
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:
Emergency
Proposed
Final

General Notices

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 August 15, 2013.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

261

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
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.
February 1	January 15	4:30 p.m.

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TABLE OF CONTENTS

Cumulative Tables.....	264
------------------------	-----

EMERGENCY

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY	
Regulation No. 202, Rent Increase Dispute Resolution Procedures.....	267

PROPOSED

DEPARTMENT OF EDUCATION	
Office of the Secretary	
275 Charter Schools.....	275

DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Medicaid and Medical Assistance	
Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity...	282
Attachment 3.1-A Page 5 Addendum, Multi-State Purchasing Pool Supplemental Rebate Agreement	285
Division of Public Health	
4305 Trauma System Regulation.....	288
Division of Social Services	
11002.9 Definitions and Explanation of Terms.....	289

DEPARTMENT OF INSURANCE	
Office of the Commissioner	
302 Captive Insurance Financial Regulation.....	293

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Air Quality	
1140 Delaware Low Emission Vehicle Program.....	295
1147 CO2 Budget Trading Program.....	303
Division of Fish and Wildlife	
3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit.....	304
3588 Atlantic Menhaden.....	305

DEPARTMENT OF STATE	
Division of Professional Regulation	
1100 Board of Dentistry and Dental Hygiene, Section 12.0 Unprofessional Conduct Defined	307
4100 Board of Home Inspectors.....	309
Public Service Commission	
3001 Rules for Certification and Regulation of Electric Suppliers.....	310

FINAL

DELAWARE SOLID WASTE AUTHORITY	
501 Regulations of the Delaware Solid Waste Authority.....	313
502 Statewide Solid Waste Management Plan.....	314
503 Differential Disposal Fee Program.....	315

DEPARTMENT OF AGRICULTURE	
Office of the Secretary	
101 On-Farm Home Processing of Non-Potentially Hazardous Foods.....	316
1201 Nutrient Management Certification Regulations.....	317

TABLE OF CONTENTS

263

DEPARTMENT OF FINANCE

Division of Revenue

206 Internet Lottery Regulations..... 317

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Public Health

4202 Control of Communicable and Other Disease Conditions..... 320

DEPARTMENT OF LABOR

Division of Industrial Affairs

1341 Workers' Compensation Regulations; 1342 Health Care Practice Guidelines; PART A Carpal Tunnel Syndrome Guidelines; PART B Chronic Pain Treatment Guidelines; PART C Cumulative Trauma Disorder Medical Treatment Guidelines; PART D Low Back Treatment Guidelines; PART E Shoulder Treatment Guidelines; PART F Cervical Treatment Guidelines; PART G Lower Extremity Treatment Guidelines..... 322

Division of Unemployment Insurance

1202 Unemployment Insurance Regulations..... 325

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1125 Requirements for Preconstruction Review, Section 2.0, Emission Offset Provisions.. 326

1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Sections 6.0 & 10.0 328

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

301 Criminal History Record Checks for Child Care Persons..... 331

302 Child Abuse Registry Checks for Child Care and Health Care Persons..... 339

DEPARTMENT OF STATE

Division of Professional Regulation

5300 Board of Massage and Bodywork..... 342

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section 11(e) – Program Compliance..... 344

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing and Comment Period..... 345

Dept. of Education, Notice of Monthly Meeting..... 345

Dept. of Health and Social Svcs., Div. of Medicaid and Medical Assistance; Div. of Public Health; Div. of Social Services, Notices of Public Comment Periods..... 345 - 346

Dept. of Insurance, Office of the Commissioner, Notice of Public Comment Period..... 346

Dept. of Natural Resources and Environmental Control, Div. of Air Quality; Div. of Fish and Wildlife, Notices of Public Hearings and Comment Periods..... 347 - 349

Dept. of State, Div. of Prof. Regulation; Public Service Commission, Notices of Public Hearings.... 349 - 350

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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.).

DELAWARE RIVER BASIN COMMISSION

Revised Notice of Proposed Rulemaking and Public Hearing..... 17 **DE Reg.** 143 (Prop.)

DEPARTMENT OF AGRICULTURE**Office of the Secretary**

101 On-Farm Home Processing of Non-Potentially Hazardous Foods..... 17 **DE Reg.** 25 (Prop.)

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

Delaware Forest Service

401 Forest Service Erosion and Sedimentation Regulations..... 17 **DE Reg.** 145 (Prop.)

Harness Racing Commission

502 Delaware Standardbred Breeders' Fund Regulations..... 17 **DE Reg.** 203 (Final)

Pesticides Section

601 Delaware Pesticide Rules and Regulations..... 17 **DE Reg.** 146 (Prop.)

DEPARTMENT OF EDUCATION**Office of the Secretary**

106 Teacher Appraisal Process Delaware Performance Appraisal System
(DPAS II), Repealed..... 17 **DE Reg.** 204 (Final)

106A Teacher Appraisal Process Delaware Performance Appraisal System
(DPAS II) Revised..... 17 **DE Reg.** 205 (Final)

107 Specialist Appraisal Process Delaware Performance Appraisal System
(DPAS II), Repealed..... 17 **DE Reg.** 214 (Final)

107A Specialist Appraisal Process Delaware Performance Appraisal System
(DPAS II) Revised..... 17 **DE Reg.** 216 (Final)

108 Administrator Appraisal Process Delaware Performance Appraisal System
(DPAS II), Repealed..... 17 **DE Reg.** 224 (Final)

501 State Content Standards..... 17 **DE Reg.** 148 (Prop.)

851 K to 12 Comprehensive Health Education Program..... 17 **DE Reg.** 150 (Prop.)

917 Accelerated Academic Programs..... 17 **DE Reg.** 152 (Prop.)

Professional Standards Board

1502 Professional Growth Salary Increments..... 17 **DE Reg.** 65 (Final)

DEPARTMENT OF FINANCE**Office of the State Lottery**

205 Charitable Video Lottery Rules and Regulations..... 17 **DE Reg.** 10 (Emer)

206 Internet Lottery Regulations..... 17 **DE Reg.** 29 (Prop.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**Division of Medicaid and Medical Assistance**

1915(c) Home and Community-Based Services Waiver..... 17 **DE Reg.** 156 (Prop.)

Diamond State Health Plan Plus 1115 Demonstration Waiver..... 17 **DE Reg.** 225 (Final)

Medicaid Expansion under the Affordable Care Act of 2014 - DSSM 14000,
15000, 16000 and 18000..... 17 **DE Reg.** 126(Emer.)

..... 17 **DE Reg.** 162 (Prop.)

Division of Public Health

4104 Delaware Conrad State 30 / J-1 Visa Waiver Program..... 17 **DE Reg.** 233(Final)

4303 Delaware Early Difibrillation Program.....	17 DE Reg. 165 (Prop.)
4456 Hazardous Chemical Act, Repealed.....	17 DE Reg. 234 (Final)
4462 Public Drinking Water Systems.....	17 DE Reg. 30 (Prop.)
Division of Social Services	
9018.2 Time Limit for Able-bodied Adults.....	17 DE Reg. 66 (Prop.)
Division of Substance Abuse and Mental Health	
6002 Credentialing Mental Health Screeners & Payment for Vol. Admissions.	17 DE Reg. 72 (Prop.)
 DEPARTMENT OF INSURANCE	
Office of the Commissioner	
802 Delaware Workplace Safety Regulation.....	17 DE Reg. 166 (Prop.)
804 Workers Compensation Ratepayer Advocate.....	17 DE Reg. 169 (Prop.)
1003 Credit for Reinsurance.....	17 DE Reg. 235 (Final)
 DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1341 Workers' Compensation Regulations.....	17 DE Reg. 34 (Prop.)
1342 Health Care Practice Guidelines, PARTS A - G.....	17 DE Reg. 35 (Prop.)
Division of Unemployment Insurance	
1202 Unemployment Insurance Regulations.....	17 DE Reg. 36 (Prop.)
 DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Air Quality	
SIP for the Implementation, Maintenance and Enforcement of the 2010 Nitrogen Dioxide (NO ₂) National Ambient Air Quality Standard (NAAQS).....	17 DE Reg. 96 (Gen.)
1101 Definitions and Administrative Principles.....	17 DE Reg. 36 (Prop.)
1103 Ambient Air Quality Standards.....	17 DE Reg. 38 (Prop.)
1104 Particulate Emissions from Fuel Burning Equipment.....	17 DE Reg. 44 (Prop.)
1108 Sulfur Dioxide Emissions From Fuel Burning Equipment.....	17 DE Reg. 79 (Prop.)
1114 Visible Emissions.....	17 DE Reg. 45 (Prop.)
1125 Requirements for Preconstruction Review, Section 1.9, Definitions.....	17 DE Reg. 6 (Errata)
1139 Nitrogen Oxides (NO _x) Budget Trading Program.....	17 DE Reg. 47 (Prop.)
1143 Heavy Duty Diesel Engine Standards.....	17 DE Reg. 48 (Prop.)
Division of Fish and Wildlife	
3200 Horseshoe Crabs.....	17 DE Reg. 49 (Prop.)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (3.0, 5.0 & 6.0) Section 12.0.....	17 DE Reg. 50 (Prop.) 17 DE Reg. 172 (Prop.)
3545 Invasive Finfish.....	17 DE Reg. 7 (Errata)
3581 Spiny Dogfish.....	17 DE Reg. 236 (Final)
3900 Wildlife, Sections 2.0, 5.0, 10.0, 14.0 and 16.0.....	17 DE Reg. 174(Prop.) 17 DE Reg. 238 (Final)
Division of Waste and Hazardous Substances	
1301 Regulations Governing Solid Waste (DRGSW).....	17 DE Reg. 58 (Prop.)
1352 Regulations Governing Aboveground Storage Tanks.....	17 DE Reg. 59 (Prop.)
Division of Water	
7503 Oil Gas and Mineral Exploration Regulations.....	17 DE Reg. 61 (Prop.)
Division of Watershed Stewardship	
5101 Sediment and Stormwater Regulations.....	17 DE Reg. 240 (Final)
7402 Shellfish Sanitation Regulations.....	17 DE Reg. 53 (Prop.)
 DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Office of Highway Safety	
1205 Electronic Red Light Safety Program (ERLSP).....	17 DE Reg. 182 (Prop.)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**Division of Family Services**

105 Residential Child Care Facilities and Day Treatment Programs.....	17 DE Reg. 182 (Prop.)
201 Child Placing Agencies.....	17 DE Reg. 62 (Prop.)

DEPARTMENT OF STATE**Division of Professional Regulation**

Uniform Controlled Substances Act Regulations, Section 2.0, Requirements...	17 DE Reg. 186 (Prop.)
300 Board of Architecture.....	17 DE Reg. 188 (Prop.)
1900 Board of Nursing, Sect. 14.0 Nurse Licensure Compact Rules & Regs...	17 DE Reg. 83 (Final)
1900 Board of Nursing, Sect. 6.0 Requirements and Procedures for Licensure	17 DE Reg. 85 (Final)
1900 Board of Nursing, Sect. 10.0 Disciplinary Proceedings.....	17 DE Reg. 86 (Final)
2500 Board of Pharmacy.....	17 DE Reg. 192 (Prop.)
2900 Real Estate Commission.....	17 DE Reg. 242 (Final)
3500 Board of Examiners of Psychologists.....	17 DE Reg. 89 (Final)
4100 Board of Home Inspectors.....	17 DE Reg. 243 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	17 DE Reg. 196 (Prop.)

DEPARTMENT OF TRANSPORTATION**Division of Motor Vehicles**

2202 Issuance of Duplicate Drivers' Licenses.....	17 DE Reg. 197 (Prop.)
2214 Waiver of Written Examinations for Certain New Residents.....	17 DE Reg. 197 (Prop.)
2251 Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle.....	17 DE Reg. 197 (Prop.)
2264 Use of Dealer License Plates on Boat Trailers.....	17 DE Reg. 197 (Prop.)
2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices.....	17 DE Reg. 197 (Prop.)
2274 Distribution of Literature Advertising Businesses.....	17 DE Reg. 197 (Prop.)
2275 Requirements for Licensing of Vehicle Dealers.....	17 DE Reg. 197 (Prop.)

Division of Planning and Policy

2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	17 DE Reg. 198 (Prop.)
---	------------------------

Division of Transportation Solutions

2405 Oversize/Overweight Hauling Permit Policy and Procedures.....	17 DE Reg. 202 (Prop.)
--	------------------------

EXECUTIVE DEPARTMENT**Delaware Economic Development Authority**

401 Procedures Regarding Non-State Guaranteed Bonds.....	17 DE Reg. 90 (Final)
403 Administration and Operation of Council on Development Finance.....	17 DE Reg. 90 (Final)

OFFICE OF MANAGEMENT AND BUDGET**Division of Facilities Management**

Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	17 DE Reg. 63 (Prop.)
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	17 DE Reg. 91 (Final)

STATE BOARD OF PENSION TRUSTEES**The Delaware Public Employees' Retirement System**

The Delaware Public Employees Pension System.....	17 DE Reg. 91 (Final)
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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.)

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 Delaware Code, Section 7011 (25 **Del.C.** §7011)

EMERGENCY**PUBLIC NOTICE****202 Rent Increase Dispute Resolution Procedures**

AND NOW, this 15th day of August, 2013, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware Registrar of Regulations:

1. Pursuant to its statutory authority, the Authority has proposed for adoption a comprehensive set of emergency regulations (the "Proposed Regulations") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 **Del.C.** §7043.

2. The Rent Justification Dispute Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Accordingly, the Authority anticipates receiving rent increase notices that may trigger the dispute resolution procedures set forth in the statute within the next thirty (30) days. Accordingly, due to time restraints, it is necessary to establish emergency regulations to provide manufactured home community owners and tenants with guidelines and procedures to be used pending the adoption of final regulations by the Authority.

