and report all clinically significant adverse events to the primary-care provider and to the Vaccine Adverse Event Reporting System (VAERS) when appropriate.
- 14.2.6 The pharmacist, registered intern or pharmacy student shall provide documentation to each person receiving immunizations and ~~when appropriate to the Immunization Section of the Department of Health and Social Services so the names of those individuals can be added to the Vaccination Registry shall report to the Immunization Vaccination Registry.~~
- 14.2.7 All documentation and records required by this Regulation must be maintained for a period of not less than three years and available for inspection by the Board of Pharmacy.
- 14.3 ~~Classes and Indications of Approved Medications. Classes of medications shall include injectable medications, immunizations, and biologicals contained in the list of Approved Drug Products with Therapeutic Equivalence Evaluations or drugs under clinical study when administered in accordance with indications approved by the Food & Drug Administration. Administration of medications includes injectable medications, biologicals and adult immunizations pursuant to a valid prescription or approved protocol approved by a physician duly licensed in this State.~~
- 14.4 ~~Authorization. Only those registered pharmacists meeting the requirements of this Regulation shall administer injectable medications, biologicals, and adult immunizations. The Board of Pharmacy shall maintain a current list of those pharmacists so authorized. It is the responsibility of each registered pharmacist to maintain his or her current status on such list.~~

*(Break in Continuity of Sections)*

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

**2500 Board of Pharmacy**

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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 Del.C. §5206(1))  
24 DE Admin. Code 5200

### PUBLIC NOTICE

#### 5200 Board of Examiners of Nursing Home Administrators

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 Del.C. §5206(1), proposes to revise its regulations. The proposed revisions to the regulations 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 September 10, 2013 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Latoya Stephens, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

The proposed rule changes are as follows, additions are indicated in underline, deletions are indicated in strike-through:

#### 5200 Board of Examiners of Nursing Home Administrators

#### *(Break in Continuity of Sections)*

### 7.0 Renewal of Licensure

- 7.1 Licensees shall report any facts requested by the Board in conjunction with the renewal process.
- 7.2 Licensees must attest to completion of the continuing education requirements of regulation 5.0. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of certification may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division of Professional Regulation.
- 7.3 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 signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one (1) year after renewal. 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. Licensees renewing during the late renewal period shall be audited.
- 7.4 Late Renewal.
  - 7.4.1 A licensed Nursing Home Administrator whose license has expired may, within one year following the licensure period, have his license reinstated without examination upon payment of the renewal fee, plus a late fee. In addition, satisfactory evidence must be submitted to the Board that during the preceding two year period the applicant has completed continuing education programs or courses of study that meet the requirements of regulation 5.0.
  - 7.4.2 Any licensee whose license has expired for a period in excess of one year may have his license reinstated without examination in accordance with regulation 7.4.1 and upon satisfying the Board as to the applicant's current qualifications by completing an application form, providing, however, such applicant may attach a resume in lieu of completing the sections on occupational background and administrative experience of the application form.
- 7.5 Inactive Status
  - 7.5.1 A written request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue for three years from the date of Board approval. An inactive license shall terminate at the end of the three-year period unless the license is returned to active status before the end of the three-year period.

7.5.2 A licensee who has been granted inactive status and who wishes to return to active status shall submit a written request to the Board along with a pro-rated renewal fee and proof of completion of twenty-four units of continuing education for each annual period of inactive status. All of the required continuing education units must have been completed within the twelve-month period immediately preceding the request for reinstatement.

*(Break in Continuity of Sections)*

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

**5200 Board of Examiners of Nursing Home Administrators**

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2711 and 3102

(21 Del.C. §§302, 2711 and 3102)

2 DE Admin. Code 2202, 2214, 2251, 2264, 2272, 2274 & 2275

### PUBLIC NOTICE

**2202 Issuance of Duplicate Drivers' Licenses**

**2214 Waiver of Written Examinations for Certain New Residents**

**2251 Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle**

**2264 Use of Dealer License Plates on Boat Trailers**

**2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices**

**2274 Distribution of Literature Advertising Businesses**

**2275 Requirements for Licensing of Vehicle Dealers**

Pursuant to Executive Order 36, the Division of Motor Vehicles of the Department of Transportation reviewed its existing regulatory scheme, detailed in Title 2, Delaware Administrative Code. That review identified several existing regulations that have been recognized as obsolete, or whose provisions have been replaced by other statutes or rules.

This Notice describes the regulations that are to be canceled as a result of this review, and explains the basis for their cancellation. They are as follows:

Regulation 2202 - Issuance of Duplicate Driver's Licenses: Stipulates an unnecessary policy that the division no longer performs.

Regulation 2214 – Waiver of Written Examinations for Certain New Residents: This regulation is no longer needed because it is already covered under 21 Del.C. §2713.

Regulation 2251 – Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle: This regulation is no longer needed because it is superseded by 21 Del.C. §2310.

Regulation 2264 – Use of Dealer License Plates on Boat Trailers: This regulation is no longer needed.

Regulation 2272 – Authorization of Police Agencies to Issue Vehicle Inspection Notices: This regulation is no longer needed because it is now covered under 21 Del.C. §2144(a).

Regulation 2274 – Distribution of Literature Advertising Businesses: This regulation is no longer needed because existing ethics laws cover this action.

Regulation 2275 – Requirements for Licensing of Vehicle Dealers: This regulation is no longer needed because it is now covered under Title 21, chapter 63.

Recommended:

Jennifer K. Cohan, Director, Division of Motor Vehicles

So Ordered this 12th day of July, 2013.

Shailen P. Bhatt, Secretary  
Delaware Department of Transportation

**\*Please Note: As a result of the regulations being repealed, they are not being published here. A copy of the regulations is available at:**

**Division of Motor Vehicle Regulations being repealed**

## DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 131, 146 and 508 (17 Del.C. §§131, 146 & 508)  
2 DE Admin. Code 2309

### PUBLIC NOTICE

#### 2309 Standards and Regulations for Subdivision Streets and State Highway Access

#### Background

The Delaware Department of Transportation's Planning Division developed proposed revisions to its regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets.

This proposed revision to the Standards and Regulations for Subdivision Streets and State Highway Access relates to two matters: guidance for Shared Use Paths/Sidewalks, and a new review process for low traffic-generating existing commercial projects expected to produce average daily traffic of 199 vehicles or less.

Proposed deletions are shown as stricken through text and proposed new language is shown as underlined text below.

Written comments will be accepted regarding these proposals until August 31, 2013. Any requests for copies of the Regulations, or any questions or comments regarding amendments to these Regulations should be directed to:

Marc Coté  
Assistant Director - Development Coordination  
P.O. Box 778  
Dover, DE 19903  
Phone (302) 760-2266  
Fax (302) 739-2251  
Mark.Cote@state.de.us

#### 2309 Standards and Regulations for Subdivision Streets and State Highway Access

#### 1.0 Purpose

##### *(Break in Continuity Within Section)*

##### 1.5 Process for Low Traffic Generating Existing Commercial Projects for 199 ADT or Less

This section defines the process and coordination between the Subdivision Section and the District Offices as they relate to existing commercial projects that generate a total of 199 Average Daily Trips (ADT) or less, seeking an Entrance Permit (EP) that would utilize an existing entrance facility. The business must not have been vacant for three or more years to be eligible.

1.5.1 All applicants will be required to complete and submit a Permit Application (PA). This application can be obtained from and/or submitted to the respective District Office or to the Subdivision

Section. Please note: To promote good customer service the District personnel are encouraged to accept the information and the PA from the applicants and forward to the Subdivision Section.

- 1.5.2 The Subdivision Section will perform a cursory review based on the provided information to determine if the formal plan review process is needed to obtain a Letter of No Objection to Recordation (LONOR) from the Subdivision Section or if the District can issue a Letter of No Contention (LONC).
- 1.5.3 The Subdivision Section will make the review responsibility determination within 5 business days and notify the District. If the determination is made to have the review occur at the District, the District will process the request and issue a LONC within 10 business days for a maximum process time of 3 weeks. If more time is needed, the Subdivision Reviewer or appropriate District personnel will notify the Applicant with an expected response date.
- 1.5.4 The Subdivision Section will check such items as Right of Way (ROW) dedication (on Minor Collectors and above), known safety issues (by requesting accident data for three years at the entrance location from the Statistics Group within Planning), whether an auxiliary lane is required (utilizing the Auxiliary Lane Worksheet), the general layout of the entrance facilities, the surrounding area, infrastructure and if construction is occurring in the area to determine if the formal plan review process and LONOR are required.
  - 1.5.4.1 Existing Commercial Projects that generate a total of 100 ADT or less will typically not meet the thresholds to require an auxiliary lane, so analysis utilizing the Auxiliary Lane Worksheet is not necessary.
- 1.5.5 If a project is proposed along a Minor Collector or greater roadway functional classification (i.e. Major Collector, Minor Arterial, Principal Arterial or Freeway/Expressways) then proper ROW dedication must be confirmed to exist or be provided via a deed or Record Plan. The applicant will have to complete the formal plan review process through the Subdivision Section to obtain a LONOR for the Record Plan.
- 1.5.6 If a Capital Transportation Program (CTP) project is occurring contiguous to the parcel/project then the formal plan review process and LONOR may be required.
- 1.5.7 If significant construction and/or improvements are needed to support the application, then the formal plan review process through the Subdivision Section and a LONOR are required.

## 1.56 Definitions

“**AASHTO Standards**” Policies and Standards published by American Association of State Highway and Transportation Officials.

*(Break in Continuity of Sections)*

## 3.0 Site Plan Design

*(Break in Continuity Within Section)*

### 3.5 Connectivity

*(Break in Continuity Within Section)*

#### 3.5.4 Bicycle and Pedestrian Spacing and Connectivity

*(Break in Continuity Within Section)*

##### 3.5.4.2 Shared-Use Paths and Sidewalks

- 3.5.4.2.1 Sidewalks shall be installed along **Frontage Roadways** - This section defines the process as it relates to the requirements, along all DeIDOT Arterial, Collector, and Local roadway frontage of the proposed development by the owner or Applicant, to construct a Shared-Use Path (SUP) and/or Sidewalk or to provide the fee payment in lieu of construction for development projects seeking an Entrance Plan Approval (EPA) from the Development Coordination section. DeIDOT may require a shared use path be installed at such locations in lieu of a sidewalk.

## PROPOSED REGULATIONS

- 3.5.4.2.1.1 Regardless of the location of the project or whether a project is required to actually construct a SUP/Sidewalk or not, the Permanent Easement (PE) for the facility is required on every plan submission and approval.
- 3.5.4.2.1.2 SUP/Sidewalks shall be required for all projects requesting an EPA in all Investment Level Areas as defined by the State Strategies for Policies and Spending maps if the project generates 2,000 Average Daily Trips (ADT) or more.
- 3.5.4.2.1.3 SUP/Sidewalks shall be required for all projects requesting an EPA in all Investment Level I and Investment Level II Areas as defined by the State Strategies for Policies and Spending maps. (If a physical impossibility exists, then the SUP/Sidewalk fee in lieu of construction shall be paid.)
- 3.5.4.2.1.4 SUP/Sidewalks shall be required for all projects requesting an EPA in all Investment Level III and Investment Level IV Areas as defined by the State Strategies for Policies and Spending Maps if the project abuts an existing facility. If the project does not abut an existing facility it will be at the Subdivision Engineer's discretion. No fee in lieu of construction is required if the SUP/Sidewalk facilities are not required as per the Subdivision Engineer's determination.
- 3.5.4.2.1.5 SUP/Sidewalk fee in lieu of construction shall be based on current DeIDOT Unit Prices. The Shared-Use Path and Sidewalk Fee Calculation Form, (available on DeIDOT's website [http://www.deldot.gov/information/business/subdivisions/SUP\\_and\\_SW\\_Fee\\_Calc\\_Form.docx](http://www.deldot.gov/information/business/subdivisions/SUP_and_SW_Fee_Calc_Form.docx)), shall be used to calculate the amount.
- 3.5.4.2.1.6 If a non-profit organization (school, fire-company, church etc.) receives funding for the construction of the required SUP/Sidewalk from the Community Transportation Fund (CTF) then the SUP/Sidewalk will either be constructed at that location through the applicant's construction process under a third party agreement or at a future date through the Department's Capitol Transportation Program (CTP).
- 3.5.4.2.1.7 The fee in lieu of construction will be utilized in accordance with the Department's SUP/Sidewalk fund procedure.
- 3.5.4.2.1.8 If any of the criteria above is to be waived, it will require the Director of Planning's approval.
- 3.5.4.2.2 **Internal Development and Subdivision Streets** – This section defines the process as it relates to the requirements, ~~F~~for constructing a Shared-Use Path (SUP) and/or Sidewalk within residential subdivisions and developments in developed, developing and planned development areas:
- 3.5.4.2.2.1 The Applicant shall provide sidewalks along both sides of subdivision streets where the development has a net density of three dwelling units or greater, or DeIDOT determines, in its sole discretion, that sidewalk would connect the development to transit or other local destinations;
- 3.5.4.2.2.2 The Applicant shall provide sidewalks along both sides of development project streets where the development has access to transit or is of such a nature that it is reasonable to assume, as determined by DeIDOT, that it will attract pedestrians;
- 3.5.4.2.2.3 The Applicant shall provide sidewalk along at least one side of a street for a residential subdivision or development that does not meet the density standards in paragraphs a and b or where there are physical or environmental constraints that make sidewalks on both sides of a street impractical.
- 3.5.4.2.2.4 Other paragraphs of this section notwithstanding, no sidewalk shall be placed along any street that DeIDOT determines, in its sole discretion, has physical or environmental constraints.
- 3.5.4.2.3 ~~For residential subdivisions and developments in rural areas sidewalk shall only be placed in those locations that DeIDOT determines are, or will be at some future time, necessary to make pedestrian connections to transit or to land uses that are likely to attract pedestrian traffic.~~ **Off-Network Trails** – This section defines the process as it relates to the requirements, for constructing a Shared-Use Path (SUP) and/or

Sidewalk which does not fully match the location and placement criteria of 3.5.4.2.1 or 3.5.4.2.2.