NOW THEREFORE, for the reasons set forth above, IT IS ORDERED:

1. That the "Rent Increase Dispute Resolution Procedures" (the "Regulations") attached hereto as Exhibit A are adopted pursuant to 25 **Del.C.** §7011 and §7043 and 29 **Del.C.** §10119. The Regulations adopted herein shall become effective ten (10) days after their publication in the Delaware *Register of Regulations* and shall remain in effect for 120 days, unless extended as authorized by 29 **Del.C.** §10119 and until final regulations may be adopted.

2. That pursuant to 29 **Del.C.** §1134, the Authority shall transmit a copy of this Order and the Regulations to the Delaware *Register of Regulations* for publication in the next issue of the Delaware *Register of Regulations*.
3. That the Authority will receive, consider, and respond to petitions by any interested person for the reconsideration, or revision of these emergency Regulations. Copies of any such petitions shall be mailed and or delivered to the Authority at the Authority's business office located at 1675 S. State Street, Suite E, Dover, DE 19901.
4. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.
5. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson
William Dunn

George Meldrum
Andy Strine

EXHIBIT A**REGULATIONS USED FOR THE ADMINISTRATION OF THE DELAWARE MANUFACTURED HOME
RELOCATION TRUST FUND PURSUANT TO 25 Del.C. §7011 THROUGH §7015****202 Rent Increase Dispute Resolution Procedures**

The Delaware Manufactured Home Relocation Authority ("Authority") is authorized to establish rules and regulations under the provisions of 25 **Del.C.** §7011, et. seq. (the "Act"). The emergency regulations set forth below establish policies and procedures relating to the administration by the Authority of the Rent Increase Dispute Resolution procedures set forth in 25 **Del.C.** §7043. Because of the need to have policies and procedures in place when the Authority begins receiving rent increase notices and petitions to arbitrate, the Authority is adopting these emergency regulations without prior notice or public hearing pursuant to 29 **Del.C.** §10119.

REASON FOR EMERGENCY ORDER

An Act to Amend Title 25, Chapter 70 of the **Delaware Code** relating to Manufactured Homes and Manufactured Communities signed into law on June 30, 2013 established procedures that a manufactured home community owner must follow in order to raise a manufactured home owner's lot rent. Community owners must provide at least 90 days notice to each affected home owner, any Home Owners Association, and the Authority prior to any increase in rent. If the proposed increase exceeds the CPI-U (as defined in the Act) the Authority is charged with the responsibility of administrating and overseeing the Rent Increase Dispute Resolution process set forth in the Act, including scheduling a meeting between the affected parties to allow them the opportunity to resolve any dispute regarding the proposed rent increase and designating a qualified arbitrator to conduct arbitration proceedings if one or more of the parties files a petition to arbitrate. The Rent Justification Dispute Resolution Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Accordingly, the Authority anticipates receiving rent increase notices that may trigger the dispute resolution procedures set forth in the Act within the next thirty (30) days. Accordingly, due to time restraints, it is necessary to establish these emergency regulations for a period of up to 120 days (subject to renewal as provided in 29 **Del.C.** §10119). The Authority will receive, consider, and respond to petitions by any interested person for the reconsideration, or revision of the emergency regulations set forth herein. Copies of any such petitions shall be mailed and or delivered to the Authority at the Authority's address set forth herein.

EFFECTIVE DATE OF THE ORDER

This Emergency Order shall take effect at 12:01 a.m. September 10, 2013 and shall remain in effect for 120 days, unless extended as authorized by 29 **Del.C.** §10119 and until final regulations may be adopted.

ORDER

It is hereby ordered this 15th day of August, 2013, that the above referenced Regulation is adopted pursuant to 25 Del.C. §§7011, 7043, and 29 Del.C. §10119.

202 Rent Increase Dispute Resolution Procedures

(Authorization: Section 7011)

1.0 Introduction: Role of Authority Regarding Rent Increase Disputes

The Authority's role in the administration of rent increase disputes is limited to implementing and overseeing the process by which rent increase disputes are resolved and to the extent applicable, funding direct arbitration costs in excess of the arbitration fees paid by the participants in arbitration proceedings under 25 Del.C. §7043. In fulfilling that role, the Authority shall at all times remain neutral and shall not provide legal advice to any party relating to any rent increase dispute.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless the meaning set forth below is inconsistent with the Act or the manifest intention of the Act.

"Act" means the Delaware Manufactured Home Owners and Community Owners Act set forth in 25 Del.C. Chapter 70.

"Affected home owner" means a leaseholder of a manufactured home community whose rent is proposed to be increased by the community owner of the community within which the leaseholder's manufactured home is located.

"Authority" means the Delaware Manufactured Home Relocation Authority.

"Community owner" means the owner of a manufactured home community, as defined in the Act.

"CPI-U" means the average annual increase of the Consumer Price Index For All Urban Customers in the Philadelphia-Wilmington-Atlantic City area for the most recently available preceding thirty-six (36) month period at the time the notice of a rent increase is mailed to the leaseholders.

"Designated representative" means an individual authorized to act on behalf of any party, provided said authorization is in writing and signed by the party on whose behalf the individual is authorized to act.

"Direct arbitration costs" means the following out of pocket costs paid in connection with an arbitration hearing held pursuant to the provisions of 25 Del.C. §7043(c): (a) fees payable to the arbitrator; (b) the reasonable cost of any meeting rooms or facilities used for the arbitration hearing; (c) the cost of the court reporter for attendance at the arbitration hearing; (d) the reasonable out of pocket expenses paid by the arbitrator in connection with the scheduling and holding of the arbitration hearing; and (e) any other costs approved in advance by the Authority and determined by the Authority to constitute a "direct arbitration cost". Direct arbitration costs shall not include the cost of preparing a verbatim transcript of the hearing unless the arbitrator determines that a verbatim transcript is necessary in order for the arbitrator to render a decision.

"HOA" means a home owners association registered with the Authority pursuant to 25 Del.C. §7026(b).

"Leaseholder" means a person who is a party to a lease subject to the provisions of 25 Del.C. §7040 through 7055.

"Notice to the Authority" or words to that effect shall mean the delivery of notice to the following address: Delaware Manufactured Home Relocation Authority, 1675 S. State Street, Suite E, Dover, DE 19901.

"Party" shall include a community owner, an HOA, and any leaseholder affected by a proposed rent increase.

3.0 Notification of Rent Increase Dispute Resolution Provisions

Each year, the Authority provides community owners with notice of the right of first offer provisions set forth in 25 Del.C. §7026. Simultaneously with the sending of that notice, the Authority shall also provide each manufactured home community owner with a copy of the Rent Increase Dispute Resolution provisions set forth in 25 Del.C. §7040 through 7055 and a copy of any applicable regulations adopted by the Authority.

4.0 Rent Increase Notice Procedures

- 4.1 A community owner is required to give written notice to each affected home owner, to the Home Owners Association, if one exists, and to the Authority, at least 90 days prior to any increase in lot rent. When more than one tenant is affected by the rent increase, in lieu of providing the HOA or the Authority with copies of each letter sent to each affected tenant, the community owner may provide the HOA and/or the Authority with a letter certifying that written notice has been sent to each affected home owner together with a copy of the form of notice provided, which form must contain the information required hereunder. The notice must identify all affected home owners by lot number, name, group, or phase. In any such notice, in addition to the information required to be provided under 25 Del.C. §7043(a), the community owner shall (with respect to each affected home owner) state whether or not the proposed rent increase exceeds the CPI-U and provide the following information:
- 4.1.1 The current monthly lot rent;
 - 4.1.2 The proposed monthly lot rent;
 - 4.1.3 The CPI-U;
 - 4.1.4 The effective date of the rent increase;
 - 4.1.5 The community owner's contact information, which shall include the name and mailing address of a representative of the community owner authorized to respond to questions relating to the proposed rent increase and schedule any necessary meetings and/or arbitration proceedings required under the Act; and
 - 4.1.6 If the proposed rent increase exceeds the CPI-U, a date, time and place on which the community owner is available to meet with the affected home owners, Home Owners Association, or their representatives, which dates must be within thirty (30) days of the date the notice is mailed out.

5.0 Scheduling of Meetings When Proposed Rent Increase Exceeds CPI-U

When a proposed rent increase exceeds the CPI-U, the Authority shall schedule a meeting between the parties at the time, date, and place set forth in the community owner's initial notice unless the Authority determines, based on input from the parties, that said time, date, or place should be changed, in which case the Authority, in its sole discretion, shall schedule the meeting at a time and place to be held within thirty (30) days from the mailing of the notice of the rent increase. Unless otherwise agreed to by all of the parties, the meeting shall take place in the county in which the manufactured home community is located. Notice of the time, date and place of the meeting shall be provided to the community owner and the HOA. If no HOA exists, notice of the time, date, and place of the meeting shall be provided to the affected leaseholders, or their designated representative, by the community owner.

6.0 Meeting Procedures

- 6.1 At any meeting held pursuant to 25 Del.C. §7043(b), the community's HOA, if any, shall be the designated representative of the leaseholders. In all other cases, where the number of affected leaseholders exceed five (5), the leaseholders shall designate in writing at least one representative to act on behalf of the affected leaseholders. In all cases the community owner shall designate a representative to act on behalf of the community owner. At each meeting, a "sign-in" sheet shall be available and any person attending the meeting shall be required to sign the sign-in sheet confirming said person's attendance at the meeting. The community owner shall maintain a copy of the sign-in

- sheet for each meeting and provide the Authority with a copy of the sign-in sheet at the end of each meeting.
- 6.2 At the meeting, the community owner shall, in good faith, disclose all of the material factors resulting in the decision to increase the rent, including the financial and other pertinent documents and information supporting the reasons for the rent increase.
- 6.3 If the parties are unable to resolve any dispute during the initial meeting, the parties may agree to extend or continue the meeting to a mutually agreeable time and place.
- 6.4 If the parties are able to resolve all disputes relating to the proposed rent increase, the community owner shall so inform the Authority in writing. Any resolution of the rent dispute shall be documented by a writing signed by all of the parties and/or their duly authorized representatives.
- 6.5 If all of the affected parties are unable to resolve the dispute at the final meeting, or are unable to agree on extending or continuing the meeting, any party who has not agreed to a resolution of the issues may, within thirty (30) days from the conclusion of the last meeting, file a petition, together with the \$250.00 arbitration fee, requesting the Authority to appoint a qualified arbitrator to conduct non-binding arbitration proceedings pursuant to 25 Del.C. §7043(c). In order to be considered timely, both the petition and the arbitration fee must be filed and paid to the Authority within the aforesaid thirty (30) day period.
- 6.6 If none of the parties pay the \$250.00 arbitration fee and petition the Authority to appoint a qualified arbitrator within the aforesaid thirty (30) day period, the community owner shall be authorized to implement the proposed rent increase as set forth in the initial notice, or if applicable, the rent otherwise agreed to by the community owner and affected leaseholders.
- 6.7 Any party is entitled to be represented by legal counsel at any meeting provided that said legal counsel is authorized to practice law in the state of Delaware.

7.0 Arbitration Procedures

- 7.1 Upon receipt of a petition to appoint a qualified arbitrator pursuant to 25 Del.C. §7043(c) and the initial \$250.00 arbitration fee from the party filing the petition, the Authority shall prepare a caption setting forth the names of the parties and shall select an arbitrator to serve as the arbitrator and to conduct the non-binding arbitration proceeding. Each arbitration petition shall be assigned a docket number by the Authority. Thereafter, any paper filed with the Authority or appointed arbitrator shall include on the first page the caption and docket number assigned to the case. The initial petition shall include the name, mail and email addresses, telephone and fax numbers of the person filing the petition and the name, address, telephone and fax numbers of the person representing the person filing the petition. The initial \$250.00 arbitration fee shall be paid by the party filing the petition at the time the petition is filed. An original and five (5) copies of the petition shall be provided to the Authority. If the petition is filed by the community owner, a copy of the petition shall be mailed to each affected home owner, and if applicable, to the Home Owners Association (or their respective designated representative) on the same day that the petition is filed. If the petition is filed by an affected home owner, or if applicable, the Home Owners Association, a copy of the petition shall be mailed to the community owner (or the community owner's designated representative) on the same day the petition is filed. Any document required to be mailed shall be mailed by United States mail, first class, with postage prepaid.
- 7.2 The Authority shall endeavor to create a list of members of the Delaware Bar who are both qualified and willing to act as arbitrators. The Authority will post a list of such arbitrators on the Authority's web site.
- 7.3 Any arbitrator appointed by the Authority shall be a member of the Delaware Bar who has provided the Authority with satisfactory evidence of his or her training in alternative dispute resolution.
- 7.4 If all of the parties have agreed in writing to the appointment of a specific Delaware attorney to act as arbitrator, the Authority shall appoint the agreed upon attorney as arbitrator.
- 7.5 Upon receipt of written notice from the Authority of his or her appointment, the appointed arbitrator shall determine whether or not there is any conflict of interest or other matter that would otherwise affect his or her ability to render an impartial decision, in which case the appointed arbitrator shall decline the appointment and the Authority shall appoint another arbitrator. Notwithstanding the