- 3.5.4.2.3.1 The proposed physical location and Permanent Easement (PE) for the facility is required to be shown (on the Record Plan or Site Plan) and recorded via separate deed or recorded plat. The intent is to allow current or future land owners and adjoining land owners the opportunity to understand the location and nature of any such Off-Network Trail.
- 3.5.4.2.3.2 Shared-Use Path (SUP) and/or Sidewalk construction for development projects that are responsible for the creation of such Off-Network Trails shall coordinate the timing and/or phasing of trail construction during the process of seeking an Entrance Plan Approval (EPA) from the Development Coordination section. Unless agreed to by the Development Coordination section of DelDOT as a condition of approval, the Shared-Use Path (SUP) and/or Sidewalk construction shall begin concurrent with initial site-entrance construction, and be complete prior to 25% occupancy or leasing of the development project.
- 3.5.4.2.3.3 The location of any such Off-Network Trail/facility is required to be situated based upon guidance from the DelDOT Planning Section's Bicycle and Pedestrian coordinators.
- 3.5.4.2.3.4 The approved and recorded plans shall include the following note: "Initial construction, ongoing maintenance and long term funding associated with any Shared-Use Path (SUP) and/or Sidewalk segments and their associated Permanent Easements shall be the responsibility of the developer, the property owners or both associated with this project. The State of Delaware assumes no responsibility for the future maintenance of these Shared-Use Path (SUP) and/or Sidewalk segments and their associated Permanent Easements."
- 3.5.4.2.4 Permanent easements. The Applicant shall provide permanent easements as necessary to DelDOT along residential subdivision street, off-network trails and/or development street frontage for those locations where DelDOT is not requiring the installation of Shared-use paths and/or sidewalk at the time of the development's construction.
- 3.5.4.2.5 Shared-use paths and Sidewalks shall be constructed in accordance with Chapter 5 of this manual and shall meet Americans with Disabilities Act requirements. Sidewalk widths may be widened to provide for a shared-use path if determined or approved by DelDOT.
- 3.5.4.2.6 Shared-use paths and Sidewalks shall be separated from the edge of road, pavement, driveways, and site entrances in accordance with Chapter 5 of this manual. Where a sidewalk is planned to adjoin the pavement edge of parking lot areas, such sidewalk shall be grade-separated from the parking lot surface by at least a six-inch vertical face curbing.
- 3.5.4.2.7 Shared-use paths and Sidewalks shall be free of utility poles, bushes, plants, and all other obstructions.

*(Break in Continuity of Sections)*

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

**2309 Standards and Regulations for Subdivision Streets and State Highway Access**

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# PROPOSED REGULATIONS

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## DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)  
2 DE Admin. Code 2405

### PUBLIC NOTICE

#### **2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Under 21 Del.C. §4504, the Delaware Department of Transportation (DelDOT), adopted an Oversize/Overweight Hauling Permit Policy and Procedures Manual. DelDOT has now drafted revisions to the manual, and is seeking public comments on the proposed changes.

The proposed revised manual is a complete re-write of the existing DelDOT manual, making it more compatible with AASHTO (American Association of State Highway and Transportation Officials) Policy. Fees and dimensional characteristics remain unchanged in the new manual.

DelDOT will take written comments on the draft changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual through August 31, 2013.

Question or comments regarding these proposed changes should be directed to:

Dennis Blades, Licensing Specialist  
State of Delaware Department of Transportation  
Hauling Permit Section  
PO Drawer E  
Dover, DE 19903  
(302) 739 -7808 (FAX)  
haulpermit@state.de.us

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

**2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

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## Symbol Key

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

## Final Regulations

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

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

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### DEPARTMENT OF AGRICULTURE Harness Racing Commission Delaware Standardbred Breeders' Fund

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D (29 **Del.C.** §4815(b)(3)b.2.D)  
3 DE Admin. Code 502

#### ORDER

#### 502 Delaware Standardbred Breeders' Fund Regulations

#### I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 **Del.C.** §4815(b)(3)b.2.D and §10115, the State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations. Proposed amended regulation 1.2 expands eligibility to participate in Fund-sponsored races to foals of Delaware sires regardless of the out of state residence of the owner/ lessee of the foal and also will reduce paperwork. Proposed amended regulation 2.0 defines the terms "Delaware sire" and "stand" more clearly and the penalty for racing out of state before the end of Delaware's breeding season has been moved to proposed amended regulation 10.2. Proposed amended regulation 10.0 specifies a new heading to conform with the new terminology of proposed amended regulations 1.2 and 2.0. Proposed amended regulation 10.2, in addition to setting forth the one-year disqualification penalty for out-of-state racing before the end of Delaware's breeding season previously set forth in the definition of "Delaware sire" in Regulation 2.0, also specifies the responsibilities of owners and lessees of Delaware sires.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware *Register of Regulations* for May 1, 2013 in accordance with 29 **Del.C.** §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

**II. PUBLIC COMMENTS**

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulations.

**III. FINDINGS AND CONCLUSIONS**

The public was given the required notice of the Fund's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulations.

**IV. ORDER**

**AND NOW this 10th day of July, 2013**, it is hereby ordered that:

1. The proposed amendments to the Fund's regulations are adopted;
2. The text of the final regulation shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

**IT IS SO ORDERED.**

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2013 issue of the *Register* at page 1120 (16 DE Reg. 1120). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**502 Delaware Standardbred Breeders' Fund Regulations**

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**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

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

**REGULATORY IMPLEMENTING ORDER**

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

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2013, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the repeal.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) because it is no longer needed.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106 attached hereto as Exhibit "B" is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106 shall hereby be repealed and no further action will be required by the department.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall no longer be cited in the *Administrative Code of Regulations* for the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 18, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of July 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18th day of July 2013

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1234 (16 DE Reg. 1234). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

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**OFFICE OF THE SECRETARY**

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

14 **DE Admin. Code** 106A

**REGULATORY IMPLEMENTING ORDER**

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

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2013, in the form hereto attached as Exhibit "A". Comments were received from the Delaware State Education Association (DSEA), Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD).

Changes were made to the proposed regulation in several areas to reflect the comments as follows: 1) clarification of the definition of summative evaluation related to "additional observation data"; 2) clarification in section 5.1 related to Appraisal Component and Appraisal Criteria to make this more succinct and to lessen any interpretation issue; 3) clarification and renumbering of the section 8.0 Improvement Plan related to the circumstances under which an improvement plan may be developed if an observed lesson is unsatisfactory and procedures for when said improvement plan is developed; 4) clarification of the type of professional development during the time of an Improvement plan; and 5) capitalization as noted by comments received.

The Department received comments from the GACEC and SCPD noting that their belief that the amendments are "weakening" the appraisal process.

The Department views these comments with the utmost seriousness, and believes that the overall amendment to the regulation, taken as a whole, provides deeper, more focused opportunities for educator appraisal and continues to develop the system with stronger alignment to student growth results (Component V) and now also includes a required emphasis on the educator evaluation rubrics that had not existed heretofore. The Department continues to engage stakeholders to ensure proposed changes are made to streamline and revise the process to allow for fairness, focus and improvement of our educators.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised as a means to update the process.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the Administrative Code of Regulations for the Department of Education.

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## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 18, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of July 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18th day of July 2013

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

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Terry M. Whittaker, Ed.D.

Randall L. Hughes II

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

#### 1.0 Effective Date

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

#### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

**"DSEA"** shall mean the Delaware State Education Association.

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

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

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

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

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

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

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

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

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

"**Student Achievement**" shall mean

(a) For tested grades and subjects:

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

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

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

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

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

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

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

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

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

## 3.0 Appraisal Cycles

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

## 4.0 DPAS II Guide for Teachers

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

## 5.0 Appraisal Components and Appraisal Criteria

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be ~~[evaluated by a credentialed evaluator the assigned Evaluator determined]~~. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. Notification of any such waiver shall be provided to all teachers in a school district or charter school and the Department of Education by the last day in August of each year:
  - 5.1.1 Planning and Preparation
    - 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable. (Optional)

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

two way communication with families about student progress, behavior, and personal needs or concerns. (Optional)

5.1.4.2 Recording student data in a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.

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

5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

~~5.2 Notwithstanding 5.1, for the 2011-2012 school year the first four (4) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator. Appraisal Component 5.1.5 may, however, be used to determine whether a DCAS Teacher shall receive a "Highly Effective" rating.~~

**6.0 Summative Evaluation Ratings**

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

6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the teacher has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a teacher's Summative Evaluation.

6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

6.2.1 "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the *DPAS II Revised Guide for Teachers*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.

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

~~6.2.1.2 Notwithstanding 6.2.1, for the 2011-2012 school year, for a DCAS Teacher "Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.~~

~~6.2.1.2.1 For the 2011-2012 school year, once the Student Improvement Component calculation for DCAS teachers is complete, the summative rating for DCAS teachers who earn an "Effective" rating and who earn an "Exceeds" rating on the Student Improvement Component shall indicate that the teacher earned an "Effective" summative rating based on the first four Appraisal Components and a "Highly~~

~~Effective" summative rating based on all five Appraisal Components. The rating for a teacher earning the "Highly Effective" rating as noted herein shall also include the following language: "The Component V rating is based on student performance on DCAS only, during this pilot year. Note that only DCAS subject teachers are eligible for the Highly Effective summative rating during the 2011-12 school year."~~

6.2.2 **"Effective"** shall mean that:

- 6.2.2.1 The teacher has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
- 6.2.2.2 The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.
- 6.2.2.3 ~~Notwithstanding 6.2.2.1 and 6.2.2.2, for the 2011-2012 school year, for a Non-DCAS teacher "Effective" shall mean the teacher has earned a Satisfactory Component Rating in three (3) or four (4) of the first four (4) Appraisal Components.~~
- 6.2.2.4 ~~Notwithstanding 6.2.2.1 and 6.2.2.2, for the 2011-2012 school year, for a DCAS Teacher "Effective" shall mean that the teacher has earned a Satisfactory Component Rating in three (3) or four (4) of the first four (4) Appraisal Components, and~~
- 6.2.2.5 ~~The DCAS Teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.2.~~

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

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

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

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

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

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

## 7.0 Pattern of Ineffective Teaching Defined

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

Year 1

Year 2

Year 3

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

**8.0 Improvement Plan**

- 8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
- ~~8.1.1~~ **8.2** An Improvement Plan shall also may be developed if a teacher's overall performance during an observed lesson is unsatisfactory. ~~[This unsatisfactory performance shall may be noted by the evaluator on the Formative Feedback form Evaluator on the required forms by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement In instances where an improvement plan is to be developed, the Evaluator shall first have noted the unsatisfactory performance on the required forms by noting "Performance is Unsatisfactory" and initialing the statement].~~
- 8.2 Notwithstanding 8.1, for the 2011-2012 school year, an Improvement Plan shall not be developed related to Appraisal Component 5.1.5.
- ~~8.3.2~~ **8.3** The Improvement Plan shall contain the following:
  - ~~8.3.2.1~~ **8.3.1** Identification of the specific deficiencies and recommended area(s) for growth;
  - ~~8.3.2.2~~ **8.3.2** Measurable goals for improving the deficiencies to satisfactory levels;
  - ~~8.3.2.3~~ **8.3.3** Specific professional development or activities to accomplish the goals;
  - ~~8.3.2.4~~ **8.3.4** Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
  - ~~8.3.2.5~~ **8.3.5** Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - ~~8.3.2.6~~ **8.3.6** Timeline for the plan, including intermediate check points to determine progress;
  - ~~8.3.2.7~~ **8.3.7** Procedures for determining satisfactory improvement;
  - ~~8.3.2.8~~ **8.3.8** Multiple observations and opportunity for feedback provided by a ~~trained evaluator~~ Credentialed Observer, a mentor, a lead teacher, or an instructional coach.
- ~~8.4.2~~ **8.4** ~~Any state or federally funded pp~~rofessional development that is completed during the time that the Improvement Plan is in effect ~~must be certified by the Department and~~ must directly relate to areas identified as needing improvement.
- ~~8.5.4~~ **8.5** The Improvement Plan shall be developed cooperatively by the teacher and Evaluator. If the plan cannot be cooperatively developed, the ~~e~~**E**valuator shall have the authority and responsibility to determine the plan as specified in ~~8.2~~ 8.1 ~~[and 8.2]~~ above.
- ~~8.6.5~~ **8.6** The teacher shall be held accountable for the implementation and completion of the Improvement Plan.
- ~~8.7.6~~ **8.7** Upon completion of the Improvement Plan, the teacher and Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

**9.0 Challenge Process**

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the ~~Formative Feedback~~ required

form(s). To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the Evaluator unless the supervisor of the Evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level ~~credentialed~~ Evaluator.

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

#### 10.0 ~~Evaluator Credentials~~ Credentialing

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

#### 11.0 Evaluation of Process

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

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

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

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### OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

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

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 DE Admin. Code

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The regulation is no longer applicable because 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised took effect beginning in the 2011-2012 school year.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **June 3, 2013**, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the repeal.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) because it is no longer needed.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107 attached hereto as *Exhibit "B"* is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107 shall hereby be repealed and no further action will be required by the department.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall no longer be cited in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **July 18, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of July 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of July 2013

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1244 (16 DE Reg. 1244). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

## OFFICE OF THE SECRETARY

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

## REGULATORY IMPLEMENTING ORDER

**107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised****I. Summary of the Evidence and Information Submitted**

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

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

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **June 3, 2013**, in the form hereto attached as *Exhibit “A”*. Comments were received from the Delaware State Education Association (DSEA), Governor’s Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD).

Changes were made to the proposed regulation in several areas to reflect the comments as follows: 1) clarification of the definition of summative evaluation related to “additional observation data”; 2) clarification in section 5.1 related to Appraisal Component and Appraisal Criteria to make this more succinct and to lessen any interpretation issue; 3) clarification and renumbering of the section 8.0 Improvement Plan related to the circumstances under which an improvement plan *may* be developed if an observed lesson is unsatisfactory and procedures for when said improvement plan is developed; 4) clarification of the type of professional development during the time of an Improvement plan; and 5) capitalization as noted by comments received.