- foregoing, if all of the parties agree in writing to waive any conflict of interest and the arbitrator is willing to accept the appointment, the appointed arbitrator may accept the appointment. Upon appointment of an arbitrator, the parties shall provide the arbitrator with a list of witnesses who are expected to testify as quickly as possible so that the arbitrator may run a conflict of interest check on all names supplied by the parties.
- 7.6 Where a community owner has proposed rent increases in excess of the CPI-U that would affect leaseholders at different time periods, with the consent of all the parties, the Arbitrator is authorized to consolidate the cases for purposes of the arbitration hearing. Under such circumstances, only one payment of \$250.00 each shall be required from the community owner and leaseholders.
- 7.7 Simultaneously with the filing of a petition to arbitrate, the party filing the petition shall pay to the Authority the \$250.00 arbitration fee set forth in 25 Del.C. §7043(c). The other party or parties shall pay their \$250.00 arbitration fee within fifteen (15) calendar days after the filing of the petition. Where multiple leaseholders are affected by the proposed rent increase, only one payment of \$250.00 shall be required on behalf of all such leaseholders. All such fees collected by the Authority shall be deposited into the Authority's general operating account and shall not be considered a part of the Trust Fund administered by the Authority pursuant to 25 Del.C. §7012. If any party or parties fail to timely pay the required \$250.00 arbitration fee, the arbitrator is authorized to enter judgment against the party or parties failing to pay the arbitration fee.
- 7.8 Unless agreed to in writing by all of the parties, all arbitration hearings must be held within sixty (60) days from the date of the filing of the petition to arbitrate. Where multiple petitions relating to the same matter have been filed, the date of the filing of the first petition shall govern.
- 7.9 As quickly as practicable after an arbitrator is selected, the arbitrator shall contact the parties (or their representatives and by teleconferences, whenever possible) to schedule the hearing at a mutually convenient time and place. Hearings may be held in the evenings or on weekends. Once an arbitrator has been appointed, no *ex parte* communications with the arbitrator are permitted. Prior to the hearing, the arbitrator shall notify the Authority in writing of the time, date, and place of the hearing.
- 7.10 The arbitrator is authorized to schedule an informal preliminary conference with the parties (in person or by telephone) as the arbitrator deems appropriate in order to narrow the issues and minimize the expense of the arbitration process. The arbitrator is authorized to require the parties to exchange or provide to the other parties documents relevant to the rent increase at issue, including documents related to the standards set forth in 25 Del.C. §7042.
- 7.11 At any arbitration hearing:
- 7.11.1 The Delaware Uniform Rules of Evidence shall be used as a guide by the arbitrator for admissibility of evidence submitted at the arbitration hearing;
- 7.11.2 All testimony will be under oath or affirmation administered by the arbitrator, unless waived by all parties;
- 7.11.3 Testimony shall be transcribed and shall be considered a written record;
- 7.11.4 Each witness shall be subject to reasonable cross examination by the opposing party; and
- 7.11.5 The Arbitrator is authorized to limit the number of witnesses to avoid duplication, and where multiple leaseholders are affected by the proposed rate increase, require the affected leaseholders to designate a representative to act on and testify on behalf of all affected leaseholders.
- 7.12 The parties are encouraged to stipulate to undisputed facts and to the admissibility of evidence in order to narrow the issues and minimize the expense of the arbitration process.
- 7.13 Subject to the terms and conditions of any confidentiality designation pursuant to section (q) below, any exhibit that a party intends to rely upon at the hearing must be provided to the arbitrator and opposing parties at least five (5) business days prior to the hearing, except for good cause shown.
- 7.14 At the hearing, the community owner shall open and close the presentation of evidence. The burden of proof shall be on the community owner.
- 7.15 If a party fails to appear at a scheduled hearing, the arbitrator may enter an order ruling against the party who failed to appear.

- 7.16 All parties to hearings, their counsel, and witnesses shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the arbitrator on matters of order or procedure may be noted on the record. The arbitrator may, in his or her discretion, recess or continue any hearing when the conduct of witnesses or other persons unduly disrupts or interferes with the proper conduct of the hearing.
- 7.17 Any party may request that the arbitrator accord confidential treatment to some or all of the information contained in a document. If the claim of confidentiality is challenged by any party, then the party claiming confidential treatment must demonstrate to the arbitrator that the designated information is confidential as recognized by state law. Notwithstanding any claim of confidentiality, any party to the proceeding shall be allowed to inspect a copy of the confidential document upon the signing of a confidentiality agreement in a form approved by the arbitrator.
- 7.18 While a court reporter shall be present at all arbitration hearings, unless specifically requested by the arbitrator, a paper or electronic transcript of the hearing shall not be required. In the absence of a specific request by the arbitrator, any party may, at said parties sole cost and expense, order a paper or electronic transcript of the hearing.
- 7.19 Arbitration hearings conducted pursuant to 25 Del.C. §7043 are deemed private proceedings. Unless otherwise authorized by the arbitrator for good cause shown, attendance at any hearing shall be limited to the following:
- 7.19.1 the arbitrator;
 - 7.19.2 the court reporter;
 - 7.19.3 the parties and their respective legal counsel;
 - 7.19.4 witnesses who are not parties, while testifying; and
 - 7.19.5 a representative of the Authority.
- 7.20 Settlements are to be encouraged. If the case settles before a hearing or before the arbitrator issues a decision, the arbitrator, after being informed of any settlement, shall arrange a teleconference with all parties (or their authorized representatives) to confirm the settlement, unless the parties have done so in a writing signed by all of the parties (or their authorized representatives). Upon confirmation of any settlement, the arbitrator shall notify the Authority that a settlement has been agreed to by the parties.
- 7.21 The decision of the arbitrator shall be based solely on the evidence presented at the hearing and based on the standards set forth in 25 Del.C. §7042. The arbitrator shall render his or her decision within fifteen (15) days of the conclusion of the arbitration hearing. Decisions by the arbitrator shall be in writing, shall clearly set forth the date of the issuance of the decision, and shall inform the parties of the right to appeal the decision to the Superior Court by filing, within thirty (30) days of the date of the issuance of the arbitrator's decision, a notice of appeal with the office of the Prothonotary of the county within which the affected manufactured home community is located. A copy of the decision shall be provided to the Authority.

8.0 Appeals

- 8.1 As provided in 25 Del.C. §7044, in any arbitration proceeding, the community owner, home owners association, or any affected home owner may appeal the decision of the arbitrator within thirty (30) days of the issuance of the arbitrator's decision. Any such appeal shall be to the Superior Court in the county of the affected community. If a community is located in more than one county, the appeal may be filed in the Superior Court of either county.
- 8.2 Appeals to the Superior Court by law shall be on the record without a trial de novo.
- 8.3 Promptly after the filing of any appeal, the party appealing from the arbitrator's decision shall, at the appealing party's expense, order a copy of the transcript of the arbitration hearing.
- 8.4 Appeals to the Superior Court shall be prosecuted in accordance with Rule 72 of the Delaware Superior Court Rules of Civil Procedure.

9.0 Computing Time

In computing any time period under these rules, the first day of the designated period of time shall commence on the next day after the event requiring the computation of the time period. The last day of the time period shall be included.

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 275

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**275 Charter Schools****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** 275 Charter Schools. The amendments reflect revisions in the process for Performance Reviews, renewal and new application process, annual reports as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 3, 2013 to Susan Haberstroh, Associate Secretary, Education Supports and Innovative Practices, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. IMPACT CRITERIA

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not specifically address students receiving an equitable education but does address the operation and review of charter schools.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation does not specifically address student health and safety but does address the operation and review of charter schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not specifically address students' legal rights but does address the operation and review of charter schools.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation preserves the necessary authority and flexibility of the decision making at the local board and school level as delineated in Delaware Code.

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

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 for addressing charter schools does not change.

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

275 Charter Schools

1.0 Purpose and Effect

- 1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 **Del.C.** Ch. 5 (hereafter, the "Charter School Law") develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:
 - 1.1.1 Agency commitment and capacity;
 - 1.1.2 Application process and decision-making;
 - 1.1.3 Performance-based accountability;
 - 1.1.4 Ongoing oversight and evaluation; and
 - 1.1.5 Renewal and revocation decision-making.
- 1.2 These regulations establish the requirements for applying for a charter to operate a public school, renewal of the charter, modification of the charter, oversight of the charter's performance, and for opening, and operating, and closing the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.
- 1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff administrators and boards of the Charter Schools, and the community, students, staff, administrators and boards of the reorganized school districts of the State.
- 1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by, or transferred to the Department with the consent of the State Board.

2.0 Definitions

- 2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

- “Accountability Committee”**: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.
- “Annual Report”**: A report submitted by the charter school to the approving authority, DDOE, and State Board of Education and posted publicly on the school’s website. The report shall contain the information and follow the prescribed format required by statute.
- “Applicant”**: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the Renewal or modification of such a charter, as the context indicates.
- “Audit”**: An informal financial, programmatic, or compliance audit of a charter school.
- “Charter Contract”**: An agreement between the Authorizer and the Charter School. A school enters into a Charter Contract with the authorizer that clearly defines the respective roles, powers, and responsibilities for the school and approving authority and incorporates the provisions of the Performance Agreement.
- “Charter Holder”**: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.
- “Charter School”**: A non home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to the Department with the approval of the State Board for the personal physical attendance of all students.
- “Delaware Comprehensive Assessment System (DCAS)”** means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities.
- “Department”**: The Delaware Department of Education.
- “Department’s Annual Charter Report”**: A report prepared by the Department of Education for the Governor, General Assembly, and State Board of Education in accordance with statute that analyzes the performance, as measured by the Performance Framework, of all charter schools in the state. It also analyzes expenses as compared with traditional public schools, recommends changes in policy and innovative practices which can be replicated in other public schools. The report shall be presented on or before February 1st of each year and is posted on the Department’s public website.

(Break in Continuity Within Section)

- “Performance Agreement”**: The document which describes the academic performance expectations, identifies economic viability requirements, defines organizational responsibilities, and outlines accountability of the Charter School. ~~An approved charter school application serves as the basis for the p~~Performance Agreement, which is for a specified term and uses a uniform format as prescribed by the Department with the assent of the State Board of Education. The Performance Agreement is enforceable as part of the school’s ~~e~~Charter Contract.
- “Performance Framework”**: A rubric based tool established by the Department with the assent of the State Board of Education, as amended from time to time, which contains the details, ~~utilizing~~ includes multiple measures, and is used by the Department to assess compliance with the Performance Agreement in the areas of academic performance, economic viability, organizational responsibilities and accountability of the Charter School. The completed frameworks will be provided to the Charter School Accountability Committee, Secretary and State Board of Education to inform their decision making for ~~Renewals, modifications and formal reviews.~~
- “Performance Review”**: The process by which the Charter School’s compliance with its Performance Agreement is evaluated annually to inform ~~R~~renewal, major modification and formal review decisions. Compliance with the charter and the Performance Agreement, as assessed through the Performance Framework, is the basis for the Performance Review. Review Analysis and results will be reported in the Department’s ~~a~~Annual Charter ~~r~~Report.
- “Renewal”**: The approval of an application to continue operating an existing Charter School ~~for an additional five year period, available after the school has been in operation for four years.~~ Renewal

PROPOSED REGULATIONS

~~decisions are based on the criteria set forth in 14 Del.C. §512, and informed by a Charter School's compliance with its Performance Agreement as evaluated by the Performance Framework occurs in accordance with 14 Del.C. §514A.~~

(Break in Continuity Within Section)

3.0 Application Process

- 3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the ~~first day of school of the second school year thereafter, unless otherwise agreed upon by the authorizer and the applicant to allow the applicant to serve students who would otherwise be displaced because of the closure of an existing charter school~~ in accordance with 14 Del.C. §511 (g) (1),(2).
- 3.2 All applications, whether for an original charter, a modification of a charter or the renewal of a charter, shall be made on forms approved by the Department.
- 3.3 An original and ~~ten (10)~~ five (5) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered; an electronic copy shall also be submitted at the same time either as an attachment to an e-mail message or by electronic portable storage. The electronic copy shall be identical in all respects to the original application. Incomplete applications, or applications received after the deadline, will not be considered.
- 3.4 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.
- 3.5 An application is not complete unless all of the following requirements are met:
- 3.5.1 All ~~questions on applicable sections in~~ the application form are ~~answered~~ appropriately completed.
- 3.5.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is ~~received by the deadline provided by the Charter School Office.~~

(Break in Continuity Within Section)

- 3.9 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the Charter Contract, the Performance Framework Review (not applicable for new applications), ~~the preliminary and final reports~~ of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal, major modification, or formal review of a charter, the record shall also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school's Charter Contract and Performance Agreement, renewal report, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.
- 3.10 Applicants and Charter Holders shall make the financial disclosures relating to ownership and financial interest as required by 14 Del.C. §511(eg). A charter school founder or member of a charter school board has a "financial interest" in the charter school if that person receives compensation in excess of \$5,000.00 from the charter school in any calendar year. Compensation means money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by a charter school founder or member of a charter school board. "Ownership" shall have the meaning commonly ascribed to it as appropriate in context.

4.0 Standards and Criteria for Granting Charter**4.1 Applicant Qualifications**

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research based curriculum and instructional strategies, aligned to Delaware content standards, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and school finance.

(Break in Continuity Within Section)

4.2 Performance Requirements**4.2.1 Minimum Requirements**

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and the Department's implementing rules and regulations including without limitation those relating to the State Assessment System.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the applicable assessments administered pursuant to the State Assessment System, and a timetable for accomplishment of those goals, as established in the Performance Agreement.

4.2.1.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the State Assessment System, the application and performance agreement must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the State Assessment System and must be incorporated into the Performance Agreement.

4.2.1.4 Following charter approval, but not later than a date established by the Department, the Applicant must enter into a Charter Contract and a Performance Agreement approved by the Department with the assent of the State Board, which shall address the organizational, academic and financial performance expectations of the Applicant during the term of the charter. The Department, with the assent of the Board, shall establish and publish a Performance Framework which shall be used to assess the school's compliance with its Performance Agreement. Nothing contained herein shall be interpreted to relieve an applicant of its obligation to comply with any approval criteria or requirement set forth in 14 **Del.C.** Ch. 5. The Department shall conduct an annual audits Performance Review using the Performance Framework to ensure ongoing compliance with the school's Performance Agreement.

(Break in Continuity Within Section)

4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §7151) and Department Regulation 605.

PROPOSED REGULATIONS

- 4.5.1.2 The application must include a plan to distribute the “Student Rights and Responsibilities Manual” to each Charter School student and parent/guardian at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the “Student Rights and Responsibilities Manual” at the time of enrollment.
- 4.5.2 The application must include the process and procedures the Charter School will follow to comply with applicable laws, including the following laws:
- 4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.
- 4.5.2.2 11 **Del.C.** Ch. 85 and 14 **Del.C.** §511(p), and Department regulations regarding criminal background checks for public school related employment.
- 4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.
- 4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.
- 4.5.2.5 The provision of free and reduced breakfast and lunch to eligible students pursuant to any applicable state or federal statute or regulation.
- 4.5.2.6 Freedom of Information Act
- 4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time registered nurse (R.N.) will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School’s policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

5.0 Nature of Charter

- 5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.
- 5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department ~~may~~ requires the Charter Holder to produce satisfactory evidence, including written documentation, of compliance in their Annual Report.
- 5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School’s failure to comply with these regulations ~~may~~ shall be treated as a failure on the part of the school to comply with its charter.

6.0 Funding

- 6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

- 6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.
- 6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.
- 6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

7.0 Financial Audit

After July 1st of each year, pursuant to 14 Del.C. §513(a) each Charter Holder shall contract to have an audit of the business and financial transactions, records, and accounts of the school, in a form and manner satisfactory to the Department, and shall provide the audit results to the Department by October 1. Each Charter School shall display the audit on their public website.

(Break in Continuity of Sections)

9.0 Modifications of Charters

- 9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.
- 9.2 The application shall be submitted on a form approved by the Department and posted on the Department website. The applicant shall specify the exact modification requested and describe the need for the modification.
- 9.3 The applicable standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.

(Break in Continuity Within Section)

- 9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. ~~Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1st and December 31st and, if approved, shall be effective the following school year.~~
- 9.8 Major modifications.
 - 9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:

(Break in Continuity Within Section)

- 9.8.1.9 Alter the charter school's charter to satisfy the provisions of "~~restructuring~~" as prescribed in the federal Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof.

(Break in Continuity of Sections)

13.0 Charter Closure Protocol

The Department will publish on their website an outline of responsibilities and actions that shall be taken by both the authorizer and the charter holder after a decision is rendered to revoke or nonrenew a charter.

14.0 Performance Fund - RESERVED

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

275 Charter Schools

PROPOSED REGULATIONS

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

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

Medicaid Provider Screening Requirements and Enrollment Fee and Program Integrity

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Medical Assistance Program (DMAP) Manual specifically, the General Policy Provider Manual regarding *Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity*.

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 September 30, 2013.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Delaware Medical Assistance Program (DMAP) Manual specifically, the General Policy Provider Manual regarding *Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity*.

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. Specifically, Section 6401, *Provider Screening and Other Enrollment Requirements Under Medicare, Medicaid, and CHIP*; and Section 6501, *Termination of Provider Participation Under Medicaid If Terminated Under Medicare or Other State Plan*
- 42 CFR Part 455 Subpart E

Background

Section 6401

Section 6401(a) of the Affordable Care Act, as amended by section 10603 of the Affordable Care Act, establishes procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under Medicare, Medicaid, and Children's Health Insurance Program (CHIP). Section 1866(j)(2)(B) of the Act requires the Secretary of the U.S. Department of Health and Human Services to determine the level of screening to be conducted according to the risk of fraud, waste, and abuse with respect to the category of provider or supplier. Section 1866(j)(2)(C) of the Act requires the Secretary to impose a fee on each institutional provider of medical or other items or services or supplier, to be used by the Secretary for program integrity efforts. Section 6401(b) of the Affordable Care Act includes requirements for States to comply with the process of screening providers and suppliers and imposing temporary enrollment moratoria for the Medicaid program as established by the Secretary. The Centers for Medicare and Medicaid Services (CMS) implemented these requirements with Federal regulations at 42 CFR Part 455 Subpart E. These regulations were published in the Federal Register, Volume 76, February 2, 2011, and were effective March 25, 2011.

Section 6501

Section 6501 of the Affordable Care Act (ACA) amends section 1902(a)(39) of the Social Security Act (the Act)

and requires State Medicaid agencies to terminate the participation of any individual or entity if such individual or entity is terminated under Medicare or any other State Medicaid plan. In final implementing regulations at 42 CFR §455.101, CMS generally defined “termination” as occurring when a State Medicaid program, CHIP, or the Medicare program has taken action to revoke a Medicaid or CHIP provider’s or Medicare provider or supplier’s billing privileges and the provider has exhausted all applicable appeal rights or the timeline for appeal has expired. CMS also indicated in final implementing regulations at 42 CFR §455.101, that the requirement to terminate under section 6501 of the ACA only applies in cases where providers, suppliers or eligible professionals have been terminated or had their billing privileges revoked “for cause.” Section 6501 builds upon section 6401(b)(2) which requires that CMS establish a process to make provider termination information available to State Medicaid programs.

Summary of Proposal

To receive reimbursement under the Delaware Medical Assistance Program (DMAP), a provider must be eligible and actively enrolled. The provider is enrolled when certain conditions are met and are applicable to the provider type.

Section 6401 and Section 6501 of the Affordable Care Act mandate provider screening and enrollment requirements that State Medicaid agencies must implement. Please refer to *42 CFR 455 Subpart E – Provider Screening and Enrollment* for the complete set of rules and regulations. Delaware Medicaid must implement these requirements to comply with Federal law.

To become compliant with ACA-mandated provider screening and enrollment requirements, the Division of Medicaid and Medical Assistance (DMMA) is updating the Program Integrity provisions of the General Policy Provider Manual at Section 1.39 to include the following provisions:

- An enrollment fee for institutional providers as described in 42 CFR §455.460 (section 6401(a));
- Compliance in the event that CMS imposes a temporary enrollment moratoria as described in 42 CFR §455.470 (section 6401(b));
- Termination of provider participation in Medicaid and CHIP upon termination from Medicare or another State’s Medicaid program or CHIP on or after January 1, 2011 as described in 42 CFR §455.416 (section 6501); and,
- Screening of providers in accordance with 42 CFR 455.400 et seq. at enrollment, reenrollment and revalidation (section 6401).

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

The costs for system changes are already budgeted in the General Fund.

There will be additional costs for some providers associated with the enrollment/revalidation fee.

DMMA PROPOSED REGULATION #13-25

REVISION:

1.39.2 Provider Screening and Enrollment

Sections 6401 and 6501 of the Affordable Care Act require States to incorporate additional program integrity provisions within Medicaid and the Children’s Health Insurance Program to prevent fraud, waste and abuse. The enhanced provisions include enrollment fees, additional provider screening requirements, temporary provider enrollment moratoria, and provider termination.

1.39.2.1 Provider Enrollment Fee

Effective, March 30, 2010, Section 6401(a) of the Affordable Care Act (ACA) requires states to impose a fee on institutional providers for program integrity efforts. The fee is required at initial enrollment and reenrollment. The enrollment fee amount is established by the Centers for Medicare and Medicaid Services (CMS) and updated annually. The Delaware Medical Assistance Program (DMAP) will begin collection of fees in August of 2013. Institutional providers who have paid the enrollment fee to a Medicare contractor or another State’s Medicaid program or Children’s Health Insurance Program (CHIP) within the last 365 days are not required to pay an additional enrollment fee to the DMAP. The enrollment fee may also be waived for providers who present proof of hardship exception from CMS.

1.39.2.2 Provider Screening and Enrollment Requirements

The Affordable Care Act (ACA) requires states to perform enhanced screening of providers at initial enrollment.

re-enrollment, establishment of a new location, change of location, and revalidation. Providers will also need to complete an annual online disclosure statement identifying persons with 5% or more ownership, controlling interest, and all managing employees. Ordering and referring providers are required to enroll with DMAP in a limited capacity and are subject to the new provider screening initiatives. The ACA requires DMAP to deny or terminate enrollment of any providers, disclosed entities, or individuals who do not meet ACA screening guidelines.

1.39.2.2.1 Provider Risk Categories

Based on the potential for fraud, waste, and abuse, CMS has assessed the various Medicare provider types and assigned risk categories. DMAP will assign a risk category in accordance with CMS guidelines for non-Medicare providers. Provider screening requirements vary depending on ACA-defined risk categories. The risk categories are "limited", "moderate", and "high". Providers falling within two risk levels will be assigned the higher risk category. DMAP reserves the right to modify provider risk levels as it pertains to encumbrances, adverse actions, sanctions, terminations and suspensions.

Limited Risk Level- All providers and disclosure-identified individuals must verify Social Security number, licensure status, taxpayer identification number, and National Provider Identifier. Various databases will be checked for sanctions, exclusions, terminations, and encumbrances. Limited risk level providers include but are not limited to the following as identified by CMS:

- Physicians
- Non physician practitioners
- Medical groups or clinics
- Hospitals
- Ambulatory Surgical Centers (ACs)
- Early Stage Renal Disease (ESRD) facilities
- Federally Qualified Health Centers (FQHCs)
- Skilled Nursing Facilities (SNFs)

Moderate Risk Level- Moderate risk providers are subject to unannounced pre-enrollment and post-enrollment site visits. Moderate risk providers and disclosure-identified individuals must verify Social Security number, licensure status, taxpayer identification number, and National Provider Identifier. Various databases will be checked for sanctions, exclusions, terminations, and encumbrances. Moderate risk level providers include but are not limited to the following as identified by CMS:

- Ambulance providers
- Community Mental Health Centers
- CORF - Comprehensive Outpatient Rehabilitation Facilities
- Revalidating Durable Medical Equipment (DME) suppliers
- Revalidating Home Health Agencies (HHA)
- Hospice organizations
- Laboratories - independently owned

High Risk Level- High risk providers and disclosure-identified persons with 5% or more ownership are required to comply with a fingerprint-based background check and unannounced pre-enrollment and post enrollment site visits. High risk providers and disclosure-identified persons must verify Social Security number, licensure status, taxpayer identification number, and National Provider Identifier. Various databases as directed by CMS will be checked for sanctions, exclusions, terminations, and encumbrances. High risk level providers include but are not limited to the following as identified by CMS:

- Durable Medical Equipment suppliers (newly enrolling)
- Home Health Agencies (newly enrolling)

1.39.2.2.2 Ordering, Referring and Prescribing Providers (ORPs)

Physicians and non-physician practitioners whose sole interaction with clients is limited to ordering, referring, or prescribing items and/or services, are required to enroll with DMAP in a limited capacity for purposes of identifying the providers who write the orders, referrals and prescriptions. Providers who are members of Delaware's risk-based managed care organizations are exempt from this requirement. Failure to enroll with DMAP will result in the denial of claims for items ordered, referred, or prescribed for Medicaid beneficiaries by an ORP.

1.39.2.3 Temporary Provider Enrollment Moratoria

The ACA requires States to comply with a temporary provider enrollment moratorium when directed by the federal Secretary of Health and Human Services to combat fraud, waste, and abuse. States may also implement restrictions on new enrollment for provider types that are identified as high risk for fraud, waste, and abuse.

1.39.2.4 Provider Termination

Section 6501 of the ACA mandates that States terminate enrollment of providers who have been terminated from Medicare or another State's Medicaid or CHIP program. On a monthly basis, DMAP will screen all enrolled providers through various federal databases for sanctions, exclusions, and terminations. All individuals and entities identified through annual disclosure statements are also subject to these screenings. DMAP will terminate providers and disclosed entities or individuals who do not meet ACA screening guidelines.

1.39.2.5 Provider Appeal Rights

Providers may appeal denial and termination decisions as a result of ACA provider screening and enrollment requirements. Refer to Section 6.0 Appendix A in the General Policy Provider Manual for information regarding provider appeals.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

Medicaid Reimbursement for Prescription Drugs – Multi-State Purchasing Pool Supplemental Drug Rebate Agreement

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify the *Multi-State Purchasing Pool Supplemental Rebate Agreement* for pharmaceutical products.

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 September 30, 2013.

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

SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to amend the Title XIX Medicaid State Plan to modify the *Multi-State Purchasing Pool Supplemental Rebate Agreement* for pharmaceutical products.

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. Specifically, Section 2501, *Prescription Drug Rebates*
- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, *Authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Medicaid Supplemental Drug Rebate Agreements

The federal Omnibus Budget Reconciliation Act of 1990, section 4401 added §1927 to the Social Security Act. Section 1927 provides that States may enter separate or supplemental drug rebate agreements as long as such agreements achieve drug rebates equal to or greater than the drug rebates set forth in the Secretary's national rebate agreement with drug manufacturers, which is published at 56 F.R. 7049 (1991). Specifically, the drug rebate statute, at section 1927(a)(1) of the Social Security Act (Act), provides that "the Secretary may authorize a State to enter directly into agreements with a manufacturer." Also, section 1927(a)(4) of the Act provides that any drug rebate agreement between a State and drug manufacturers and in effect on November 5, 1990, may constitute a rebate agreement in compliance with the statute if the Centers for Medicare and Medicaid Services (CMS) determines that any such agreement "provides for rebates that are at least as large as the rebates otherwise required under this section." CMS accordingly believes that Congress intended that States that seek CMS approval under section 1927(a)(1) to enter directly into agreements with manufacturers must ensure that any such agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers.