The Department received comments from the GACEC and SCPD noting that their belief that the amendments are “weakening” the appraisal process.

The Department views these comments with the utmost seriousness, and believes that the overall amendment to the regulation, taken as a whole, provides deeper, more focused opportunities for educator appraisal and continues to develop the system with stronger alignment to student growth results (Component V) and now also includes a required emphasis on the educator evaluation rubrics that had not existed heretofore. The Department continues to engage stakeholders to ensure proposed changes are made to streamline and revise the process to allow for fairness, focus and improvement of our educators.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised as a means to update the process.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to

14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **July 18, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of July 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of July 2013

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

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Randall L. Hughes II

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

#### 1.0 Effective Date

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

#### 2.0 Definitions

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

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

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

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

**"Credentialed Observer"** shall mean an individual, not always the supervisor of the specialist, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer

denotes any individual who may conduct observations as part of a specialist's appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

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

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

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

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

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

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

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

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

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

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

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

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

“**Student Achievement**” shall mean

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

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

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

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

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

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

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

### 3.0 Appraisal Cycles

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

### 4.0 DPAS II Guide for Specialists

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

## 5.0 Appraisal Components and Appraisal Criteria

5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be ~~evaluated by a credentialed evaluator or the assigned Evaluator determined~~. In each academic year, for each of the first four (4) Appraisal Components, a school district or charter school may waive one (1) criterion identified as optional below. Notification of any such waiver shall be provided to all specialists in a school district or charter school and the Department of Education by the last day in August of each year:

### 5.1.1 Planning and Preparation

- 5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.
- 5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards. (Optional)
- 5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests. (Optional)
- 5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.
- 5.1.1.5 Demonstrating Knowledge of How to Design or Use Student Assessments: Specialist creates and or selects assessments that are congruent with instructional goals, criteria and standards. The specialist plans for the use of formative and summative assessments of the specialist's students.

### 5.1.2 Professional Practice and Delivery of Services

- 5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.
- 5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients. (Optional)
- 5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding. (Optional)
- 5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.

### 5.1.3 Professional Collaboration and Consultation

- 5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs. (Optional)
- 5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns. (Optional)
- 5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.
- 5.1.3.4 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.

- 5.1.3.5 Use of Assessment in Planning and Delivery of Services: Specialist makes the criteria of the assessment known to the students, monitors the students' progress, provides descriptive feedback, and promotes student self-assessment and uses data to plan future instruction.
- 5.1.4 Professional Responsibilities
  - 5.1.4.1 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.
  - 5.1.4.2 Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel. (Optional)
  - 5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or students. (Optional)
  - 5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.
- 5.1.5 Student Improvement
  - 5.1.5.1 Measuring Student Improvement: Students collectively demonstrate appropriate levels of Student Growth as benchmarked against standards set by the Secretary based on input from stakeholder groups.
- 5.2 ~~Notwithstanding 5.1 for the 2011-2012 school year, the first four (4) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator.~~

## 6.0 Summative Evaluation Ratings

- 6.1 Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.
  - 6.1.1 A satisfactory rating for each of the first four Appraisal Components shall mean the specialist has no more than one unacceptable rating on the Appraisal Criteria specified in each of the ~~five (5)~~ components ~~set forth in 5.1. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a specialist's Summative Evaluation.~~
  - 6.1.2 A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.
- 6.2 The Summative Evaluation shall also include one of four overall ratings: Highly Effective, Effective, Needs Improvement or Ineffective.
  - 6.2.1 Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth, as defined in the *DPAS II Revised Guide for Specialists*, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.
    - 6.2.1.1 ~~Notwithstanding 6.2.1 for the 2011-2012 school year, for a specialist the Summative Evaluation Rating "Highly Effective" shall not be applicable.~~
  - 6.2.2 Effective shall mean that:
    - 6.2.2.1 The specialist has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and
    - 6.2.2.2 The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.

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

6.2.3 Needs Improvement shall mean that:

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

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

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

6.2.4 Ineffective shall mean that:

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

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

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

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

**7.0 Pattern of Ineffective Practice Defined**

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

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

**8.0 Improvement Plan**

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

~~8.1.1~~ **8.2** An Improvement Plan shall also may be developed if a specialist's overall performance during an observation is unsatisfactory. ~~[This unsatisfactory performance shall may be noted by the evaluator on the Formative Feedback form Evaluator on the required forms by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement~~ In instances where an improvement plan is to be developed, the evaluator shall first have noted the unsatisfactory performance on the required forms by noting "Performance is Unsatisfactory" and initialing the statement].

- [8.23]** The Improvement Plan shall contain the following:
- [8.23].1** Identification of the specific deficiencies and recommended area(s) for growth;
  - [8.23].2** Measurable goals for improving the deficiencies to satisfactory levels;
  - [8.23].3** Specific professional development or activities to accomplish the goals;
  - [8.23].4** Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;
  - [8.23].5** Procedures and evidence that must be collected to determine that the goals of the plan were met;
  - [8.23].6** Timeline for the plan, including intermediate check points to determine progress;
  - [8.23].7** Procedures for determining satisfactory improvement.
  - [8.23].8** Multiple observations and opportunity for feedback provided by a ~~trained evaluator~~ Credentialed Observer, a mentor, or lead specialist, or an instructional coach.
- [8.34]** ~~Any state or federally funded PP~~ professional development that is completed during the time that the Improvement Plan is in effect must directly relate to areas identified as needing improvement.
- [8.345]** The Improvement Plan shall be developed cooperatively by the specialist and Evaluator. If the plan cannot be cooperatively developed, the Evaluator shall have the authority and responsibility to determine the plan as specified in 8.21 **[and 8.2]** above.
- [8.456]** The specialist shall be held accountable for the implementation and completion of the Improvement Plan.
- [8.567]** Upon completion of the Improvement Plan, the specialist and Evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

## 9.0 Challenge Process

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

## 10.0 ~~Evaluator Credentials~~ Credentialing

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

*Guide for Specialists.* Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

10.3 The credentialing process shall be conducted by the Department of Education.

#### 11.0 Evaluation of Process

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

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

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

### OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

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

##### I. Summary of the Evidence and Information Submitted

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

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **June 3, 2013**, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the repeal.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) because it is no longer needed.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 108 attached hereto as *Exhibit "B"* is hereby repealed. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 108 shall hereby be repealed and no further action will be required by the department.

##### IV. Text and Citation

The text of 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal

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System (DPAS II) repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall no longer be cited in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **July 18, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 18th day of July 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 18<sup>th</sup> day of July 2013

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1253 (16 DE Reg. 1253). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

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

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

## ORDER

### **Diamond State Health Plan Plus 1115 Demonstration Waiver [Delaware Waiver #11-W-00036/4]**

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to renew the Diamond State Health Plan 1115 Demonstration Waiver for five years. 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 May 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 12, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 1115 demonstration waiver, entitled "Diamond State Health Plan" for five years.

#### Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*

- Social Security Act §1115, *Demonstration projects*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations*

### Background

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to healthcare to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of healthcare expenditures for the Medicaid population.

In order for the Diamond State Health Plan 1115 Demonstration Waiver to continue past the expiration date, the State must request an extension no later than June 30, 2013.

### Summary of Proposal

Pursuant to the notice requirements of 42 CFR §431.408(a)(2)(ii), Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA), hereby notifies the public that it intends to seek a five-year renewal of its Diamond State Health Plan (DSHP) 1115 Demonstration Waiver from the Centers for Medicare and Medicaid Services (CMS). The duration of the extension being requested is January 1, 2014 through December 31, 2018. Delaware seeks to build on the successes of its existing demonstration and deliver better health outcomes more efficiently.

Delaware supports the goals of the Affordable Care Act (ACA) to enhance access to affordable coverage, improve service delivery and control program cost growth. Delaware Medicaid is committed to collaborating with CMS to ensure that state and federal health reform activities are complimentary and coordinated. To this end, the renewal request will update obsolete sections of the waiver and align the waiver with the new requirements of the ACA.

Delaware plans on the following specific proposed waiver renewal initiatives:

- To expand Medicaid eligibility to individuals with income at or below 133% of the Federal Poverty Level (FPL) beginning January 1, 2014;
- To incorporate the new simplified Medicaid eligibility methodology called “modified adjusted gross income” (MAGI) to the extent required by the ACA;
- To follow MAGI eligibility groups once federal regulations are finalized; and,
- To ensure enrollment without interruption in coverage to the maximum extent possible for individuals who are not categorically eligible for Medicaid, the State also plans to implement a transition plan consistent with the provisions of the ACA.

### *Draft of Proposed Waiver Renewal Application*

A draft of Delaware’s waiver renewal application is currently available for review on the Division of Medicaid and Medical Assistance (DMMA) website at <http://dhss.delaware.gov/dhss/dmma/>.

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

### Fiscal Impact Statement

This waiver renewal maintains cost neutrality for each year in the three-year renewal period covering January 1, 2014 through December 31, 2018. A function of this waiver is to assure that coverage of the expanded population will be budget neutral. In other words, the cost of covering this population, as well as the Medicaid eligible population, will be no more than if the DHSS/DMMA had continued covering only its Medicaid population under the traditional fee-for-service program.

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

Christiana Care Health Services, Generations Home Care, Inc., the Governor’s Advisory Council for Exceptional Citizens (GACEC), State Council for Persons with Disabilities (SCPD), and the UnitedHealthcare Community Plan of Delaware offered the following comments, observations and recommendations summarized

below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

## **Christiana Care Health Services**

Inclusion of ESSURE and HSG is encouraged in the Delaware Family Planning Waiver. ESSURE is a minimally invasive procedure for permanent conception. ESSURE (58565) and HSG (58340, 74740) are most effective and the least invasive procedure for permanent birth control. These procedures are safer, require less anesthesia and have quicker recovery than tubal ligation.

**Agency Response:** DMMA appreciates and will consider your recommendations. However, no changes to the waiver are needed at this time.

## **Generations Home Care, Inc.**

Two staff members from Generations Home Care attended the public hearing on the waiver extension May 22, 2013 and send these comments regarding the 1115 Demonstration Renewal.

Generations Home Care is a licensed not-for-profit home and community-based service provider incorporated in Delaware in 1968. Generations Home Care has a statewide presence, with three county offices, serving Sussex, Kent, and New Castle Counties. Generations has continuously provided care and assistance to Delaware residents in need, regardless of their ability to pay, for over 40 years. We provide services that enable individuals to remain in the familiar surroundings of home through home-based care by a cadre of skilled and experienced professionals. Our services allow elderly and disabled adults to maintain their dignity and independence without ever compromising safety or sacrificing quality of care.

Services and supports offered cover all phases of health maintenance and recovery - whether recuperating from a short-term disability or living with a chronic health condition.

Generations Home Care participates in the Delaware Diamond State Health Plan. Generations joined other community-based providers under this Demonstration April 1, 2012. We strongly support Delaware's request for an extension of its waiver for the period January 1, 2014 through December 31, 2016.

We believe the waiver will:

- Expand options for those who need long term care by growing home and community based services
- Rebalance Delaware's Long Term Care System
- Promote early intervention for individuals at risk of requiring institutional long term care
- Respect and expand consumer choices

Generations Home Care encourages a partnership between Generations and the Delaware Department of Health and Social Services to fund a new **Residential Supported Living Service**, referred to as **Adult Foster Care Level II**. This program is not a new option for most states. **Adult Foster Care Level II**, in most states, is a Medicaid-funded home and community-based service for adults with physical disabilities and older adults who can no longer live alone and who otherwise would have no option but to be placed in a nursing facility for lack of alternative community options. All services are provided in a licensed residential home - a home with less than four (4) adults.

**Adult Foster Care Level II** is not a group home model, nor is it Assisted Living. **Adult Foster Care Level II** assists an adult with Activities of Daily Living (i.e. toileting, bathing, feeding, walking, grooming) and/or Instrumental Activities of Daily Living (i.e., shopping, managing medications, budgeting, preparing meals, handling transportation). In addition, the program provides coordination with social activities.

Elderly and disabled adults accepted into the program require **Long Term Care** support, which makes this population appropriate for the Diamond State Integrated Long Term Care Delivery System, which began April 1, 2012. The Diamond State Health Plan Plus already includes this service population: aged and/or disabled individuals over age 18 who meet Nursing Facility level of care, but who prefer to receive home and community-based services as an alternative. Program participants are maintained in the most integrated setting appropriate for their needs. **Adult Foster Care Level II** affords choice in remaining in an alternative residential setting versus entering or remaining in an institution. Plus, it is consistent with the demonstration waiver's objective of controlling expenditures while honoring the preferences of individuals who want to remain in a homelike setting and out of more costly and restrictive institutional settings.

**Adult Foster Care Level II** services are provided under the direction of a licensed Home Health Agency and supervised by a Registered Nurse and Masters prepared staff with degrees in social work, rehabilitation, psychology or a related field. Further, all Level II sponsors and resident managers have high school diplomas and

receive specialized training to meet the needs of the at-risk adult. To assure safety and quality, this program can and should be licensed by DHSS. The process exists today to make this happen and should be included in this application.

Using "Best Practice" models from other states, Delaware can expeditiously implement this new option. Forty-four (44) states use Medicaid funds to support a continuum of home and community-based services, from Assisted Living Residences to Adult Foster Care Homes.

Generations Home Care avidly agrees with DHSS, the provider community, and at-risk individuals, and their families, that it is critical to Delaware to continue the successful implementation of programs and services that rebalance Long Term Care resources. The **Adult Foster Care Level II** program respects individual choice by offering quality, cost-effective, humane, non-institutional alternatives. Would any one of us want anything less for our loved ones and for ourselves?

We sincerely believe Delaware must expand its long term services and supports options in the community. Partnering with CMS and expanded options under the Affordable Care Act and use federal grant money, states can transition Medicaid beneficiaries out of institutions and back to their homes or another qualified community based setting.

Adult Foster Care or rest residential homes with fewer than four unrelated individuals should be a community based option. According to the **Kaiser Family Foundation**, individuals in the Money Follows the Person Program most often transitioned to an apartment setting; Delaware has a shortage of housing settings appropriate for this population. AFC Tier II offers an additional housing setting with support services.