Currently, prescription drug manufacturers are required to enter into a rebate agreement. The agreement requires manufacturers to provide state Medicaid programs with rebates for the drugs purchased for recipients on an outpatient basis. *Section 2501* of the Patient Protection and Affordable Care Act (ACA) makes two modifications to the prescription drug rebate program. The first modification, which took effect on January 1, 2010, increases the minimum rebate amount but requires the State to remit 100 percent of the additional rebates collected to the federal government. The second modification, which took effect on March 23, 2010, extends the application of the prescription drug rebates program to prescription drugs that are provided to Medicaid recipients who are enrolled in Medicaid Managed Care Organizations (MCOs).

Summary of Proposal

Among the services provided to recipients of services under the Delaware Medical Assistance Program (DMAP) are prescription drugs and related pharmacy services. Expenditures for pharmacy services are offset in part by rebate agreements with suppliers of prescription drugs. Part of the system by which Delaware receives these rebates is a multi-state purchasing pool supplemental rebate agreement.

The existing multi-state supplemental rebate agreement between the State of Delaware and pharmaceutical manufacturers for legend drugs provided fee-for-service to Medicaid individuals was originally effective October 1, 2005. Delaware participates in the TOP\$ program, the multistate Medicaid pharmaceutical purchasing pool administered by Provider Synergies, LLC, an affiliate of Magellan Medicaid Administration.

The Division of Medicaid and Medical Assistance (DMMA) intends to make substantive changes to the existing **TOP\$SM The Optimal PDL \$olution ("TOP\$") State Supplemental Rebate Agreement ("SRA")**, which includes revised definitions, and structural changes to the SRA. Specifically, *Definitions* have been added to provide for the inclusion of Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates.

The intent of the SRA has been expanded to cover both fee-for-service (FFS) and MCO populations, as long as the State retains control of the Preferred Drug List (PDL) for both populations. Inclusion of the MCO population under the contract is *optional* and at the sole discretion of the State. The proposed changes will be effective October 1, 2013 and will apply to claims with dates of service on or after that date.

A brief description of additional changes to the TOP\$ SRA include:

- Clarified the terms under which supplemental rebates accrue for partial quarter invoicing.
- Changed the rebate calculation to use Wholesale Acquisition Cost (**WAC**) on the last day of the quarter.
- Limited termination by the manufacturer to the entire agreement not by National Drug Code (NDC) or product.
- Removed "termination without cause" language.
- Added an interest penalty of ten percent (10%) to the SRA.
- Provided for the "Participation Agreement" to renew automatically for one-year terms, as long as the controlling agreement between Magellan/Provider Synergies and Participating State is active.
- Removed tiers from the bid grid.

- Added option to use alternative supplemental rebate calculation types to allow for different rebate accrual calculations other than Guaranteed Net Unit Price (GNUP).

Draft of Proposed State Supplemental Rebate Agreement

See attachment to the regulation for a draft of "TOP\$SM The Optimal PDL \$solution ("TOP\$") State Supplemental Rebate Agreement".

DMMA is required by federal regulation to submit its supplemental rebate agreement for approval prior to its use. As such, the provisions of this state plan amendment relating to the multi-state supplemental rebate agreement are subject to approval by CMS.

Fiscal Impact Statement

There is minimal fiscal impact expected. The change in TOP\$ contract language will allow the State to apply supplemental rebates to the medication costs paid for by the participating MCO. It is anticipated that the net-net cost will remain the same. There is also a stipulation of interest charges for late payment which will assist with maintaining the timely payment of the quarterly invoices.

DMMA PROPOSED REGULATION #13-26 REVISION:

Attachment 3.1-A
Page 5 Addendum
Continued 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
LIMITATIONS

12.a. Prescribed Drugs Continued: Drug Rebate Agreements

The Centers for Medicare and Medicaid Services (CMS) has authorized a rebate agreement between the State and a drug manufacturer that provides supplemental rebates for drugs provided to the Delaware Medicaid program as follows:

- CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.
- CMS has authorized the State of Delaware to enter into "The Optimal PDL Solution (TOP\$) State Supplemental Drug Rebate Agreement, a Medicaid multi-state pooling program. The amendment to the Supplemental Drug Rebate Agreement was submitted to CMS on December 20, 2005 and CMS has authorized the State of Delaware to enter into the "TOP\$ Medicaid Program Participation Agreement".
- A supplemental rebate agreement (to be) submitted to CMS on November 10, 2013 amended the December 20, 2005 version of the "State of Delaware TOP\$SM The Optimal PDL \$solution ("TOP\$") State Supplemental Rebate Agreement" authorized under Transmittal Number SP-412, has been authorized by CMS.
 - Pharmaceutical manufacturers are allowed to audit utilization rates;
 - Compliance with the reporting requirements for state utilization information and restrictions to coverage;
 - The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
 - Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are authorized by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary for Health and Human Services. The state will remit the federal portion of any state supplemental rebates collected.

PROPOSED REGULATIONS

- Participation in the TOP\$ multi-state rebate program will not limit the state's ability to submit a SPA to authorize the implementation of a state-specific supplemental rebate agreement.

DMMA PROPOSED REGULATION #13-26 ATTACHMENT

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

Medicaid Reimbursement for Prescription Drugs – Multi-State Purchasing Pool Supplemental Drug Rebate Agreement

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 97, §9706 (g)(2) (16 Del.C. Ch 97, §9706 (g)(2))

16 DE Admin. Code 4305

4305 Trauma System

PUBLIC NOTICE

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 Trauma System Regulations. The proposed revisions to the Trauma System regulations bring the Delaware Statewide Trauma System and its components into alignment with the current revision of the American College of Surgeons' Committee on Trauma's Resources for Optimal Care of the Injured Patient 2006. The revisions were developed and recommended by the stakeholders who serve on the state Trauma System Committee and primarily are related to documentation of the requirements for Trauma System Participating Hospitals, modification of the Trauma Registry inclusion criteria to be in alignment with the National Trauma Data Bank criteria, updating of the Trauma Center Designation Process, and relocation of the Prehospital Trauma Triage Scheme to the Advanced and Basic Life Support Standing Orders.

On September 1, 2013, the Department plans to publish proposed amendments to the State of Delaware Trauma System Regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the September 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) 223-1789.

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, October 3, 2013 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: 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:**

4305 Trauma System

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. 512)
16 DE Admin. Code 11002.9

Child Care Subsidy Program Definitions and Explanation of Terms Definition of Relative

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

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

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

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

Summary of Proposed Changes

DSSM 11002.9, *Definition and Explanation of Terms*, is amended to clarify the definition of "relative" for child care certificate approvals. The current definition is vague and leads eligibility determination workers to the Delaware Temporary Assistance for Needy Families (TANF) policy definitions. The proposed rule change is intended to ensure that eligible relatives provide authorized child care services.

DSS PROPOSED REGULATION #13-27

11002.9 Definitions and Explanation of Terms

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

Authorization	Form 618d or 626 is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.
Caregiver/Provider	The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.
Caretaker	The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.
CCDBG	Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without state match to: <ol style="list-style-type: none"> 1. Provide child care to low income families 2. Enhance the quality and increase the supply of child care 3. Provide parents the ability to choose their provider 4. Increase the availability of early childhood programs and before and after school services. Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41
CFR	Code of Federal <i>Regulations</i> . These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.
CCMIS	Child Care Management Information System, the name used to describe the Division's payment system for child care.
Child	A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or are in need of protective services.
Child Care Category	The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are: <ol style="list-style-type: none"> 11 - Participants receiving TANF and not working, but participating in TANF E&T 12 - Participants receiving TANF and working 21 - Participants receiving Food Stamps Benefits who are mandatory or voluntary participants in E&T and not receiving TANF 31 - SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary 41 - A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or non-qualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.) 51 - A participant is coded category 51 when s/he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41

Child Care Centers	A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 13 or more children, who are unattended by a parent or guardian.
Child Care Certificate	A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but parents who wish to select a non-contracted provider of their choice cannot get care unless the provider completes one.
Child Care Parent Fee	The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.
Child Care Services	Those activities that assist eligible families in the arrangement of child care for their children.
Child Care Type	Refers to the setting or place where child care is provided. The four types of care are: <ol style="list-style-type: none">1. Center based (under DCIS II Child Care Sub system Site #17 or 18)2. Large Family Home (under DCIS II Child Care Sub system Site #16)3. Family Home (under DCIS II Child Care Sub system Site #15)4. In-Home (under DCIS II Child Care Sub system Site #19)
Children From Low Income Families	Children in families whose income is less than 200% of the Federal Poverty Limit (FPL).
DCIS II	Delaware Client Information System, the automated client eligibility system for the Department of Health and Social Services.
Educational Program	Educational Program - A program of instruction to achieve: <ol style="list-style-type: none">1. A basic literacy level of 8.9;2. Instruction in English as a second language;3. A GED, Adult Basic Education (ABE), or High School Diploma;4. Completion of approved special training or certificate courses;5. A post-secondary degree where the degree is part of an approved DSS Employment and Training program. <p>The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associate's degree may be attained if it leads to a bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.</p>
Employment	Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to minimum wage or an equivalent. It also includes periods of up to three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.
Family Child Care Home	A private residence other than the child's residence, where licensed care is provided for one to six children who are not related to the caregiver.
Family Size	The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.
Food Benefit Employment and Training	The program by which certain unemployed mandatory and/or voluntary Food Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Benefit Employment & Training. Under the Division's DCIS II Child Care Sub system, this is Category 21.

Income	Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.
Income Eligible	A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.
Income Limit	The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.
In-Home Care	Care provided for a child in the child's own home by either a relative or non-relative, other than the parent/caretaker, where such care is exempt from licensing requirements. Care is limited to the child(ren) residing in the household. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements and is also limited to the children of one household.
Job Training/Training	A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Benefit Employment & Training (FB E&T) contracted programs; WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.
Large Family Child Care Home	A licensed child care service provided for part of a twenty-four (24) hour day, offered by any person or entity including but not limited to an owner, association, agency or organization that advertises or holds himself, herself or itself out as conducting such a service. This person or entity has in custody or control seven (7) to a maximum of twelve (12) children preschool-age or older who live at and/or are present at the Large Family Child Care Home. In addition to the children preschool-age or younger, this person or entity may also have custody or control of one (1) to a maximum of two (2) school-age children who do not live at the Large Family Child Care Home but are present only for before and after school, and/or during school holidays, and/or during the summer. All of these children are provided care, education, protection, supervision or guidance in a private home or non-residential setting. This does not include a child care service provided exclusively to relatives as defined by these rules.
Legal Care	Care which is either licensed or exempt from licensing requirements.
Parent	The child's natural mother, natural legal father, adoptive mother or father, or step-parent.
Parental Choice	The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.
Physical or Mental Incapacity	A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.
Protective Services	The supervision/placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.
Purchase of Care Plus (POC+)	Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee, if applicable, and any additional provider-determined co-pay.
Reimbursement Rates	The maximum dollar amount the State will pay for child care services.
Relative	Grandparents, <u>great-grandparents</u> , aunts, uncles, brothers, sisters <u>adult brother or sister</u> , cousins, and any other relative as defined by TANF policy, <u>including step relatives</u> , as they are related to the child.

Residing With	Living in the home of the parent or caretaker.
Seamless Services	To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.
Self-Arranged Care	Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.
Self-Initiated	Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Benefit Employment & Training (FB E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.
Special Needs Child	A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the authority to do so.
Special Needs Parent/ Caretaker	An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the authority to do so.
SSBG	Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.
TANF	Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).
TANF Child Care	The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.
Technical Eligibility	Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.
Verification	Written or oral documentation, demonstrating either need for service or sources of income.
Work Force Investment Act (WIA)	Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 6915 and 29 Delaware Code, Chapter 101
(18 **Del.C.** §§311 and 6915 and 29 **Del.C.** Ch. 101)
18 **DE Admin. Code** 302

302 Captive Insurance Financial Regulation

PUBLIC NOTICE

PROPOSED REGULATIONS

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 302 relating to the Captive Insurance Financial Regulation. The docket number for this proposed amended Regulation is 2242-2013.

The proposed amended Regulation supports Delaware's Captive Insurance Program (18 **Del.C.** Ch. 69) and allows Delaware to adopt a national model audit requirement for Risk Retention Groups, maintaining Delaware's accreditation standing. The Delaware Code authority for the proposed change is 18 **Del.C.** §311 and §6915; 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

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, Monday, September 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

302 Captive Insurance Financial Regulation

1.0 Purpose and Authority.

- 1.1 The purpose of this regulation is to set forth the financial, reporting and other requirements which the Commissioner deems necessary to the regulation of captive insurance companies, as authorized by the Delaware Revised Captive Insurance Company Act, 18 **Del.C.** Ch. 69. Reference hereinunder to "company" shall mean captive insurance company or companies, unless otherwise specified.
- 1.2 The provisions of this regulation shall apply unless the Commissioner directs otherwise.
- 1.3 Risk Retention Groups shall be subject to the requirements set forth in 18 **DE Admin. Code** 301. If a Risk Retention Group is exempt from the reporting requirements of 18 **DE Admin. Code** 301 pursuant to section 2.2 of that regulation, then this regulation shall apply to such Risk Retention Group in its entirety. If such Risk Retention Group is not exempt from Regulation 301, then only sections 1.0, 2.0, and 9.0 through 14.0 of this regulation shall apply.

(Break in Continuity of Sections)

16.0 Effective Date

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

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

302 Captive Insurance Financial Regulation

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

1140 Delaware National Low Emission Vehicle Program

REGISTER NOTICE

SAN # 2013-01

1. TITLE OF THE REGULATIONS:

Amendment to 7 **DE Admin. Code** 1140 – *Delaware Low Emission Vehicle Program*

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

Division of Air Quality is proposing amendments to, 7 **DE Admin. Code** 1140- *Low Emission Vehicle Program*. The purpose of this action is to 1) remove the requirements that provide for prospective incorporation of revisions made by California, and 2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle (LEV) III standard and the Greenhouse Gas (GHG) standard, also known as the Advanced Clean Cars Program for model years 2015 to 2025.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.**, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Monday, September 23, 2013 beginning at 6:00 PM at the Richardson & Robbins Auditorium, 89 Kings Highway, Dover Delaware 19901. Interested parties may submit comments in writing to: Deanna Cuccinello, DNREC Division of Air Quality, at 655 South Bay Road, Suite 5N, Dover, DE 19901.

7. PREPARED BY:

Deanna Cuccinello 302.739.9402 August 14, 2013

1140 Delaware ~~National~~ Low Emission Vehicle Program

XX/XX/2013

1.0 Purpose

- 1.1 The provisions of this regulation establish in Delaware a LEV Low Emission Vehicle (LEV) program, which incorporates the requirements of the California LEV program.
- 1.2 The LEV program shall apply to all new model year 2014 and subsequent model year motor vehicles that are passenger cars, light-duty trucks, and medium-duty passenger vehicles subject to the California LEV program and delivered for sale in Delaware.

XX/XX/2013

2.0 Applicability

(Break of Continuity Within Section)

PROPOSED REGULATIONS

2.3 The prohibitions contained in 2.1 of this regulation shall not apply to vehicles that are:

(Break of Continuity Within Section)

2.3.12 Acquired by a Delaware resident serving in the armed forces while stationed in another state.

XX/XX/2013

3.0 Definitions

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

(Break of Continuity Within Section)

“Emission Control Label” means a paper, plastic, metal or other permanent material, welded, riveted or otherwise permanently attached to an area within the engine compartment (if any), or to the engine, in such a way that it will be visible to the average person after installation of the engine in all new vehicles certified for sale in California, in accordance with Title 13, California Code of Regulations Section 1965.

“Emission standards” mean specified limitations on the discharge of air contaminants into the atmosphere.

~~**“Engine family”** means the basic classification unit comprised of the engine and drive train configuration selected by a manufacturer and used for the purpose of certification testing.~~

“Environmental Performance Label” means a paper or plastic decal securely affixed by the manufacturer to a window of all passenger cars, light-duty trucks, and medium-duty passenger vehicles which disclose the global warming and smog score for the vehicle in accordance with Title 13, CCR Section 1965.

(Break of Continuity Within Section)

“Federal Fuel Economy and Environmental Label” means a Federal Label that is affixed by the manufacturer to a window on all 2013 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles and would deem automobile manufacturers compliant with the federal Economy and Environmental Label published in 40 CFR Parts 85, 86 and 600 as promulgated on July 6, 2011 as compliant with the California Environmental Performance Label requirements. The label must disclose the smog and global warming scores for the vehicle in accordance with Title 13, CCR Section 1965 and the "California Motor Vehicle Emission Control, Smog Index, and Environmental Performance Label Specifications."

“Fleet Average Emission” means a vehicle manufacturer’s average vehicle emissions of all greenhouse gases, non-methane organic gases (NMOG), or NMOG plus oxides of nitrogen (NOx), as applicable, from all new vehicles delivered for sale or lease in Delaware in any model-year.

“Greenhouse Gas” means any of the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

“Greenhouse Gas Credit” means greenhouse gas credit.

“Greenhouse Gas Vehicle Test Group” means vehicles that have an identical test group, vehicle make and model, transmission class and driveline, aspiration method (e.g., naturally aspirated, turbocharged), camshaft configuration, valve train configuration, and inertia weight class.

“Gross vehicle weight rating or GVWR” means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

“Heavy-duty Engine” means any engine used to propel a heavy-duty vehicle.

“Heavy-duty Vehicle” means a heavy-duty vehicle as defined at Title 13, CCR, Section 1900.

“Independent Low Volume Manufacturer” means a manufacturer that has been designated by CARB as an independent low volume manufacturer as defined at Title 13, CCR, Section 1900.

(Break of Continuity Within Section)

~~**“Light-duty truck 1 or LDT-1”** means a light-duty truck with a loaded vehicle weight of 3,750 pounds or less.~~

~~“Light duty truck 2 or LDT 2” means a light duty truck with a loaded vehicle weight of greater than 3,750 pounds and a gross vehicle weight of less than or equal to 8,500 pounds and includes medium-duty passenger vehicles when determining compliance with the greenhouse gas emission standards of this regulation.~~

“**Loaded vehicle weight**” means the vehicle curb weight plus 300 pounds.

~~“Mail out” means a widely distributed general correspondence issued by CARB whenever said board needs information from the public, or when it wishes to inform the public of new information.~~

“**Manufacturer**” means any independent low volume, small, intermediate or large volume vehicle manufacturer as defined at Title 13, CCR, Section 1900.

“**Medium-duty passenger vehicle**” means medium-duty vehicle as defined at Title 13, CCR, Section 1900.

“**Military tactical vehicle**” means all land combat and transportation vehicles, excluding rail-based, which are designed for or are in use by any of the United States armed forces.

~~“Model year” means model year as defined at 40 CFR 85.2302 and determined in accordance with the provisions of 40 CFR 85.2301 through 85.2304, as supplemented or amended, and incorporated herein by reference means, for each vehicle manufacturer the period which includes January 1 of the calendar year in which the model is first offered for sale and ends December 31 of the final calendar year of sale or, if the manufacturer has no annual production period, the calendar year. In case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.~~

(Break of Continuity Within Section)

“**NMOG + NOx Credit**” means non-methane organic gas plus oxides of nitrogen credit.

(Break of Continuity Within Section)

“**Recall**” means: a manufacturer’s issuing of notices directly to consumers that vehicles in their possession or control should be corrected; and/or a manufacturer’s efforts to actively locate and correct vehicles in the possession or control of consumers.

“**Recall Campaign**” means that plan approved by the California Air Resources Board or the Department, by which the manufacturer will effect the recall of noncomplying vehicles.

“**Sale or sell**” means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

“**Secretary**” means the Secretary of the Department.

“**Small Volume Manufacturer**” means a manufacturer that has been designated by the CARB as a small volume manufacturer as defined at Title 13, CCR, Section 1900.

“**State**” means the State of Delaware, unless otherwise specified.

“**Test group**” means a grouping of vehicles as defined by 40 CFR 86.1827-01, as supplemented or amended, and incorporated herein by reference.

“**Test vehicle**” means an experimental or prototype motor vehicle that appears to have very low emission characteristics, or a used motor vehicle within which an experimental motor vehicle pollution control device is installed, and which has also received a test vehicle or fleet permit from CARB.

“**Ultimate purchaser**” means, with respect to any new motor vehicle or new motor vehicle engine, the first person whom in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

“**USEPA**” means the United States Environmental Protection Agency.

“**Vehicle identification number or VIN**” means a unique, 17 digit, alphanumeric code that the vehicle manufacturer assigns to a vehicle.

XX/XX/2013

4.0 Emission certification standards

Each model year and subsequent motor vehicle subject to 2.1 of this regulation shall be California-certified.

XX/XX/2013

5.0 ~~NMOG fleet-wide average exhaust emission requirement~~ New Vehicle Emission Requirements

- 5.1 ~~A manufacturer of model year 2014 or later passenger cars, light-duty trucks, or medium-duty vehicles delivered for sale in Delaware, shall demonstrate compliance with the NMOG fleet-wide average exhaust emission requirement of Title 13, CCR, Section 1961, which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation. No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:~~
- 5.1.1 the exhaust emission standards, as applicable in Title 13, CCR Section 1956.8 (g) or (h), 1960.1, 1961, 1961.1, 1961.2, or 1961.3 and
 - 5.1.2 the environmental performance label requirements for 2014 and subsequent model year vehicles in accordance with Title 13, CCR, Section 1965, and
 - 5.1.3 the evaporative emission standards in Title 13, CCR, Section 1976, and
 - 5.1.4 the refueling emission standards in Title 13, CCR, Section 1978, and
 - 5.1.5 the malfunction and diagnostic system requirements in Title 13, CCR, 1968.2, and
 - 5.1.6 the assembly-line testing procedure requirements in Title 13, CCR, Section 2062, and
 - 5.1.7 the specifications for fill pipes and openings of motor vehicle fuel tanks in Title 13, CCR, Section 2235.
- 5.2 ~~A manufacturer may accrue NMOG credits and debits and use them in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in Delaware in accordance with this regulation.~~

XX/XX/2013

6.0 ~~Vehicle Testing~~ Manufacturer Fleet Requirements

- 6.1 ~~Each manufacturer shall meet the following fleet requirements for the new vehicles delivered for sale or lease in Delaware:~~
- 6.1.1 Effective for 2014 model-years, each manufacturer shall comply with the fleet average NMOG emission requirements and LEV II phase-in requirements for passenger cars and light-duty trucks which average shall be based on the number of the manufacturer's vehicles subject to 2.1 of this regulation and, for 2014 and subsequent model-years, may earn and bank NMOG credits, both in accordance with Title 13, CCR, Section 1961(c), except that the formula for accruing credits at Title 13, CCR, Section 1961(c) shall be based upon the number of vehicles the manufacturer produces and delivers for sale in Delaware in accordance with this regulation.
 - 6.1.2 Effective for the 2015 and subsequent model-years, each manufacturer shall comply with the fleet average NMOG + NOx emission requirements and the LEVIII phase-in requirements for passenger cars, light-duty trucks and medium-duty vehicles, and may earn and bank NMOG + NOx credits as applicable, all in accordance with Title 13, CCR, Section 1961.2.
 - 6.1.3 Effective for the 2014 through 2016 model-years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and for 2014 and subsequent model-years earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.1.
 - 6.1.4 Effective for the 2017 and subsequent model years, each manufacturer shall comply with the fleet average emission greenhouse gas requirements for passenger cars, light-duty trucks and medium-duty passenger vehicles, and may earn and bank GHG credits, in accordance with Title 13, CCR, Section 1961.3.
- 6.4~~2~~ ~~Each new vehicle model subject to 2.1 of this regulation shall satisfy the motor vehicle emission requirements of Title 13, CCR, Sections: 1956.8 (g) or (h), 1960.1, 1961, 1962, 1962.1, 1961.1,~~

~~1961.2, 1961.3, 1965, 1968.1, 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2101, 2111, and 2235.~~
A manufacturer shall demonstrate compliance by presenting to the Department upon request copies of the applicable Executive Order.

- 6.23 Each manufacturer of a vehicle subject to 2.1 of this regulation shall conduct Inspection Testing and Quality Audit Testing in accordance with Title 13, CCR, Section 2062, and shall provide the test results to the Department upon request. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.
- 6.34 Each new vehicle subject to 2.1 of this regulation, prior to being offered for sale in Delaware, shall meet the motor vehicle emission requirements of Title 13, CCR, Section 1961, as determined by compliance testing, conducted by CARB in accordance with Title 13, CCR, Sections 2101 through 2110, 2150, and 2151. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.
- 6.45 For the purposes of detection and repair of vehicles subject to this regulation failing to meet the motor vehicle emission requirements of Title 13, CCR, Section 1961 the Department may conduct, after consultation with CARB, In-Use Vehicle Enforcement Testing in accordance with the protocol and testing procedures in Title 13, CCR, Section 2140. A manufacturer shall demonstrate compliance by presenting to the Department, upon request, copies of the test results and the determination and findings made by CARB.

XX/XX/2013**7.0 Warranty**

- 7.1 Each manufacturer of a vehicle subject to 2.1 of this regulation shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle shall comply over its period of warranty coverage with all requirements of Title 13, CCR, Sections 2035 through 2038, 2040, and 2041.
- 7.2 Each manufacturer of a vehicle subject to 2.1 of this regulation shall submit to the Department, upon request, a ~~Failure of Emission Related Components~~ Emission Warranty Information report as defined at Title 13, CCR, Section 2144.
- 7.3 For purposes of compliance with 7.2 of this regulation, a manufacturer may submit copies of the ~~Failure of Emission Related Components~~ Emission Warranty Information report that are submitted to CARB.

XX/XX/2013**8.0 Reporting and Record-Keeping Requirements**

- 8.1 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, no later than ~~March~~ May 1 following the close of the model year, a report itemized by test group and emissions standard documenting total new vehicle deliveries for sale or lease in Delaware ~~of vehicles in each test group during that model year.~~
- 8.2 Beginning with the 2014 model year, each manufacturer of a vehicle subject to 2.1 of this regulation shall submit annually to the Department, by no later than ~~March~~ May 1 following the close of the model year, a report, ~~prepared according to Title 13, CCR, Section 1961, calculating the NMOG fleet wide average exhaust emission~~ itemized by test group and emission standard, that demonstrates the manufacturer has met the fleet requirements of Section 6.0 of this regulation for the model year just ended for vehicles delivered for sale in Delaware.
- 8.3 If a manufacturer wants to bank GHG, NMOG, or NMOG + NOx credits, the manufacturer shall submit annually to the Department, by no later than May 1 following the end of the model-year, a report which demonstrates that such manufacturer has earned GHG, NMOG, or NMOG + NOx credits in Delaware. Credits are to be calculated in the same manner as required by CARB.
- 8.34 Beginning with the 2014 model year, each ~~manufacturer~~ dealer of a vehicle exempted under 2.3.7 of this regulation must keep records on all inter or intra-dealer trades of new 2014 or subsequent model-

PROPOSED REGULATIONS

year vehicles that have not been certified by CARB and therefore have not received a CARB Executive Order, and these records shall be made readily available to the Department upon request.