**\*\*Twenty states worked with CMS to reclassify supplemental services as demonstration services to receive the enhanced federal match. Twenty-seven (27) states reported housing to be the most significant issue facing MFP (Money Follows the Person).**

**\*\*Qualified community settings in some MFP demonstrations include a home, apartment, or group home with less than four non related residents. Under the Affordable Care Act (ACA), MFP was extended by five years through 2016 and additional funding was set aside for the demonstration.**

**\*\*As more Medicaid beneficiaries transition to the community, one critical component of a successful community placement is multiple housing options, etc. a program like Adult Foster Care II.**

**\*\*Across all target populations, seniors are the group most likely to be re-institutionalized. This outcome provides an ideal opportunity for Delaware to partner with CMS to support a community option that includes Adult Foster Care II.**

**Housing** remains the biggest challenge facing states in the year ahead. States have repeatedly cited the lack of safe affordable and accessible housing as the biggest barrier to MFP transitions since the demonstration program began in 2008 (**The Kaiser Commission on Medicaid and the Uninsured**).

In a review of the Federal Register Volume 77, Number 38, Monday February 27, 2012, we encourage Delaware to show evidence of the following:

- (1) Stakeholder involvement that includes the medical advisory committee, beneficiaries and diverse provider group representatives and other stakeholders involved in the demonstration; are homecare provider groups at the table?
- (2) Transparency regarding comments made during the public comment period and how these comments were addressed by the State. **How were public comments considered in the Waiver Demonstration extension? Will the state ask for an amendment to the demonstration, etc.?**
- (3) Transparency regarding complaints, how the State reviews and responds to complaints; is this information available for public access?
- (4) Post-approval public forum.
- (5) Information on access to the State's evaluation design, including information on the demonstrations' impact of access to care, cost of care, quality of care and how the demonstration impacts the outcome of care; what is the impact on the beneficiary and the provider community; is any group "**harmed**" by the demonstration?
- (6) Public access to the State's draft and final annual reports regarding the extended demonstration.
- (7) **Access to the State's summary of types of grievances and appeals, trends discovered and actions taken or to be taken.**
- (8) Process in which inquiries and comments from the public may be directed to CMS by mail or email.

- (9) Public information on any policy or administrative difficulties in the operation of the waiver extension.
- (10) Since the State's Demonstration depends heavily on two Managed Care Organizations, how does the state provide information or access to information on the State's monitoring and supervision of the MCO organizations responsible for much of the demonstration; were policy and administrative actions by the MCO the same or interpreted differently? If not, what is the State's process for corrective action?

In summary, we support Delaware Diamond State Health Plan & Diamond State Health Plan Plus Waiver extension request, especially if it includes more community housing options for beneficiaries.

**Agency Response:** Thank you for your comments and support. DMMA concurs with your support of diverse long term service options and the critical role of safe, affordable, and accessible housing. In response to your specific question regarding compliance with federal regulations, DMMA has adhered to the federal requirements for transparency by publishing the renewal request for public comment, holding public hearings and, publishing the comments received and the agency's response on the DMMA website at <http://dhss.delaware.gov/dhss/dmma/>.

## GACEC and SCPD

The GACEC and the SCPD have reviewed DHSS/DMMA's soliciting comments on its proposed renewal of the Diamond State Health Plan (DSHP) waiver. The notice includes links to a 61-page document [hereinafter "Extension Request"] containing the proposed waiver application and several appendices. The DSHP is the Medicaid managed care program first adopted in 1996. The Extension Request (p. 61) indicates that comments and the DMMA responses will be shared with CMS. GACEC and SCPD have the following observations.

First, the Public Notice is inconsistent with the "Extension Request". The Notice [16 **DE Reg.** 1140 (May 1, 2013)] recites that the extension is sought "for an additional three years". In contrast, the Extension Request is for five years. At pp. 4 and 61.

**Agency Response:** Thank you for pointing out the discrepancy. The Extension Request is correct. DMMA is requesting an extension for five (5) years.

Second, the Division of Prevention and Behavioral Health Services (DPBHS), formerly the Division of Child Mental Health Services, was identified as a distinct MCO under the original DSHP. See attachments. If it still enjoys that status, its role should be described in the Extension Request. The Extension Request (p. 15) indicates that "extended mental health" benefits "are covered under the traditional Medicaid system." To the contrary, my impression is that the DPBHS provides extended mental health benefits for children enrolled in the DSHP requiring more than a certain threshold of services.

**Agency Response:** DPBHS does not operate as a Managed Care Organization specified under the requirements in 42 CFR 438. DPBHS does coordinate and provide the extended mental health benefits for children enrolled in the DSHP requiring more than the identified threshold of services.

Third, on p. 7, the word "thought" should be "through".

**Agency Response:** The waiver document has been corrected with the word "through".

Fourth, effective July 1, 2014, DMMA "plans to terminate the state-operated primary case management entity, Diamond State Partners (DSP)." See Extension Request, p. 12. The DSHP originally had four MCOs. By 2002, it had only one MCO left. See Extension Request, pp. 22-23. Given the need for "choice", DMMA essentially established a State MCO, Diamond State Partners (DSP). From 2007 to the present, DMMA has had two private MCOs. DMMA implies that enrollment in DSP has declined dramatically due to the attractiveness of the two private MCOs:

DSP was created in July, 2002 when Delaware had only one commercial Managed Care Organization (MCO). However, since 2007, Delaware has had two viable commercial MCOs for member choice. As a result, DSP enrollment has dropped from a high enrollment number of 17,980 in May, 2004 to less than 3,200 currently.

Enrollment Request, p. 12.

In fact, DMMA has discouraged or barred recent enrollment in DSP. In 2011, when the waiver was being modified to create the DSHP+ program, SCPD strongly objected to DMMA's decision to bar participation of DSP. The Council viewed a choice among only two MCOs as minimal. SCPD also stressed that the State would lose "leverage" in financial negotiations with two MCOs since the MCOs would realize that withdrawal of either MCO

could force the State to create a State MCO. DMMA acknowledges this “dynamic” in the current Extension Request (at p. 23): “The decisions of various MCOs to discontinue participation in the DSHP in the past were based largely on their attempts to negotiate exorbitant inflationary increases at contract negotiation time, believing that Delaware would have to accept their terms or discontinue the waiver.” In pertinent part, SCPDs September 6, 2011 critique (*italicized*) of the DSHP+ proposal was as follows:

**CHAPTER II: PROGRAM DESCRIPTION**

*Section II.1: This section recites that “(t)he State wishes to have a maximum of two Contractors to provide a statewide managed care service delivery system...”. This is apart from the State-run MCO, Diamond State Partners (DSP) which DHSS notes is closed to new members. See also §II.3.3. There are multiple “concerns” with this approach.*

*a. The Division of Prevention and Behavioral Health Services (DPBHS) is an MCO under the DSHP. This is not clarified in this section or elsewhere in the document. Section II.7.6.2.1, which uses outdated references to the Division of Child Mental Health Services, does not identify DPBHS as an MCO under the DSHP. Parenthetically, an outdated reference to DCMHS also appears in §9.5.2.*

*b. Allowing only the 2 current private MCOs to implement the DSHP Plus severely limits participant freedom of choice. The original DSHP had four (4) MCOs - Amerihealth, Blue Cross, First State, and Delaware Care. This provided real competition and an incentive to offer supplemental services (e.g. eyeglasses) to attract participants. Although the current plan authorizes MCOs to offer supplemental services (§§II.7.3.1.a; 7.3.3; and 7.5, final bullet), the prospects for MCOs offering such services are marginal given the non-competitive system adopted by DHSS. The prospects for “conscious parallelism”, “price fixing”, and collusion are enhanced with only 2 MCOs. No RFP was issued to invite competitive bids to serve as an MCO. Moreover, DHSS eschews any negotiating leverage with the 2 approved MCOs which are quite aware of the burden faced by DHSS if 1 of the MCOs withdraws. The Concept Paper contains the following recitation:*

*(I)n the unlikely event that one MCO should discontinue participation in DSHP Plus, DMMA requests authority to continue mandatory managed care for up to 15 months under a single MCO while DMMA seeks participation from a second qualified MCO.*

*This undermines the important “choice” feature of the Medicaid program and merits opposition. Moreover, given the history of MCO’s dropping out of the DSHP, the representation that discontinuation of participation by 1 MCO is an “unlikely event” is not realistic. The only reason DHSS established a State-run MCO was because MCOs cited monetary losses, dropped out of the DSHP, and left only one private MCO.*

*It would be preferable to include DSP as an MCO implementing DSHP Plus or to issue an RFP to enroll more than 2 private MCOs.*

**The Councils strongly oppose the discontinuation of the DSP.** We recommend that DMMA provide satisfaction survey results on DSP to permit comparison with satisfaction survey results from the two private MCOs described at p. 38 of the Extension Request. If satisfaction results for the DSP are high, this would provide additional support for not diminishing “choice” by terminating the DSP.

**Agency Response:** DMMA appreciates your comments regarding DSP. DMMA endorses freedom of choice. As the commenter points out, however, experience has shown that the small population in Delaware does not support the viability of multiple managed care organizations. We are confident that two managed care organizations effectively and efficiently serve the existing DSHP population without limiting access to services. It is no longer cost-effective to cover services through the State managed program, DSP. Please note that CMS requirement of “choice” is satisfied as long as the State contracts with two MCOs.

Fifth, DMMA describes case management as follows:

DMMA has established minimum case management program requirements and qualifications for case managers. Additionally, DMMA requires that each MCO assign one and only one case manager for every member eligible to receive long-term care services.

Extension Request, p. 15.

Both Councils have previously shared concerns with case manager-participant ratios under the DSPH+ and the lack of specialized expertise among case managers for distinct subpopulations, particularly TBI.

**Agency Response:** The DMMA addressed the Councils' concerns previously and revised the case management qualifications to ensure that case managers were not treated as fungible, therefore all case managers must have knowledge or experience in:

1. The needs and service delivery system for all populations in the Case Manager's caseload
2. Newly hired case managers must be provided orientation and training in a minimum of the following areas:
  - a. Case Management techniques for specialty populations, such as individuals with Acquired Brain Injuries.

The MCOs are required to establish a long-term care case management and support coordination program for DSHP Plus members as directed by the State. Coupled with the minimum case management program requirements and qualifications for case managers, these requirements attempt to address the distinct subpopulations such as TBI.

Sixth, the planned expansion of eligibility to individuals with countable income at or below 133% of the FPL merits endorsement. See Extension Report at p. 12. However, it would also be preferable if the benefits menu could be enhanced to cover adult dental services. Such services are currently excluded. See Extension Request at p. 16. Such expansion has some legislative support. See S.B. 56, introduced on April 30, 2013.

**Agency Response:** Thank you for your endorsement of the expansion. We recognize the importance of dental services. However, at this time there is no funding available to expand coverage to the adult population.

Seventh, DMMA indicates that its Health Benefits Manager (HBM) "encourages", members of the same family to select the same MCO. The rationale for such "encouragement" is not disclosed. "Steering" of participants to a single MCO based on the choice of other family members is ostensibly an odd approach. It would be preferable to prioritize other factors, including whether the MCO includes the PCP and specialist used by the participant.

**Agency Response:** DMMA's decision to encourage family members to select the same MCO is based on the benefits to the family including, but not limited to: better navigation of the healthcare system and provider availability. Participants always have the option to select an alternative MCO within 90 days of enrollment.

Eighth, on p. 29 of the Extension Request, the reference to "QII lead by DMMA" merits revision.

**Agency Response:** We cannot respond to this comment because we do not know what revisions the commenter wants.

Ninth, p. 38 of the Extension Request contains the following recital: "Results indicate that provider satisfaction levels during this period 2009 to 2012 are positive in both plans. "This is somewhat cryptic since a 51% satisfaction rating could be viewed as "positive". It would be preferable to provide more specific results. Consistent with the "Fourth" comment above, it would also be useful to include satisfaction statistics for the DSP.

**Agency Response:** Both attachments "D" and "E" break out specifics for satisfaction levels. Additionally, the QMS provides more details concerning the MCOs' satisfaction levels.

Tenth, the restriction to change MCOs to once annually (Extension Report, p. 60) should be subject to exceptions for cause. Indeed, Attachment "D", which collects client complaints, describes a request to change an MCO since the PCP was no longer enrolled with the current MCO. It should be regarded as "good cause" to switch to an MCO in which the PCP is a participating provider.

**Agency Response:** "Good Cause" exceptions are incorporated as outlined in 42 CFR 438.56.

Eleventh, the Extension Report, p. 60, recites as follows: "DSHP applicants are always approved retroactively to the first of the month in which they apply for coverage if they meet all Medicaid qualifying criteria". We question the accuracy of this representation. The DLP is currently involved in a case in which DMMA has declined retroactive eligibility to the first of the month in which the applicant applied for coverage. DMMA identifies the first of the month in which the participant enrolls with an MCO as the initial date of coverage. Moreover, the excerpt from the March, 22, 2012 CMS approval of the DSHP identified a concern with 6-8 week delays in initiating Medicaid eligibility for approved applicants.

**Agency Response:** DMMA appreciates the comment noting that our currently approved 1115 waiver permits

the State to begin providing services to certain population groups upon enrollment in an MCO. As part of this waiver renewal, DMMA proposes to begin providing medical services to all applicable populations beginning with their month of application.

Twelfth, Attachment P, Table IV, Goal 4, establishes a benchmark of “number and percent of members who rate their experience of care as ‘Good’ or ‘Very Good’.” This could be improved. For example, if the only 2 choices are “Good” and “Very Good”, the results are not valid. The other categories in the survey (e.g. poor; fair; excellent) should be identified.

**Agency Response:** DMMA appreciates and has considered the recommendations expressed and thank you for your comments. However, we have not proposed any changes to the waiver as a result of this comment.