(Break of Continuity of Sections)

XX/XX/2013

10.0 Incorporation by Reference

- 10.1 Unless specifically excluded by this regulation, when a provision of the CCR is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.
- 10.2 ~~Prospective incorporation by reference means the ongoing process, whereby all provisions of regulations incorporated into this regulation from the CCR, as set forth in Table 40-1, are continually automatically updated in order to maintain consistency with the most current CCR. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a California rule, brought about by either judicial or administrative action and adopted or otherwise noticed by the state of California, shall be paralleled by a similar change to the Delaware regulation so that the Delaware regulation will have the same meaning and status as its California counterpart. The Low Emission Vehicle Program at 7 DE Admin. Code 1140, refer to various section of Title 13 of the California Code of Regulations (CCR). Wherever 7 DE Admin. Code 1140 refers to a specific section of the CCR, the reference is made to that version of the § as of the amended date provided for that section in 7 DE Admin. Code 1140: Table 40-1. The Department hereby incorporates by reference each of the sections of Title 13 CCR that are listed in Table 1 as of such § respective Amended Date.~~
- 10.3 Provisions of the CCR that are excluded from incorporation by reference in this regulation are excluded in their entirety, unless otherwise specified. If there is a cross-reference to a California citation that was not specifically incorporated, the cross-referenced citation is not incorporated by virtue of the cross-reference. ~~Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.~~
- 10.4 Nothing in these provisions incorporated by reference from the CCR shall affect the Department's authority to enforce statutes, rules, permits or orders administered or issued by the Secretary.
- 10.5 The following documents and sources of Title 13 of the California Code of Regulations (CCR) are incorporated by reference within this regulation:

Table 40-1
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference

Title 13, CCR	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions		
Section 1900	Definitions	<i>As effective December 31, 2012</i>
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	<i>As effective December 31, 2012</i>
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	<i>As effective December 31, 2012</i>

PROPOSED REGULATIONS

Section 1961	Exhaust Emission Standards and Test Procedures – 2004 <u>through 2019</u> and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<u>As effective December 31, 2012</u>
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 <u>through 2016</u> and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	<u>As effective August 7, 2012</u>
Section 1961.2	Exhaust Emission Standards and Test Procedures – <u>2015</u> and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<u>As effective December 31, 2012</u>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<u>As effective December 31, 2012</u>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<u>As effective August 7, 2012</u>
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<u>As effective November 27, 1999</u>
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<u>As effective August 7, 2012</u>
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	<u>As effective August 7, 2012</u>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<u>As effective December 31, 2012</u>
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<u>As effective August 7, 2012</u>
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	<u>As effective November 9, 2007</u>
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	<u>As effective May 15, 1999</u>
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<u>As effective August 7, 2012</u>
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<u>As effective August 7, 2012</u>
Section 2039	Emission Control System Warranty Statement	<u>As effective December 26, 1990</u>

PROPOSED REGULATIONS

Section 2040	Vehicle Owner Obligations	<i>As effective December 26, 1990</i>
Section 2041	Mediation; Finding of Warrantable Condition	<i>As effective December 26, 1990</i>
Section 2046	Defective Catalyst	<i>As effective February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>As effective August 7, 2012</i>
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	<i>As effective December 8, 2010</i>
Section 2109	New Vehicle Recall Provisions	<i>As effective December 30, 1983</i>
Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year	<i>As effective November 27, 1999</i>
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	<i>As effective December 8, 2010</i>
Section 2112	Definitions	<i>As effective August 7, 2012</i>
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	<i>As effective January 26, 1995</i>
Section 2114	Voluntary and Influenced Recall Plans	<i>As effective November 27, 1999</i>
Section 2115	Eligibility for Repair	<i>As effective January 26, 1995</i>
Section 2127	Notification of Owners	<i>As effective January 26, 1995</i>
Section 2128	Repair Label	<i>As effective January 26, 1995</i>
Section 2129	Proof of Correction Certificate	<i>As effective January 26, 1995</i>
Section 2130	Capture Rates and Alternative Measures	<i>As effective November 27, 1999</i>
Section 2131	Preliminary Tests	<i>As effective January 26, 1995</i>
Section 2132	Communication with Repair Personnel	<i>As effective January 26, 1995</i>
Section 2133	Record keeping and Reporting Requirements	<i>As effective January 26, 1995</i>
Section 2135	Extension of Time	<i>As effective January 26, 1995</i>
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	<i>As effective January 8, 2008</i>
Section 2137	Vehicle Selection	<i>As effective December 28, 2000</i>
Section 2138	Restorative Maintenance	<i>As effective November 27, 1999</i>
Section 2139	Testing	<i>As effective August 7, 2012</i>
Section 2140	Notification of In-Use Results	<i>As effective August 7, 2012</i>
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	<i>As effective December 8, 2010</i>
Section 2142	Alternative Procedures	<i>As effective February 23, 1990</i>

Section 2143	Failure Levels Triggering Recall	<i>As effective November 27, 1999</i>
Section 2144	Emission Warranty Information Report	<i>As effective November 27, 1999</i>
Section 2145	Field Information Report	<i>As effective August 7, 2012</i>
Section 2146	Emissions Information Report	<i>As effective November 27, 1999</i>
Section 2147	Demonstration of Compliance with Emission Standards	<i>As effective August 7, 2012</i>
Section 2148	Evaluation of Need for Recall	<i>As effective November 27, 1999</i>
Section 2149	Notification of Subsequent Action	<i>As effective February 23, 1990</i>
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	<i>As effective December 30, 1983</i>
Section 2151	New Motor Vehicle Dealer Surveillance	<i>As effective December 30, 1983</i>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective August 7, 2012</i>

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

1140 Delaware National Low Emission Vehicle Program

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1147

1147 CO₂ Budget Trading Program

REGISTER NOTICE
SAN # 2013-015

1. TITLE OF THE REGULATIONS:

Amendment to 7 **DE Admin. Code** 1147 - *CO₂ Budget Trading Program*

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

Division of Air Quality is proposing amendments to, 7 **DE Admin. Code** 1147- CO₂ Budget Trading Program, which addresses Carbon Dioxide (CO₂) emissions from Electric Generating Units (EGUs). The proposed amendments are based on the changes made to the Regional Greenhouse Gas Initiative (RGGI) Model Rule, which is the template used by RGGI participating states in their individual rulemaking process. The amendments included a change in the size and structure of Delaware's CO₂ allowance budget as well as other program modifications.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.**, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, September 25, 2013 beginning at 6:00 PM at the Kent County Building located at 555 S. Bay Road Dover Delaware 19901. Interested parties may submit comments in writing to: Babatunde Asere, DNREC Division of Air Quality, at 655 South Bay Road, Suite 5N, Dover, DE 19901.

7. PREPARED BY:

Babatunde Asere (302) 323-4542 August 8, 2013

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

1147 CO₂ Budget Trading Program

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d); 903(e)(2)a
(7 Del.C., §§901(c) & (d); 903(e)(2)a)
7 DE Admin. Code 3518

REGISTER NOTICE #2013 - 22

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

1. TITLE OF THE REGULATION:

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

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

The Atlantic States Marine Fisheries Commission approved an Interstate Fishery Management Plan (FMP) for Black Drum in May 2013. The plan was initiated to address a significant increase in harvest in the commercial and recreational fisheries. The FMP requires all states to maintain current regulations for black drum and ultimately adopt a coastwide minimum size limit of at least 14 inches by January 1, 2016. Delaware's current regulations include a 16-inch minimum size limit and a 3 fish recreational size limit. However, these measures as well as Delaware's commercial fishery management measures only apply to the Delaware River and Delaware Bay. Therefore, in support of the spirit of the FMP, the present action seeks to expand the applicability of Delaware's current restrictions statewide (to include all tidal waters of state). Such action will ensure compliance with the new FMP until modified through amendment or addendum.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901 (c) & (d); §903 (e)(2)a

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 proposed amendments to 3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit will be open September 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 30, 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

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

(Penalty Section 7 Del.C. §936(b)(2))

~~1.0~~ Definition

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

~~"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.~~

~~2.1.0~~ Size limit

~~It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than sixteen (16) inches, total length.~~

~~3.2.0~~ Possession Limits

~~3.2.1 It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) black drum per day (a day being 24 hours) from the Delaware Estuary.~~

~~3.2.2 It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds of black drum taken from the Delaware Estuary in any one (1) day.~~

~~4.3.0~~ Landing Limit

~~It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or projected that 65,000 pounds of black drum have been or will be landed in this State from the Delaware Estuary by the commercial fishery in a calendar year.~~

~~5.4.0~~ Dealer limit

~~It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds of black drum harvested from the Delaware Estuary in any one (1) day.~~

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d); 903(e)(2)a
(7 Del.C., §§901(c) & (d); 903(e)(2)a)

REGISTER NOTICE #2013 - 23

3588 Atlantic Menhaden

1. TITLE OF THE REGULATION:

3588 Atlantic Menhaden

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

The recent population assessment of Atlantic menhaden (*Brevoortia tyrannus*) showed a decline in population abundance and low recruitment rates. Estimates of fishing mortality show that overfishing is occurring and, in response, the Atlantic States Marine Fisheries Commission (ASMFC) adopted Amendment 2 to the Interstate Fisheries Management Plan for Atlantic Menhaden. Amendment 2 is designed to minimize the chance of a

PROPOSED REGULATIONS

population decline due to overfishing; reduce the risk of recruitment failure; reduce impacts to species which are ecologically dependent on Atlantic menhaden; and minimize adverse effects on participants in the fishery.

Implementation of Amendment 2 required that states submit implementation plans for approval by the ASMFC's Atlantic Menhaden Management Board. The Board approved Delaware's implementation plan at its 22 May 2013 meeting. The purpose of the present action is to formally adopt the management measures contained in Delaware's Atlantic menhaden implementation plan. The action will establish Delaware's annual Atlantic menhaden quota consistent with Amendment 2; establish timely reporting by the fishery; provide for closure of the fishery upon reaching quota; and establish a daily by-catch limit.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901 (c) & (d); §903 (e)(2)a

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 inclusion of a new 3588 Atlantic Menhaden to the Tidal Finfish Regulations (7 DE Admin. Code 3500) will be open September 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 30, 2013 beginning at 6:30 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

3588 Atlantic Menhaden

1.0 Atlantic Menhaden Quota

- 1.1 The annual quota for Atlantic menhaden shall be determined in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Menhaden and its subsequent amendments and addenda.
- 1.2 Any person who has been issued a valid commercial food fishing license may take and reduce to possession Atlantic menhaden during the period beginning at 12:01 AM January 1 and ending when the Department has determined that the annual Atlantic menhaden quota has been landed. The Department shall establish, based on recent fishery performance and landings, a date and time to order the directed fishery closed.

2.0 Atlantic Menhaden Bycatch Allowance

- 2.1 It is unlawful for any person who has been issued a valid commercial food fishing license to take and reduce to possession more than 6,000 pounds of Atlantic menhaden during any one day once the Department has determined that the Atlantic menhaden fishery is closed.
- 2.2 It shall be unlawful for any person who has been issued a valid commercial food fishing license or any vessel, regardless of the number of licensed commercial fisherman onboard that vessel, to possess or land more than 6,000 pounds of Atlantic menhaden in any one (1) day once the Department has determined the annual Atlantic menhaden fishery is closed.

3.0 Atlantic Menhaden Reporting Requirements

- 3.1 It is unlawful for any person who has been issued a valid commercial food fishing license to not accurately and completely report their Atlantic menhaden landings to the Department, via the interactive voice phone reporting system, within 24 hours of landing.
- 3.2 In addition to the requirement to phone in daily landing reports, it is unlawful for any person who has been issued a valid commercial food fishing license to not accurately and completely compile and file monthly log sheets detailing their daily landings of Atlantic menhaden on forms supplied by the Department. These forms must be submitted by the 10th of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for revocation or non-renewal of their commercial food fishing license.

4.0 Atlantic Menhaden Landing Restrictions

It is unlawful for any person who has been issued a valid commercial food fishing license to offload Atlantic menhaden to any other vessel or means of conveyance prior to landing.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 **Del.C.** §1106(a)(1))
24 **DE Admin. Code** 1100

1100 Board of Dentistry and Dental Hygiene**PUBLIC NOTICE**

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** 1106(a)(1), proposes to add a new section to its regulations, 12.0, et. al. The proposed addition defines unprofessional conduct within the practice of dentistry and dental hygiene and lists examples of such conduct.

The Board will hold a public hearing on the proposed rule change October 17, 2013 at 1:30 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 1, 2013.

1100 Board of Dentistry and Dental Hygiene

(Break in Continuity of Sections)

12.0 Unprofessional Conduct Defined

- 12.1 Dentists and dental hygienists whose behavior fails to conform to legal and accepted standards of the profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.
- 12.1.1 Unprofessional conduct shall include but is not limited to the following:
- 12.1.1.1 Performing acts beyond the authorized scope of the level of dental/dental hygiene practice for which the individual is licensed.
 - 12.1.1.2 Assuming duties and responsibilities within the practice of dentistry or dental hygiene without adequate preparation, or without maintenance of competency.
 - 12.1.1.3 Performing new techniques and/or procedures without education and practice.
 - 12.1.1.4 Inaccurately and willfully recording, falsifying or altering a patient or agency document record related to patient care, employment, or licensure.