Thirteenth, Attachment P, Table IV, Goal 1, includes a quality measure based on “appeals both pre-service and post-service per 1,000 members”. The Councils have expressed concern with the negligible number of appeals of DSHP+ participants. Based on participant descriptions of proposed reductions in services without MCO disclosure of appeal rights, this measure may be of questionable validity. Moreover, it would be preferable if DMMA would honor CLASI’s request to require contact information about the availability of free legal assistance in MCO notice forms.

**Agency Response:** DMMA appreciates and has considered the recommendations expressed and thank you for your comments. However, we have not proposed any changes to the waiver as a result of this comment.

The SCPD has a further comment:

Fourteenth, consistent with the attachment, we appreciate that individuals under the Medicaid Workers with Disabilities program are included in DSHP+.

**Agency Response:** Thank you for your comments. DMMA continues to support efforts to move individuals from institutional settings to community based settings.

### **UnitedHealthcare Community Plan of Delaware**

As a partner in serving Delaware’s Medicaid enrollees, UnitedHealthcare Community Plan is proud to have supported the State in meeting its defined goals through the Diamond State Health Plan (DSHP) and Diamond State Health Plan Plus (DSHP-Plus) programs. Delaware serves as national model for how managed care can help promote independence, expand choices, and control costs in the Medicaid program.

UnitedHealthcare Community Plan has been a partner in these efforts since 2007 and currently serves 65,000 individuals in Medicaid. Working collaboratively with DHSS and the communities we serve, we have developed programs to improve outcomes and expand access for the most vulnerable Delawareans. These include programs that support prenatal care access and education for pregnant women, disease management programs for diabetics and others with chronic disease, behavioral health programs to support the holistic needs of members, and hands on care coordination to ensure elderly and disabled members can live safely in their preferred home setting. We were also able to assist the State and community to ensure the safety and recovery of our members after Hurricane Sandy.

As DHSS looks to renew its existing DSHP 1115 demonstration waiver with CMS, Delaware has a unique opportunity to continue the success of the current model while re-evaluating key elements of its Medicaid managed care delivery system. To assist the State with identification of these elements, UnitedHealthcare is pleased to offer the following comments for your consideration. We offer our comments and support to both this and future CMS waiver renewal discussions.

### Section III Benefits

- Consider carving in benefits to Diamond State Health Plan (DSHP) and Diamond State Health Plan-Plus (DSHP-Plus). The State currently carves certain portions of the benefit out of the managed care benefit and provides these services in a fee for service environment. Carve in arrangements have the benefit of improving care delivery in that they allow all benefits to be managed by one entity, allowing for a more holistic focus on the individual and decreased confusion for beneficiaries.
- Allow for broader flexibility for home and community based services (HCBS) benefits. By allowing greater flexibility for HCBS benefits, health plans can ensure that they are able to provide beneficiaries

with the most appropriate services possible. This will allow individuals to remain in their homes and communities for longer periods of time with the appropriate supports. We can work with the State to identify additional HCBS supports that may not exist under current waivers and can offer beneficiaries a wider and richer set of community-based placement alternatives. In addition, we can work with the State to identify possible opportunities to develop a tiered waiver benefit approach to enable the alignment of the least costly benefits to a broader population

- Allow DHSP-Plus beneficiaries to have budget-authority over self-direction of personal care attendant (PCA) services. Under the current 1115 waiver, DSHP-Plus beneficiaries have employer authority for PCA services which gives them control over who provides services and how they are administered. Expanding this control to include budget-authority for DSHP-Plus beneficiaries receiving PCA services will provide these individuals with greater decision-making authority over how their budgeted funds are spent.

## Section V Managed Care Organizations

- Partner in development of alternative delivery models. We are supportive of the State's waiver amendment request to implement any state plan amendment to provide health homes for eligible demonstration enrollees, per the ACA. As Delaware looks towards implementation options, we urge the State to involve the health plans in all aspects of program design and development. Given that health homes and other alternative models are in their infancy and policy implications have not been closely examined in all instances, we would appreciate opportunities to work with the State, providers, and other stakeholders in an ongoing manner to thoughtfully discuss design and implementation considerations, as well as create transparency in the planning process. We would also welcome the opportunity to work closely with the State to monitor the development and implementation of these types of models across the country and leverage relevant lessons learned from those experiences.

UnitedHealthcare values our relationship with the State and appreciates the opportunity to provide comments as Delaware looks to the renewal of its current 1115 demonstration waiver. We look forward to our continued partnership with DHSS and are certainly available to discuss our comments and the waiver further.

**Agency Response:** Thank you for your comment. DMMA appreciates the opportunity to work with you in serving the Medicaid population of Delaware.

## FINDINGS OF FACT:

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

**THEREFORE, IT IS ORDERED**, that the proposed regulation to renew the Diamond State Health Plan 1115 Demonstration Waiver for the period January 1, 2014 through December 31, 2018 is adopted and shall be final effective August 10, 2013.

Rita M. Landgraf, Secretary, DHSS

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## DIVISION OF PUBLIC HEALTH

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

## ORDER

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

## NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing the Conrad State 30/J-1 Visa Waiver Program. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122(3)a & 11(8).

On June 1, 2013 (Volume 16, Issue 12), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 2, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE:

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the Conrad State 30/J-1 Visa Waiver Program were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from June 1, 2013 through July 2, 2013. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

#### FINDINGS OF FACT:

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Regulations Governing the Conrad State 30/J-1 Visa Waiver Program are adopted and shall become effective August 11, 2013, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1254 (16 DE Reg. 1254). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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#### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2412(16 **Del.C.** §2412)  
16 **DE Admin. Code** 4456

#### ORDER

#### 4456 Hazardous Chemical Act

The Department of Health and Social Services (hereinafter "Department") was established to extend general supervision of the interests of the health and lives of the people of the State of Delaware.

The Department was previously authorized by 16 **Del.C.** §2412 to promulgate regulations to ensure that information regarding hazardous chemicals is accessible to employees who may be exposed to such chemicals in the workplace and to emergency service organizations whose members may be exposed to such chemical hazards during emergency situations.

This regulation was intended to address comprehensively the issue of communicating chemical hazards to employees in the non-manufacturing sector as well as the manufacturing sector until such time as the OSHA Hazard Communication Standard took effect. The State of Delaware 4456 Hazardous Chemical Act regulations are now over 25 years old and duplicate OSHA requirements to which employers must comply. Therefore, all regulations previously promulgated by the Department are hereby **repealed**.

Pursuant to 29 **Del.C.** §10113(b)(5), no public hearing or period of public comment is required for amendments to existing regulations to make them consistent with changes in basic law.

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The Department **repealed** the attached amendments on July 15, 2013.

## Summary of the Evidence and Information Submitted

No period of public comment is required for Amendments to existing regulations to make them consistent with changes in basic law. 29 **Del.C.** §10113(b)(5).

### Findings of Fact

**WHEREAS**, the Department was previously charged with the regulation of the Hazardous Chemical Act;

**WHEREAS**, the regulations are now over 25 years old and duplicate OSHA requirements to which employers must comply;

**NOW, THEREFORE**, in consideration of these premises, and with the authority in 29 **Del.C.** §10113(b)(5), the Department hereby **repeals** the attached regulations.

### Decision and Effective Date

The Department hereby adopts the proposed **repeal** of the regulations to be effective 10 days following final publication of this order in the Delaware *Register of Regulations*.

### Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the repeal. This order is expected to appear in the Delaware *Register of Regulations*, Volume 17 Issue 2, August 1, 2013.

**IT IS SO ORDERED** this 15<sup>th</sup> day of July, 2013 by the Secretary of the Department of Health and Social Services.

Rita M. Landgraf, Secretary

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

**4456 Hazardous Chemical Act**

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 915 and 29 Delaware Code, Chapter 101  
(18 **Del.C.** §§311 and 915 and 29 **Del.C.** Ch. 101)

### ORDER

#### 1003 Credit for Reinsurance

Proposed amended Regulation 1003 relating to Credit for Reinsurance [Formerly Regulation 79] was published in the Delaware *Register of Regulations* on May 1, 2013. The comment period remained open until May 31, 2013. There was no public hearing on proposed amended Regulation 1003. Public notice of the proposed amended Regulation 1003 in the *Register of Regulations* was in conformity with Delaware Law.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation 1003 from:

1. Reinsurance Association of America, who endorsed the proposed regulation.
2. Lloyd's America, Inc., who endorsed the proposed Regulation.

The collective comments were reviewed and considered, with no amendments being suggested. Accordingly, no changes were made to the proposed amended Regulation 1003.

## FINDINGS OF FACT

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §910 et. seq. of the Insurance Code requires a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 1003 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.** §§ 311 and 915, and of 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt Regulation 1003 as amended as may more fully and at large appear in the version attached hereto to be effective on August 15, 2013.

## TEXT AND CITATION

The text of proposed amended Regulation 1003 last appeared in the *Register of Regulations* Vol. 16, Issue 11, pages 1150-1151.

IT IS SO ORDERED this \_\_\_\_ day of July, 2013  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1254 (16 DE Reg. 1254). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1003 Credit for Reinsurance**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))  
7 **DE Admin. Code** 3581

**Secretary's Order No.: 2013-F-0025**

**Date of Issuance: July 10, 2013**

**Effective Date: August 11, 2013**

**3581 Spiny Dogfish**

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

**Background and Procedural History**

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3581, Spiny Dogfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-03. The Department published its initial proposed regulation Amendments in the May 1, 2013 *Delaware Register of Regulations*, and held a public hearing on May 23, 2013.

The Department is proposing revisions to the current Delaware regulations concerning spiny dogfish (*Squalus acanthias*) to modify the daily commercial "take, land or possess" limit. The Department was requested to consider an increase in the "daily take, land, or possess" limit from 3,000 pounds to 10,000 pounds at a recent Advisory Council on Tidal Finfish meeting. This request was subsequently endorsed by the Council.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3581, Spiny Dogfish, pursuant to 7 **Del.C.** §901 (c & d) and 7 **Del.C.** §903(e)(2)(a). Comment was received by the Department regarding this proposed promulgation, all of which was positive and in support of the Department's actions in this matter. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 3, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

## Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will be enabled to liberalize the current regulations concerning spiny dogfish by increasing the daily commercial "take, land or possess limit" from 3,000 pounds to 10,000 pounds, thus improving the economic feasibility of harvesting this low market value resource. The species commonly occurs in tremendously large school, and a higher daily possession limit would minimize discard loss and improve harvest efficiency in the gill net fishery. Further, it should be noted that this species has been implicated in the decline of several ecologically and economically important species, including weakfish and heron. It is for these reasons that the proposed increase in the "daily take, land, or possess" limit from 3,000 to 10,000 pounds is reasonable and sound. It should also be noted that the spiny dogfish quota is monitored using mandatory catch reports and a federal dealer reporting system, thus making it unlikely that Delaware would exceed its quota allocation.

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 same, including at the public hearing held on May 23, 2013;
- 3.) The Department held a public hearing on May 23, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) liberalize the current regulations concerning spiny dogfish by increasing the daily commercial "take, land or possess limit" from 3,000 pounds to 10,000 pounds; (2) improve the economic feasibility of harvesting this low market value resource; and lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**3581 Spiny Dogfish**(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*, in Delaware except in those sizes, seasons, and quantities permitted in accordance with the most recent version of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish as amended. It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish after the Atlantic States Marine Fisheries Commission approved allocation for the region which includes Delaware has been reached during any given year. It shall be unlawful to commercially harvest, land or possess spiny dogfish taken from federal waters during any time when adjoining federal waters are closed to the taking of spiny dogfish. It shall be unlawful for any commercial fisherman to take, land or possess more than ~~3,000~~ 10,000 pounds of spiny dogfish per day from Delaware waters, with a day being defined as 24 hours. Further, it shall be unlawful for any Delaware commercial fisherman to be in possession of spiny dogfish taken from federal waters in excess of the federal daily landing limit. It shall be unlawful for any person to possess the fins from any spiny dogfish prior to landing said spiny dogfish unless said fins are naturally attached to the body of said spiny dogfish. All spiny dogfish landed in Delaware for commercial purposes must be reported through the normal state reporting system.

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 102 and 103 (7 **Del.C.** §§102 & §103)  
**7 DE Admin. Code 3900**

**Secretary's Order No.: 2013-F-0024****Date of Issuance: July 17, 2013****Effective Date of the Amendment: August 11, 2013****3900 Wildlife**

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

**Background and Procedural History**

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-19. The Department published its initial proposed regulation Amendments in the January 1, 2013 *Delaware Register of Regulations*, and held a public hearing on February 6, 2013.

The Department is proposing revisions to 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*, to wit: Section 2.0 (Method of Take); 5.0 (Wild Turkeys); 10.0 (Nuisance Game Animals); 14.0 (Falconry); and 16.0 (Endangered Species) to enable the Department to (1) allow trappers the option of marking their turtle traps with a tag bearing the trapper's name and address, or the current year's trapping license, under Section 3902; (2) establish the minimum age at 13 for taking the mandatory turkey hunting education class, and to clarify what constitutes written authorization from the Division of Fish & Wildlife to hunt turkeys, under Section 3905; (3) require a training and certification program for those persons/businesses that provide nuisance wildlife control services to the public under Section 3910, and to change the name of Section 3910 from "Nuisance Game Animals" to "Nuisance Wildlife"; (4) comply with the changes in federal regulation with regard to Falconry, under Section 3914; and (5) better define the phrase "seriously threatened with extinction", and provide the Division of Fish & Wildlife with the authority to remove species from the State of Delaware's endangered species list, under Section 3916.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*, pursuant to 7 **Del.C.** §§102-103, 7 **Del.C.** §903(e)(2)(a), and 7 **Del.C.**, Chapter 60. Comment was received by the Department regarding this proposed

promulgation, and the same was thoroughly addressed and responded to by the Division of Fish and Wildlife in its final revised Technical Response Memorandum dated July 3, 2013. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 3, 2013 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

## Findings and Discussion

I find that the *revised* proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed *revised* Amendments. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will (1) allow trappers the option of marking their turtle traps with a tag bearing the trapper's name and address, or the current year's trapping license, under Section 3902; (2) establish the minimum age at 13 for taking the mandatory turkey hunting education class, and to clarify what constitutes written authorization from the Division of Fish and Wildlife to hunt turkeys, under Section 3905; (3) require a training and certification program for those persons/businesses that provide nuisance wildlife control services to the public under Section 3910, and to change the name of Section 3910 from "Nuisance Game Animals" to "Nuisance Wildlife"; (4) comply with the changes in federal regulation with regard to Falconry, under Section 3914; (5) better define the phrase "seriously threatened with extinction", and provide the Division of Fish and Wildlife with the authority to remove species from the State of Delaware's endangered species list, under Section 3916; and (6) provide additional clarifying language to aid in the public's overall understanding of the existing regulatory language.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these *revised* 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 same, including at the public hearing held on February 6, 2013;
- 3.) The Department held a public hearing on February 6, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) allow trappers the option of marking their turtle traps with a tag bearing the trapper's name and address, or the current year's trapping license, under Section 3902; (2) establish the minimum age at 13 for taking the mandatory turkey hunting education class, and to clarify what constitutes written authorization from the Division of Fish and Wildlife to hunt turkeys, under Section 3905; (3) require a training and certification program for those persons/businesses that provide nuisance wildlife control services to the public under Section 3910, and to change the name of Section 3910 from "Nuisance Game Animals" to "Nuisance Wildlife"; (4) comply with the changes in federal regulation with regard to Falconry, under Section 3914; (5) better define the phrase "seriously threatened with extinction", and provide the Division of Fish and Wildlife with the authority to remove species from the State of Delaware's endangered species list, under Section 3916; and lastly, because (6) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

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

**3900 Wildlife**

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**DIVISION OF WATERSHED STEWARDSHIP**

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

**Secretary's Order No. 2013-WS-0026**

**Date of Issuance: July 18, 2013**

**Effective Date: January 1, 2014**

**5101 Sediment and Stormwater Regulations**

This Order considers the attached Report of the Department's presiding hearing officer, who reviewed the procedural history and the record and recommends adoption of the final regulation based upon the proposed regulation published April 1, 2013 in the *Delaware Register of Regulations*. This Order adopts the Report to the extent it is consistent with this Order. Consequently, this Order approves the final regulation for publication in the next *Delaware Register of Regulations*, but with a delayed effective date of January 1, 2014. This delayed effective date is to allow more time for the Department to provide workshops and other outreach efforts for the public.

**Background**

The Hearing Officer's Report discusses the record, which includes two public hearings on two different, albeit similar, proposed regulations. The original proposed regulation (2012 proposed regulation) was published for public comment on February 1, 2012. After reviewing the public comments, the Department had published a revised proposed regulation (2013 proposed regulation) on April 1, 2013. This Order approves the 2013 proposed regulation and withdraws the 2012 proposed regulation.

**Discussion**

The regulation adopted by this Order is a comprehensive change from the current regulation codified at 7 DE Admin. Code 5101. The change was the result of an extensive regulatory development process, which formally began with an August 15, 2006 Start Action Notice. The revision of Regulation 5101 was consistent with the April 2005 recommendations of the Governor's Task Force on Surface Water Management.<sup>1</sup> Indeed, the Department's experts in the Division of Watershed Stewardship's (DWS) Stormwater and Sediment Program began meetings with a Regulatory Advisory Committee, which the Department formed from interested persons from the land development, academic, governmental and environmental communities. DWS' experts met with the RAC's numerous subcommittees and involved approximately 235 persons from outside the Department. Thus, the proposed regulation was the culmination of years of effort by the Department's staff and those interested in stormwater management and sediment control. This regulation will assist the state in better managing stormwater to reduce economic and environmental impacts from flooding and improving the water quality of our streams, rivers and bays.

Once the 2012 proposed regulation was published, the Department considered the public comments that were submitted by over 200 persons and groups. The DWS experts reviewed the comments and provided responses, including responses that agreed with some of the suggested changes in the public comments. Most of the comments supported a change to the existing regulation, albeit many suggested different changes than proposed. Nevertheless, there was vast support for change to reflect the changes in the sediment and stormwater

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1. Formed by Executive Order No 62 issued December 17, 2004.

management since the last time Regulation 5101 was amended.

In addition, some of the interested persons requested to meet informally to review the technical support and the Department met to try and resolve the differences and to produce an improved proposed regulation. As a result, the time to obtain plan approval under the existing regulations (pre-amendment) as originally written into the proposed 2012 regulation was extended from 12 months to 18 months in the 2013 proposed regulation. In addition, the 2013 proposed regulation changed the compliance criteria for redevelopment to 30% reduction in effective imperviousness from the 2012 proposed regulation's 50% reduction in effective imperviousness based on the existing condition.

The 2013 proposed regulation improves the stormwater and sediment plan review process and updates the regulation to reflect current best management practices (BMP), as recognized by experts in the environmental community and the regulated industry of land developers and engineers. In addition, DWS prepared a Technical Guidance Document (TGD) to support and explain the regulation. Indeed, the TGD became an issue insofar as it was challenged as not being promulgated as a regulation.

The Department does not intend to use the TGD as a regulation that has the force and effect of law and which may be enforced as such. Instead, the TGD is an interpretive or advisory document that the Department will use to administer the regulation, and which will provide greater detail and explanation for the public. The TGD considers various types of stormwater and sediment plans that may be employed under the regulation, and shows how applicants can obtain approval through the use of an offset and other solutions to different and difficult stormwater and sediment management scenarios. The TGD was included in the record to interpret and support the highly technical aspects of the proposed regulation. The TGD describes how the Department will administer the regulation to specific types of stormwater and sediment plans. The Department, in an effort to alleviate some concerns with the TGD, provided a public notice with the opportunity for public comment on the TGD, but this public comment procedure was not required under Delaware's *Administrative Procedures Act (APA)*, 29 **Del.C.** §10101 *et seq.* or any other law. The Department included a public comment procedure for the TGD in the regulation to make this additive procedure binding on the Department so that the public will have the opportunity to comment formally on any changes to the TGD. The public comments received on the TGD; however, are not in this record and the TGD is not the subject of this Order, which is to approve a proposed regulation that has satisfied the formal requirement of the APA. The Department obtained a letter opinion from a Deputy Attorney General that supports the reliance on the TGD to support the regulation without requiring formal APA regulatory development treatment of the TGD.

The comprehensive revision of the Stormwater and Sediment Regulations will improve the protection of Delaware's waterways and property along the waterways from the adverse consequences of improperly managed stormwater runoff and flooding. The revised regulation will improve the control of erosion and reduce the amount of sediment that enters the waterways.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, finds that the record developed supports adopting as a final regulation the proposed regulation published April 1, 2013 in the *Delaware Register of Regulations* and as is set forth in the Appendix A;
2. The amendment of Department Regulation 5101 is consistent with protecting Delaware's water and land resources from the adverse consequence of disturbing over 5,000 square feet of soil for activity that is subject to this regulation, such as land development or redevelopment; and
3. The Department shall provide written notice to the persons affected by the Order, as determined by the Department, those persons who requested to receive all regulations, and will submit to the *Delaware Register of Regulations* for publication in its next available issue, but with a delayed effective date of January 1, 2014.

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2013 issue of the *Register* at page 1047 (16 DE Reg. 1047). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**5101 Sediment and Stormwater Regulations**

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# FINAL REGULATIONS

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))  
24 **DE Admin. Code** 2900

### ORDER

#### 2900 Real Estate Commission

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on June 13, 2013 at a scheduled meeting of the Delaware Real Estate Commission ("the Commission") to receive comments regarding proposed amendments to the Commission's rules and regulations. The Commission proposed an addition to Rule 13.0 to permit licensees to obtain continuing education credit for completion of a broker's licensing course. In addition, there is a typographical correction to Rule 13.1.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 16, Issue 11, on May 1, 2013. Notice of the June 13, 2013 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was June 28, 2013, 15 days following the public hearing. The Commission deliberated on the proposed revisions at its regularly scheduled meeting on July 11, 2013.

#### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Commission Exhibit 1: *News Journal* Affidavit of Publication.

Commission Exhibit 2: *Delaware State News* Affidavit of Publication.

The Commission received no verbal or written comment.

#### Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on the proposed amendments to the Commission's rules and regulations.

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations. The addition to Rule 13.1 will permit licensees to obtain continuing education credit for completion of a broker's licensing course which will ensure licensee competence while preventing the undue burden of duplicative education. The Commission concludes that adoption of the rules and regulations as amended advances professional standards and is in the best interest of the public.

#### Decision and Effective Date

The Commission hereby adopts the proposed amendments to the rules and regulations as effective 10 days following publication of this Order in the *Delaware Register of Regulations*.

#### Text and Citation

The text of the revised rules and regulations remains as published in the *Delaware Register of Regulations*, Volume 16, Issue 11, on May 1, 2013.

**SO ORDERED** this 11th day of July, 2013.

**DELAWARE REAL ESTATE COMMISSION**Michael Harrington, Sr., Professional Member,  
ChairpersonAndrew Staton, Professional Member,  
Vice-Chairperson

Ricky H. Allamong, Professional Member

James C. Brannon, Jr., Public Member

Gilbert Emory, Public Member

Joseph F. McCann, Public Member

Patricia O'Brien, Public Member

Vincent M. White, Professional Member

Christopher J. Whitfield, Professional Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2013 issue of the *Register* at page 1162 (16 DE Reg. 1162). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2900 Real Estate Commission**

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**DIVISION OF PROFESSIONAL REGULATION****4100 Board of Home Inspectors**Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 **Del.C.** §4106(a)(1))**ORDER****4100 Board of Home Inspectors****NATURE AND STAGE OF THE PROCEEDINGS**

On June 1, 2013, the Delaware Board of Home Inspectors published proposed regulations in the Delaware *Register of Regulations*, Volume 16, Issue 12. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 24, 2013 at a regularly scheduled meeting of the Delaware Board of Home Inspectors to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

**Board Exhibit 3** – Correspondence from Mark R. Valencik, arguing that the proposed regulations are too strict and will limit market share to established home inspectors.

There was no verbal testimony given at the public hearing on June 24, 2013. No written comments were received by the Board during the initial thirty day public comment period. The Board received 1 written comment during the fifteen day 29 **Del.C.** §10118(a) public comment period.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed regulations.

2. There were no public comments provided to the Board during the initial written public comment period or the public hearing, but it did receive one comment during the fifteen day period following the public hearing.

3. Pursuant to 24 **Del.C.** §4106(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed rules and regulations implement the Board's licensing law, Chapter 41 of Title 24 of the Delaware Code, set forth the process whereby applicants may qualify for licensure under the grandfather provision and adopt standards for continuing education. The rules and regulations further set forth a code of ethics and

standards of practice for licensees. The Board has also proposed adoption of a list of crimes substantially related to the practice of home inspection.

5. With regard to the public comment from Mr. Valencik, the Board deliberated on the comments and determined that it had utilized public meetings over the course of at least one year to develop appropriate regulations to best serve the citizens of Delaware. The Board does not believe that the regulations as proposed impose an undue burden on current home inspectors or future applicants. As such, the Board decided not to change the proposed regulations in response to Mr. Valencik's comments.

#### **DECISION AND EFFECTIVE DATE**

The Board hereby adopts the rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 10th day of July, 2013.

#### **BY THE DELAWARE BOARD OF HOME INSPECTORS**

Donald Pyle, Sr., Chairman

Joyce Edwards

Dennis Theoharis, Vice Chairman

Timothy Harriger

Danial Eichelberger

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2013 issue of the *Register* at page 1264 (16 DE Reg. 1264). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**4100 Board of Home Inspectors**

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# GOVERNOR'S APPOINTMENTS

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Name	Board Name	Appointment Date	Reappointment Date
Ms. Brenda James-Roberts	Adult Correction Healthcare Review Committee	6/2/2010	6/5/2013
Janet P. Kramer, M.D.		6/17/2009	5/9/2013
Mandell J. Much, Ph.D.		6/17/2009	5/9/2013
Mr. James C. Welch		6/17/2009	5/9/2013
Ms. Holly B. Wright		6/17/2009	5/9/2013
Mr. James G. Little	Advisory Council on Tidal Finfisheries	4/5/2007	5/9/2013
Captain Bernard L. Pankowski		6/12/2002	5/9/2013
Mr. Joseph A. Smith		6/19/2013	
Ms. Renee L. Bennett	Alderman	6/27/2013	
Ms. Linda A. Madrid		5/9/2013	
Mr. Gary Stockbridge	Blue Collar Task Force	5/22/2013	
Ms. Elizabeth Ann Happoldt	Board of Architects	2/16/2010	4/23/2013
Mr. John E. Mateyko		2/16/2010	4/23/2013
Brian S. McAllister, D.D.S	Board of Dentistry and Dental Hygiene	4/12/2013	
Mr. Thomas A. Mercer, DMD		6/10/2013	
Mr. Andrew M. Lubin	Board of Directors for the Delaware Technology Park	5/29/2013	
Ms. Patricia A. Schumann-Draper	Board of Massage and Bodywork	4/23/2013	
Michael D. Price	Child Death, Near Death and Stillbirth Review Commission	5/16/2013	
Mr. Michael A. Barlow	Christina Gateway Corporation Board of Directors	4/3/2013	
The Hon. Jeffrey Bullock		4/3/2013	
The Hon. Alan B. Levin		4/3/2013	
Mr. Theodore W. Becker, Jr.	Community Advisory Committee	6/21/2013	
Ms. Dorothy C. Abbott	Council on Forestry	5/17/2013	
Mr. W. Allen Jones		8/9/1990	5/17/2013
Mr. Peter S. Martin		11/3/2010	5/17/2013
Mr. George H. Torbert, III		12/16/2009	5/17/2013
Mr. Frederick A. Duffy	Delaware Alcoholic Beverage Control Appeals Commission	5/8/2013	
Mr. James P. Sharp	Delaware Code Revisors	6/12/2013	
Mr. Charles T. Armbruster, Jr.	Delaware Commission of Veterans' Affairs	6/14/2013	
Mr. Cornelius C. Carroll		6/23/2000	6/13/2013
Mr. William C. Farley		6/14/2013	
Mr. Earl E. Seppala		6/14/2013	
Ms. Beverly H. Steele	Delaware Harness Racing Commission	6/24/1993	5/9/2013
Janice L. Lee, M.D.	Delaware Health Care Commission	5/20/2013	
Donna M. Goodman	Delaware Health Information Network	1/1/2011	5/13/2013
Mr. Stephen M. Groff		5/13/2013	
Kathleen S. Matt, Ph.D.		5/13/2013	
Stephen A. Saville		5/23/2013	
Dr. Gary M. Siegelman, MD		5/23/2013	

# GOVERNOR'S APPOINTMENTS

Terri H. Steinberg, MD, MBA		1/1/2011	5/13/2013
Deborah Haskell, Ph.D.	Delaware Heritage Commission	5/30/2013	
Mr. Bradley H. Layfield	Delaware Interscholastic Athletic Association	5/8/2013	
Ms. Laura Leone		6/2/2010	6/12/2013
Mr. Leroy Mann, III		6/26/2013	
Mr. Nils B. Marcune	Delaware Interscholastic Athletic Association	6/26/2013	
Mr. Willie L. Savage, II		6/5/2013	
The Hon. Mitchell G. Crane	Delaware Manufactured Home Relocation Authority	5/14/2013	
Mr. Andrew C. Strine		11/3/2011	5/14/2013
Mr. Dean E. Holden	Delaware Natural Areas Advisory Council	4/2/2009	5/15/2013
Mr. John L. Williams		11/27/2007	5/15/2013
Mr. Richard W. Downes	Delaware River and Bay Authority	4/7/2009	5/9/2013
Mr. Fernando N. Guajardo		5/16/2012	5/9/2013
Mr. William E. Lowe, III		5/13/2003	5/9/2013
Mr. Gregory V. Moore	Delaware Solid Waste Authority	4/21/2010	5/9/2013
Mr. Eric Fontanez-Baez	Developmental Disabilities Council	5/17/2013	
Mr. Richard R. Kosmalski		5/17/2013	
Ms. Barbara J. Mazza		5/20/2013	
The Hon. Robert B. Coonin	Family Court	6/15/2001	6/19/2013
Mr. Theodore W. Becker, Jr.	Health Care Advisory Panel	6/26/2013	
Joseph J. Straight		5/15/2013	
The Hon. William L. Boddy, III	Justice of the Peace	7/16/1990	5/21/2013
The Hon. Herman G. Hagan		6/20/1994	5/21/2013
The Hon. Rochelle S. Knapp		5/20/2013	
The Hon. Bonita N. Lee		10/25/1990	5/21/2013
The Hon. Christopher R. Portante		5/23/2013	
The Hon. Nancy C. Roberts		7/16/1995	5/21/2013
The Hon. James A. Tull		9/6/1995	5/21/2013
Mr. W. Duane Hammond	Kent County Vocational-Technical Board of Education	11/13/2009	5/29/2013
Bobby C. Jones, Ed.D.	Kent County Vocational-Technical Board of Education	9/4/2009	5/29/2013
Mr. George E. Luff, II	Lottery Commission	6/2/2010	6/5/2013
Jacqueline D. Jenkins, Ed.D.	Merit Employee Relations Board	6/28/2009	5/9/2013
Ms. Diane S. Albanese	Professional Standards Board	6/30/2013	
Ms. Rosaria Macera		6/19/2013	
Mrs. Jo Ann Reynolds		6/19/2013	
Ms. April M. Lee	Provider Advisory Board	4/5/2013	
Mr. David L. Bonar	Public Advocate	6/27/2013	
Ms. Melanie Ewing-Lahutsky	Sex Offender Management Board	5/14/2013	
Mr. Jay Lynch		4/25/2013	
Ms. Lisa A. Minutola		4/24/2013	
The Hon. William N. Nicholas		4/24/2013	
Susan G. Schmidhauser		4/24/2013	

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# GOVERNOR'S APPOINTMENTS

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Dorothy A. Linn, Ed.D.	Southern Regional Education Board	2/23/2011	5/3/2013
Mr. Robert W. Rescigno		1/24/2006	5/3/2013
Ms. Kathryn S. Schultz	State Board of Accountancy	6/21/2013	
Karen C. Smith, Ed. D.		6/14/2013	
Mr. William F. Tobin, Jr.	State Public Integrity Commission	6/13/2012	5/9/2013
Ms. Suzanne A. Howell	Statewide Independent Living Council	11/1/2011	4/24/2013
Mr. Blake E. Roberts		4/24/2013	
Mrs. Deloris Hayes-Arrington	Statewide Labor Management Committee	5/20/2013	
Ms. Patricia S. Justice		5/20/2013	
Ms. Angela M. LaManna		5/20/2013	
The Hon. Jan R. Jurden	Superior Court	5/2/2001	6/12/2013
The Hon. Andrea L. Rocanelli		6/5/2013	
Ms. Karen H. Pugh	Sussex County Board of Elections	6/5/2013	
Mr. Fernando N. Guajardo	Sussex County Vocational-Technical School Board of Education	5/22/2013	
The Hon. Pamela J. Bakerian	Sustainable Energy Utility Oversight Board	4/29/2013	
Mr. Joseph J. Schorah, Jr.		5/1/2013	
Syed I. Shah, Ph.D.		4/29/2013	
Ms. Beverly G. Bell	Unemployment Insurance Appeal Board	9/23/2009	5/15/2013
Mr. John R. Cochran	University of Delaware Board of Trustees	5/9/2007	6/5/2013
Monica E. Bocanegra, Ph.D.	Victims' Compensation Assistance Program Appeals Board	5/8/2013	
Ms. Genelle E. Fletcher	Vocational Rehabilitation Advisory Council for DVI	6/11/2010	4/24/2013
Ms. Sonya F. Lawrence		3/17/2010	4/24/2013
Mary Ann Mieczkowski		4/24/2013	
Ms. Jennifer A. Adkins	Water Infrastructure Advisory Council	6/26/2013	
Mr. Charles D. Anderson		6/26/2013	
Mr. David B. Baker		6/26/2013	
Mr. Jeffrey M. Bross		6/26/2013	
Mr. Josef A. Burger		6/26/2013	
Mr. Joseph J. Corrado, Sr.		6/26/2013	
Mr. Richard A. Duncan, Sr.		6/26/2013	
The Hon. Eugene S. Dvornick, Jr.		6/26/2013	
Mr. Jeffrey C. Flynn		6/26/2013	
Bruce W. Jones		6/26/2013	
Mr. Brian D. Marvin	Water Infrastructure Advisory Council	6/26/2013	
Mr. Hans M. Medlarz		6/26/2013	
Mahadeo P. Verma, Ph.D.		6/26/2013	

**17 DE Reg. 245 (08/01/13)**

**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)

**SAN# 2013-09****1. TITLE OF STATE IMPLEMENTATION PLAN (SIP) REVISION:**

Regional Haze 5-Year Periodic Report (proposed)

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

Regional haze is defined as visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors, and which are located across a broad geographic area. These emissions are transported over large regions, including national parks, forests and wilderness areas ("Class I" federal areas). The Clean Air Act Mandates protection of visibility, especially in Class I areas. States were required to submit a SIP to the U.S. Environmental Protection Agency (EPA) that defined a specific plan for complying with the federal Regional Haze Rule (RHR). On September 25, 2008 (and later approved by EPA in August, 2011) Delaware submitted a SIP to EPA to address visibility impairment in the only nearby Class I area for which Delaware significantly impacted, i.e., the Brigantine Wilderness Area located in Brigantine, NJ. Five years after submittal of the initial regional haze SIP, states are required to evaluate the progress towards the reasonable progress goals for each Class I area for which the state significantly impacts. This proposed revision to the SIP serves as Delaware's 5-year periodic review per Section 308(g) of the RHR.

Pursuant to Clean Air Act section 169A(d), the DAQ is also notifying the public that the responsible Federal Land Managers (FLM) have been consulted. DAQ is making the FLM conclusions/recommendations, and the DAQ responses available to the public, as part of the supporting documentation and public hearing process. Upon completion of the public notice period, and after addressing any written comments, the DAQ will submit the final documentation to the EPA as a revision to Delaware's SIP.

In summary, DAQ proposes to submit a negative declaration to EPA specifying that the Delaware 2008 Regional Haze SIP is sufficient for meeting the requirements outlined in the RHR. The DAQ also proposes to conclude that no additional controls are necessary, based on this first Delaware five year progress report.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**7 **Delaware Code**, Chapter 60, Environmental Control**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

Interested parties may submit comments by September 6, 2013 in writing to Jack Sipple, Division of Air Quality, Blue Hen Corporate Center, 655 S. Bay Road, Suite 5N, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, August 22, 2013 beginning at 6:00 pm, in DNREC's Auditorium, R & R Building, 89 Kings Hwy, Dover, DE 19901. The SIP may also be viewed on DNREC's website at:

<http://www.dnrec.delaware.gov/Air/Pages/Visibility-SIP-5-yr-Progress-Report.aspx>

**7. PREPARED BY:**Jack Sipple (302) 739-9402 July 11, 2013 Email address: [john.sipple@state.de.us](mailto:john.sipple@state.de.us)

**Delaware State Implementation Plan Revision:  
Regional Haze 5-Year Periodic Report Progress Towards the Reasonable Progress Goals for Visibility In  
Class I Federal Areas And Determination of Adequacy of Existing Implementation Plan  
PROPOSED  
July 15, 2013  
EXECUTIVE SUMMARY**

Regional haze is defined as visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors, and which are located across a broad geographic area. These emissions are transported over large regions and can obscure vistas integral to the value of our national parks, forests and wilderness areas ("Class I" federal areas). The Clean Air Act mandates requirements to protect visibility, especially in Class I Federal areas. In 1999, the U.S. Environmental Protection Agency (EPA) finalized the Regional Haze Rule (RHR) to address visibility impairment at Class I areas.

The RHR calls for state, tribal, regional planning organizations (RPO) and federal agencies to work together to improve visibility in 156 Class I areas. Specifically, states are required to develop a series of state implementation plans (SIP) to reduce visibility impairment with the express intent that by 2064, the visibility in all Class I areas will be returned to natural conditions. The first such SIP must establish interim goals and emissions reduction strategies for 2018, based on trends from various sources including point, area, and mobile (both onroad and nonroad) source emissions, biogenic, and wildfire and agricultural emissions.

Visibility assessments prepared by the RPO: Mid-Atlantic/Northeast Visibility Union (MANE-VU) determined that for the initial Regional Haze SIPs, ammonium sulfate was the largest contributor to visibility impairment at Class I areas and reduction of sulfur dioxide (SO<sub>2</sub>) emissions is the most effective means of reducing ammonium sulfate. As such, the majority of the focus with regard to existing and planned emission controls pertains to the largest sources of SO<sub>2</sub> emissions. These sources consist of electric generating units (EGUs) and large industrial boilers. Hence, MANE-VU's long term strategy to reduce SO<sub>2</sub> to improve visibility prior to 2018 includes:

- Timely implementation of Best Available Retrofit Technology,
- Reducing the sulfur content of fuel oil,
- Reducing sulfur dioxide emissions from electric power plants,
- Seeking to reduce emissions outside MANE-VU that impair visibility in our region, and
- Continuing to evaluate other measures such as energy efficiency, alternative clean fuels, and measures to reduce emissions from wood and coal combustion.

On September 25, 2008 Delaware submitted its "Delaware Visibility State Implementation Plan" (regional haze SIP) to EPA to comply with the 2018 MANE-VU strategy. Many of the EGUs and large industrial boilers within Delaware have committed to and have installed controls through a number of mechanisms, including Delaware's multi-pollutant regulation, federally enforceable permits, and state and federal consent agreements. Reductions associated with many of these mechanisms were used to estimate the 2018 visibility improvements at the Brigantine Wilderness Class I area in New Jersey. However, since Delaware submitted its initial regional haze SIP in 2008, additional regulations and actions have been imposed which will reduce visibility impairing pollutants. Moreover, as recently as the summer of 2012, several large EGUs have announced plans to either shutdown sources or curtail emissions by converting to natural gas, leading to even more significant reductions in SO<sub>2</sub> emissions. As this report will show, these additional mandates will help ensure that the reasonable progress goals are attained well before 2018.

Section 308(g) of the RHR also requires each state to report on progress in improving visibility five (5) years after submitting the initial SIP. Known as "5-Year Progress Reports" (Report), they must be in the form of SIP revisions that comply with the procedural requirements of the United States Clean Air Act, as amended. This Report fulfills the requirements of 40 CFR 51.308(g) requiring periodic reports evaluating progress in implementing the measures included in Delaware's 2008 SIP. This document also fulfills the requirements of 40 CFR Part 51.308(h), 308(i), and 40 CFR 51 Parts 102 and 103.

It is for these reasons that the Delaware Department of Natural Resources and Environmental Control (DNREC) submits a negative declaration to EPA, specifying that the Delaware 2008 Visibility State Implementation Plan is sufficient for meeting the requirements outlined in the RHR. Furthermore, no additional controls are necessary, based on this first Report.

**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

**Summary:** The Delaware River Basin Commission ("DRBC" or "Commission") will hold a **public hearing** to receive comments on proposed amendments to the Commission's *Water Quality Regulations*, *Water Code* and *Comprehensive Plan* to revise the water quality criteria for polychlorinated biphenyls ("PCBs") in the Delaware Estuary and Bay, DRBC Water Quality Management Zones 2 through 6, for the protection of human health from carcinogenic effects. The Commission will simultaneously solicit comment on a draft implementation strategy to support achievement of the criteria.

**Dates:** The **public hearing** will be held starting at 1:00 P.M. on Tuesday, September 10, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Friday, September 20, 2013. Additional information regarding the procedures for the hearing and comments is provided below.

**Addresses:** The **public hearing** will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

**Oral Testimony and Written Comments:** Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows:

- If by email, to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us);
- if by fax, to Commission Secretary at 609-883-9522;
- if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360;
- and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Comments also may be delivered by hand at any time during the Commission's regular office hours (Mon. through Fri., 8:30 a.m. through 5:00 p.m. except on national holidays) until the close of the comment period at 5:00 p.m. on Friday, September 20. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "PCB Rulemaking" in the subject line.

**For Further Information:** The basis and background document and the draft Implementation Strategy are available on the DRBC website, DRBC.net. A May 10, 2012 PowerPoint presentation that illustrates PCB loading reductions achieved through the implementation of the Commission's PMP Rule is also posted on the website. For further information, please contact Commission Secretary Pamela M. Bush, 609-883-9500 ext. 203.

**DEPARTMENT OF AGRICULTURE****DELAWARE FOREST SERVICE****PUBLIC NOTICE****401 Forest Service Erosion and Sedimentation Regulations**

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agencies to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

The Department of Agriculture will take written comments on the proposed Regulations from August 1, 2013, to August 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations  
2320 South DuPont Highway, Dover, DE 19901  
(302) 698-4500  
[daniel.shortridge@state.de.us](mailto:daniel.shortridge@state.de.us)

**PESTICIDES SECTION****PUBLIC NOTICE****601 Delaware Pesticide Rules and Regulations**

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agencies to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations.

The proposed regulatory changes set forth below are the result of the above process.

The Department of Agriculture will take written comments on the proposed Regulations from August 1, 2013, to August 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Dan Shortridge, Chief of Community Relations  
2320 South DuPont Highway, Dover, DE 19901  
(302) 698-4500  
daniel.shortridge@state.de.us

**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, August 15, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES****PUBLIC NOTICE****1915(c) Home and Community-Based Services Waiver**

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) / Division of Developmental Disabilities Services (DDDS) gives notice to the public that a 1915(c) Home and Community-Based Services Waiver (HCBS) waiver amendment has been submitted to the Centers for Medicare and Medicaid Services (CMS) to add a new core service, *Group Supported Employment*.

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 August 31, 2013.

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

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), 42 CFR §447.205, 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 implementation of the Modified Adjusted Gross Income (MAGI) methodology provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) under the Affordable Care Act.

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 August 31, 2013.

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

**DIVISION OF PUBLIC HEALTH**

**PUBLIC NOTICE**

**4303 Delaware Early Defibrillation Program**

Office of Emergency Medical Services & Preparedness Section, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the State of Delaware Regulations Governing Automatic External Defibrillation. Due to the extensive number of amendments the Department has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

These regulations have been amended to:

- Streamline the registration process by eliminating several redundant steps.
- Eliminated the tri-annual re-registration requirement.
- Eliminate several requirements previously delineated for agencies possessing AEDs due to the advances made in AED technology.
- Eliminate the requirement to follow a specific set of written protocols.
- Specify that AED users are to follow the current American Heart Association/Emergency Cardiac Care Committee guidelines.

On August 1, 2013, the Department plans to publish proposed amendments to the Delaware Regulations Governing Automatic External Defibrillation and hold them out for public comment per Delaware law. Copies of the proposed regulations are available for review in the August 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Emergency Medical Services at (302) 223-1720.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Tuesday, September 3, 2013 at:

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

**DEPARTMENT OF INSURANCE**

**OFFICE OF THE COMMISSIONER**

**PUBLIC NOTICE**

**802 Delaware Workplace Safety Regulation**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 802 relating to Delaware Workplace Safety [Formerly Regulation 65]. The docket number for this proposed amended Regulation is 2226.

The proposed amended Regulation supports the Delaware Workplace Safety Program (18 **Del.C.** §2533) and follows new requirements passed under House Bill 175, for the 147<sup>th</sup> General Assembly, enacted on June 27,

2013. The Delaware Code authority for the change is 18 **Del.C.** §311 and §2533; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended Regulation. The proposed amended Regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, August 30, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West, Delaware Department of Insurance

841 Silver Lake Boulevard

Dover, DE 19904

Phone: (302) 674-7379, Fax: (302) 739-5566, Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

### **OFFICE OF THE COMMISSIONER**

#### **PUBLIC NOTICE**

#### **804 Workers Compensation Ratepayer Advocate**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed Department of Insurance Regulation 804 relating to Workers Compensation Ratepayer Advocate. The docket number for this proposed regulation is 2226.

The purpose of this regulation is to implement the provisions of 18 **Del.C.** §§2610 (e), (f), and (g) (enacted June 27, 2013, by HB 175) regarding the Ratepayer Advocate who shall represent the interests of Delaware workers compensation insurance rate-payers in connection with the filing of an application by an advisory organization with the Commissioner relating to rates or prospective loss costs. The Delaware Code authority is 18 **Del.C.** §311 and §2610 and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed regulation. The proposed regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

[www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml](http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml)

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Friday, August 30, 2013. Any such requests should be directed to:

Regulatory Specialist Rhonda West, Delaware Department of Insurance

841 Silver Lake Boulevard

Dover, DE 19904

Phone: (302) 674-7379, Fax: (302) 739-5566, Email: [rhonda.west@state.de.us](mailto:rhonda.west@state.de.us)

## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH AND WILDLIFE**

#### **PUBLIC NOTICE**

#### **3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

The purpose of this action is to formally adopt the provisions of the federal Final Rule for the recreational black sea bass fishery and remain compliant with Addendum XXIII to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass by amending Tidal Finfish Regulation 3507 Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas (12.0, 12.1 & 12.2).

Addendum XXIII requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The

National Oceanic and Atmospheric Administration (NOAA) published a Final Rule in the Federal Register on June 21, 2013 (Federal Register/Vol. 78, No. 120) specifying recreational management measures for black sea bass in federal waters. The Final Rule set the recreational black sea bass fishing season as May 19 through October 14 and November 1 through December 31, with a recreational possession limit of 20 black sea bass during those periods. The minimum size limit will remain 12.5 inches (excluding the caudal filament).

The proposed action will close Delaware's January 1 through February 28 recreational black sea bass season and adjust the black sea bass possession limits from 25 to 20 fish for the open seasons of May 19 through October 14 and November 1 through December 31. The minimum size limit will remain 12.5 inches.

The hearing record on the proposed changes to the black sea bass regulation will be open August 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held on August 21, 2013 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DIVISION OF FISH AND WILDLIFE**

**PUBLIC NOTICE**

**3900 Wildlife**

This action is needed to:

- a. Create a definition for the terms "Cable Restraint", "Foothold Trap", "Jaw Spread", and "Waterline".
- b. Require written permission before trapping on private or public property.
- c. Make it unlawful to set traps near exposed meat to prevent capture of raptors.
- d. Make it unlawful to tend or disturb another person's traps without their permission.
- e. Prohibit the use of toothed or serrated jawed foothold traps.
- f. Define the types and sizes of foothold traps permitted to be set both above and below the waterline.
- g. Allow the use of foot encapsulating traps.
- h. Require identification tags on all trap types.
- i. Set a maximum height in which cable restraints may be set above the ground.
- j. Establish a fox trapping season.
- k. Authorize a new method in which hunters can validate a harvested deer.
- l. Make it unlawful to possess a live coyote or nutria without a permit and establish hunting and trapping seasons for coyotes and a trapping season for nutria.
- m. Require reporting of harvested coyotes and nutria.
- n. Make it unlawful to release swine into the wild and require individuals to notify the State if swine escape and can't be recaptured and make it illegal to kill feral swine unless authorized by the Division.
- o. Makes it illegal to recreationally hunt feral swine or charge a fee to hunt feral swine.

The hearing record on the proposed changes to the 3900 Amended Wildlife Regulation will be open August 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on September 4, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**OFFICE OF HIGHWAY SAFETY**

**PUBLIC NOTICE**

**1205 Electronic Red Light Safety Program (ERLSP)**

The Secretary of the Department of Safety and Homeland Security (hereinafter referred to as "Secretary") intends to promulgate regulations that will regulate the administration of the Electronic Red Light Safety Program

(hereinafter referred to as "Program") in unincorporated areas of the State of Delaware. The Program through the use of traffic light signal monitoring systems will impose monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals.

Notice for public comment and a public hearing were properly noticed and a public hearing was held on November 22, 2004 in the second floor conference room of the Department of Safety and Homeland Security Building, Dover, DE. No comments were received either in writing or at the public hearing.

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations. As a result of Executive Order No. 36, The Department of Safety and Homeland Security in cooperation with the Department of Transportation has updated administration Regulation 1205 to incorporate programmatic changes to the Electronic Red Light Safety Program. The proposed regulatory changes set forth below are the result of the above process.

The Department of Safety and Homeland Security will take written comments on the proposed Regulations until August 31, 2013. Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Jana Simpler, Director of the Office of Highway Safety  
P.O. Box 1321, Dover, DE 19901  
(302) 744-2740  
Jana.Simpler@state.de.us

## **DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**

### **DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING PUBLIC NOTICE**

#### **105 Residential Child Care Facilities and Day Treatment Programs**

The Office of Child Care Licensing is again submitting the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs for public comment as a result of a change in the definition of "Child" and to incorporate public comments received from two organizations.

A copy of the proposed regulations is being published in the August 1, 2013 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on August 31, 2013.

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

## **DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION CONTROLLED SUBSTANCE ADVISORY COMMITTEE PUBLIC NOTICE**

### **Uniform Controlled Substances Act Regulations**

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. Rule 2.0 is revised to add the requirement that all practitioners registered under Chapter 47 of Title 16 of the Delaware Code must complete continuing education in order to qualify for continued registration. The amendment will enhance practitioner competence for greater protection of the public.

A public hearing will be held on August 28, 2013 at 9:30 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Committee at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 12, 2013, which is 15 days following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**300 Board of Architects**

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise sections 1.0 and 6.2.1 and add new text in 1.0, 4.1.2, 6.22, 6.3, and 6.9. The proposed changes seek to add a section for architect emeritus status, reinstitute a regulation for Intern Development Program Guidelines in order to comply with the National Council of Architectural Registration Boards and amend the current continuing education requirements to allow for proration of credits and become more in line with other states architecture licensing boards.

The Board will hold a public hearing on the proposed regulation change on September 4, 2013 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Meaghan Jerman, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 19, 2013 pursuant to 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**2500 Board of Pharmacy**

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations.

A public hearing was held on May 15, 2013, with deliberations conducted on June 19, 2013. As the result of deliberations, the Board decided to make substantive revisions to the proposed amendments originally published in the Delaware *Register of Regulations* on April 1, 2013, Volume 16, Issue 10. Specifically, the Board proposes to strike the language "only to patients that are self-medicating" in Rule 6.4. The balance of the proposed revisions remain as published on April 1, 2013.

A public hearing will be held on August 21, 2013 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 5, 2013 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on September 18, 2013 at 10:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**5200 Board of Examiners of Nursing Home Administrators**

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations 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 September 10, 2013 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments

should be sent to Latoya Stephens, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF MOTOR VEHICLES**  
**PUBLIC NOTICE**

Pursuant to Executive Order 36, the Division of Motor Vehicles of the Department of Transportation reviewed its existing regulatory scheme, detailed in Title 2, Delaware Administrative Code. That review identified several existing regulations that have been recognized as obsolete, or whose provisions have been replaced by other statutes or rules.

This Notice describes the regulations that are to be canceled as a result of this review, and explains the basis for their cancellation. They are as follows:

Regulation 2202 - Issuance of Duplicate Driver's Licenses: Stipulates an unnecessary policy that the division no longer performs.

Regulation 2214 – Waiver of Written Examinations for Certain New Residents: This regulation is no longer needed because it is already covered under 21 **Del.C.** §2713.

Regulation 2251 – Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle: This regulation is no longer needed because it is superseded by 21 **Del.C.** §2310.

Regulation 2264 – Use of Dealer License Plates on Boat Trailers: This regulation is no longer needed.

Regulation 2272 – Authorization of Police Agencies to Issue Vehicle Inspection Notices: This regulation is no longer needed because it is now covered under 21 **Del.C.** §2144(a).

Regulation 2274 – Distribution of Literature Advertising Businesses: This regulation is no longer needed because existing ethics laws cover this action.

Regulation 2275 – Requirements for Licensing of Vehicle Dealers: This regulation is no longer needed because it is now covered under Title 21, chapter 63.

Recommended:

Jennifer K. Cohan, Director, Division of Motor Vehicles

So Ordered this \_\_\_\_ day of July, 2013.

Shailen P. Bhatt, Secretary  
Delaware Department of Transportation

**DIVISION OF PLANNING AND POLICY**  
**PUBLIC NOTICE**

**2309 Standards and Regulations for Subdivision Streets and State Highway Access**

**Background**

The Delaware Department of Transportation's Planning Division developed proposed revisions to its regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets.

This proposed revision to the Standards and Regulations for Subdivision Streets and State Highway Access relates to two matters: guidance for Shared Use Paths/Sidewalks, and a new review process for low traffic-generating existing commercial projects expected to produce average daily traffic of 199 vehicles or less.

Proposed deletions are shown as stricken through text and proposed new language is shown as underlined text below.

Written comments will be accepted regarding these proposals until August 31, 2013. Any requests for copies of the Regulations, or any questions or comments regarding amendments to these Regulations should be directed to:

Marc Coté

Assistant Director - Development Coordination  
P.O. Box 778  
Dover, DE 19903  
Phone (302) 760-2266  
Fax (302) 739-2251  
Mark.Cote@state.de.us

**DIVISION OF TRANSPORTATION SOLUTIONS**  
**PUBLIC NOTICE**

**2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

Under 21 **Del.C.** §4504, the Delaware Department of Transportation (DelDOT), adopted an Oversize/Overweight Hauling Permit Policy and Procedures Manual. DelDOT has now drafted revisions to the manual, and is seeking public comments on the proposed changes.

The proposed revised manual is a complete re-write of the existing DelDOT manual, making it more compatible with AASHTO (American Association of State Highway and Transportation Officials) Policy. Fees and dimensional characteristics remain unchanged in the new manual.

DelDOT will take written comments on the draft changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual through August 31, 2013.

Question or comments regarding these proposed changes should be directed to:

Dennis Blades, Licensing Specialist  
State of Delaware Department of Transportation  
Hauling Permit Section  
PO Drawer E  
Dover, DE 19903  
(302) 739 -7808 (FAX)  
haulpermit@state.de.us