PROPOSED REGULATIONS

- 12.1.1.5 Committing or threatening violence, verbal or physical abuse of patients or co-workers or the public.
- 12.1.1.6 Violating professional boundaries of the dentist/hygienist-patient relationship including but not limited to physical, sexual, emotional or financial exploitation of the patient or patient's significant other(s).
- 12.1.1.7 Engaging in sexual conduct with a patient, touching a patient in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same.
- 12.1.1.8 Assigning unlicensed persons to perform the practice of licensed dentists/hygienists.
- 12.1.1.9 Delegating dental practice to unqualified persons.
- 12.1.1.10 Failing to supervise persons to whom dental/hygiene practice has been delegated.
- 12.1.1.11 Leaving a patient assignment except in documented emergency situations.
- 12.1.1.12 Failing to safeguard a patient's dignity and right to privacy in providing services.
- 12.1.1.13 Violating the confidentiality of information concerning a patient.
- 12.1.1.14 Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.
- 12.1.1.15 Practicing dentistry or dental hygiene when unfit to perform procedures and make decisions in accordance with the license held because of physical or mental impairment or dependence on alcohol or drugs.
- 12.1.1.16 Diverting or misappropriating monies, drugs, supplies or property of a patient agency or governmental program.
- 12.1.1.17 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.
- 12.1.1.18 Practicing dentistry or dental hygiene with an expired license.
- 12.1.1.19 Allowing another person to use her/his license or temporary permit.
- 12.1.1.20 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a dentist, dental hygienist, or other health care provider.
- 12.1.1.21 Committing fraud, misrepresentation or deceit in taking the licensure exam, or in obtaining a license or temporary permit.
- 12.1.1.22 Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.
- 12.1.1.23 Failing to report unprofessional conduct by another licensee.
- 12.1.1.24 Practicing or holding oneself out as a dentist or dental hygienist without a current license.
- 12.1.1.25 Failing to comply with the requirements for continuing professional education, unless exempt.
- 12.1.1.26 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.
- 12.1.1.27 Failing to comply with the terms and conditions set out in a disciplinary action of the Board.

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

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 Del.C. §4106(a)(1))
24 DE Admin. Code 4100

PUBLIC NOTICE

4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 Del.C. §4106(a)(1), proposes to amend its rules and regulations. The proposed additions at 3.5 and 10.1.2 seek to allow applicants for trainee status to obtain partial credit for inspections performed before November 4, 2013, as long as the application is submitted on or before November 4, 2013. The addition at 10.1.1 seeks to allow trainee applicants to obtain full credit for supervised inspections performed prior to November 4, 2013, and the proposed amendment at 3.5 seeks to decrease the overall number of supervised inspections a trainee licensee must complete in order to become a fully licensed home inspector. The addition at 5.1 seeks to allow the Board to pre-approve qualifying education courses for applicants.

The Board will hold a public hearing on the proposed regulation change on September 24, 2013 at 9:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until October 9, 2013 pursuant to 29 Del.C. §10118(a). The Board will deliberate on the proposed changes at its regularly scheduled meeting on October 9, 2013 at 9:30 a.m.

4100 Board of Home Inspectors

(Break in Continuity of Sections)

3.0 Grandfather provision

[24 Del.C. §4108(d)]

(Break in Continuity Within Section)

- 3.5 A trainee will be permitted to obtain one half credit for any unsupervised home inspections performed prior to November 4, 2013 so long as the application is submitted on or before November 4, 2013. In other words, a trainee will receive one credit for every two unsupervised inspections performed prior to November 4, 2013. The trainee shall indicate any such inspections on their home inspection experience log.

(Break in Continuity of Sections)

5.0 Education

- 5.1 To qualify for licensure, all applicants must successfully complete a course of study, consisting of at least 140 hours of classroom or online training, which has been approved by the Board, the American Society of Home Inspectors ("ASHI"), the National Association of Home Inspectors ("NAHI") or the International Association of Certified Home Inspectors ("INTERNACHI").

(Break in Continuity of Sections)

10.0 Responsibilities of registered home inspector trainee

- 10.1 The trainee shall complete at least ~~250~~ 125 home inspections under the active oversight of a licensed home inspector(s).

10.1.1 Trainee applicants may acquire supervised experience, as documented on a Board approved form, during the time period after the date of enactment of the statute until the deadline for

PROPOSED REGULATIONS

submission of grandfather applications. However, that supervised experience shall satisfy the licensure requirements only if the supervisor becomes licensed under the grandfather provision within three months after making application.

- 10.1.2 The trainee applicant will be permitted to obtain one half credit for any unsupervised home inspections performed prior to November 4, 2013 so long as the application is submitted on or before November 4, 2013. In other words, a trainee will receive one credit for every two unsupervised inspections performed prior to November 4, 2013. The trainee shall indicate any such inspections on their home inspection experience log.
- 10.2 The trainee shall maintain a home inspection experience log on a Board-approved form certified by the supervising home inspector(s).
- 10.3 The trainee shall ensure that the log is available at all times for inspection by the Board.
- 10.4 While performing home inspections, the trainee shall carry the registration card issued by the Board.

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

4100 Board of Home Inspectors

PUBLIC SERVICE COMMISSION

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

PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS TO IMPLEMENT THE PROVISIONS
OF 26 DEL.C. CH. 10 RELATING TO THE CREATION OF
A COMPETITIVE MARKET FOR RETAIL ELECTRIC
SUPPLY SERVICE (OPENED APRIL 27, 1999;
RE-OPENED JANUARY 7, 2003; RE-OPENED
SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER
7, 2010; RE-OPENED JULY 17, 2012

PSC REGULATION DOCKET NO. 49

EXHIBIT "B"

NOTICE OF PROPOSED RULE-MAKING AMENDING "RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS"

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 **DE Admin. Code** 3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **October 1, 2013**. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Reg. Doc. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to psc@state.de.us, include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before **October 1, 2013**, but the last date to submit written comments will be on **November 16, 2013**.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on **October 22, 2013 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8424 (July 30, 2013) (the "Order") and the proposed revised Supplier Rules in the September 2013 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <http://depssc.delaware.gov/electric.shtml>.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, with the first 20 pages being free of charge. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 **Del.C.** Ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE 19801. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to psc@state.de.us, please include "Reg. Doc. 49" as the subject of the email.

ORDER NO. 8424

AND NOW, this 30th day of July 2013, the Delaware Public Service Commission (the "Commission") determines and orders the following:

WHEREAS, the Commission has promulgated certain regulations pertaining to certification of electric suppliers entitled "Rules for Certification and Regulation of Electric Suppliers." See 26 **DE Admin. Code** 3001 (the "Supplier Rules"); and

WHEREAS, the Supplier Rules have been amended several times since their original passage in 1999. (PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011)); and

WHEREAS, by Order No. 8187 dated July 17, 2012, the Commission re-opened PSC Regulation Docket 49 to consider further revisions to the existing Supplier Rules set for the in 26 **DE Admin. Code** 3001; and

WHEREAS, Commission Staff has convened three workshops to address the proposed revisions to the Supplier Rules; and

WHEREAS, the Commission now proposes to modify the Supplier Rules to reflect the revisions discussed

PROPOSED REGULATIONS

during the workshops; and

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

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

1. That, for the reasons set forth in PSC Order No. 8187, the Commission proposes to revise the Supplier Rules as set forth herein in Exhibit "A".

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the September 2013 *Delaware Register of Regulations* a copy of this Order; a copy of the Supplier Rules, showing the proposed changes (Exhibit "A"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "B".

3. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "B" to be published in *The News Journal* and the *Delaware State News* newspapers on or before September 1, 2013. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; (e) the Retail Energy Supply Association; (f) NRG Energy, Inc.; (g) all members of the workgroup formed in accordance with PSC Order No. 8187; and (h) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 1, 2013. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Rules on Tuesday, October 22, 2013 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That the Commission will defer for the time being referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on the nature and extent of any comments received regarding the proposed revisions to the Supplier Rules, the Commission may then determine that it is necessary to appoint a Hearing Examiner.

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

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

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

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

RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS

Symbol Key

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

Final Regulations

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

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

DELAWARE SOLID WASTE AUTHORITY

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

ORDER AND DECISION

501 Regulations of the Delaware Solid Waste Authority

1. This is the Final Order and Decision of the Directors of the Delaware Solid Waste Authority (the "Authority") on proposed amendments (the "Amendments") to the Regulations of the Delaware Solid Waste Authority.

2. On June 1, 2013, the Authority caused to be published, in the Delaware *Register of Regulations*, notice of the proposed Amendments. The proposed Amendments were also the subject of publication in the *Delaware State News* on June 10, 2013.

3. In accordance with 7 Del.C. §6403(i), on Tuesday, July 2, 2013 a hearing was held before Michael W. Teichman, Esquire, the Authority's designated hearing officer. At the hearing, documents and sworn testimony were received into evidence.

4. The Authority issues this Final Order and Decision after a review of the documents and evidence admitted into the record at the hearing, as well as a careful review of the hearing officer's Proposed Order and Recommendations dated July 17, 2013.

Summary of Evidence, Findings of Fact and Conclusions of Law

5. The summary of evidence set forth in the hearing officer's Proposed Order and Recommendations accurately summarizes the documentary evidence and verbal testimony received into the record.

6. The findings of fact and conclusions of law in the Proposed Order and Recommendations appear well reasoned and amply supported by the summary of the evidence contained therein.

7. Accordingly, the summary of the evidence, findings of fact and conclusions of law set forth in the Proposed Order and Recommendations are incorporated by reference and adopted herein in their entirety as if

fully set forth herein.

Decision

8. For the reasons set forth above, the Regulations of the Delaware Solid Waste Authority are amended in the form set forth in Exhibit A hereto.

SO ORDERED, this 25th Day of July, 2013.

Richard V. Pryor, Chairman

Ronald G. McCabe, Vice Chair

Gerard L. Esposito

Gregory Moore

Tonda L. Parks

Theodore W. Ryan

Timothy P. Sheldon

*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 1230 (16 DE Reg. 1230). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

501 Regulations of the Delaware Solid Waste Authority

DELAWARE SOLID WASTE AUTHORITY

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

1 DE Admin. Code 502

ORDER AND DECISION

502 Statewide Solid Waste Management Plan

1. This is the Final Order and Decision of the Directors of the Delaware Solid Waste Authority (the "Authority") on proposed amendments, in the form of an addendum (the "Addendum"), to the Statewide Solid Waste Management Plan.

2. On June 1, 2013, the Authority caused to be published, in the Delaware *Register of Regulations*, notice of the Addendum. The proposed Addendum was also the subject of publication in the *Delaware State News* on June 10, 2013.

3. In accordance with 7 **Del.C.** §6403(j), on Tuesday, July 2, 2013 a hearing was held before Michael W. Teichman, Esquire, the Authority's designated hearing officer. At the hearing, documents and sworn testimony were received into evidence.

4. The Authority issues this Final Order and Decision after a review of the documents and evidence admitted into the record at the hearing, as well as a careful review of the hearing officer's Proposed Order and Recommendations dated July 17, 2013.

Summary of Evidence, Findings of Fact and Conclusions of Law

5. The summary of evidence set forth in the hearing officer's Proposed Order and Recommendations accurately summarizes the documentary evidence and verbal testimony received into the record.

6. The findings of fact and conclusions of law in the Proposed Order and Recommendations appear well reasoned and amply supported by the summary of the evidence contained therein.

7. Accordingly, the summary of the evidence, findings of fact and conclusions of law set forth in the Proposed Order and Recommendations are incorporated by reference and adopted herein in their entirety as if fully set forth herein.

Decision

8. For the reasons set forth above, the addendum to Statewide Solid Waste Management Plan Authority is hereby adopted in the form set forth in Exhibit A hereto.

SO ORDERED this 25th day of July, 2013

Richard V. Pryor, Chairman

Ronald G. McCabe, Vice Chair

Gerard L. Esposito

Gregory Moore

Tonda L. Parks

Theodore W. Ryan

Timothy P. Sheldon

***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 1231 (16 DE Reg. 1231). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

502 Statewide Solid Waste Management Plan

DELAWARE SOLID WASTE AUTHORITY

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

1 DE Admin. Code 503

ORDER AND DECISION

503 Differential Disposal Fee Program

1. This is the Final Order and Decision of the Directors of the Delaware Solid Waste Authority (the "Authority") on the proposed removal of the Differential Disposal Fee Program (the "Obsolete Program") as it appears in the Delaware Administrative Code as 1 DE Admin. Code §503.

2. On June 1, 2013, the Authority caused to be published, in the Delaware *Register of Regulations*, notice of the removal of the Obsolete Program. The removal of the Obsolete Program was also the subject of publication in the *Delaware State News* on June 10, 2013.

3. In accordance with 7 Del.C. §6403(i) and (k), on Tuesday, July 2, 2013 a hearing was held before Michael W. Teichman, Esquire, the Authority's designated hearing officer. At the hearing, documents and sworn testimony were received into evidence.

4. The Authority issues this Final Order and Decision after a review of the documents and evidence admitted into the record at the hearing, as well as a careful review of the hearing officer's Proposed Order and Recommendations dated July 17, 2013.

Summary of Evidence, Findings of Fact and Conclusions of Law

5. The summary of evidence set forth in the hearing officer's Proposed Order and Recommendations accurately summarizes the documentary evidence and verbal testimony received into the record.

6. The findings of fact and conclusions of law in the Proposed Order and Recommendations appear well reasoned and amply supported by the summary of the evidence contained therein.

7. Accordingly, the summary of the evidence, findings of fact and conclusions of law set forth in the Proposed Order and Recommendations are incorporated by reference and adopted herein in their entirety as if fully set forth herein.

Decision

8. For the reasons set forth above, the Obsolete Program shall be stricken in its entirety and notice thereof shall be published in the Delaware *Register of Regulations*.

SO ORDERED, this 25th Day of July, 2013.

Richard V. Pryor, Chairman

Ronald G. McCabe, Vice Chair

Gerard L. Esposito

Gregory Moore

Tonda L. Parks

Theodore W. Ryan

Timothy P. Sheldon

*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 1232 (16 DE Reg. 1232). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

503 Differential Disposal Fee Program

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY

Statutory Authority: 3 **Delaware Code**, Sections 102 and 302 (3 **Del.C.** §102 and §302)
3 **DE Admin. Code** 101

ORDER

101 On-Farm Home Processing of Non-Potentially Hazardous Foods

I. NATURE OF PROCEEDINGS

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 regulatory change set forth here is a result of this process.

Proposed amended regulation 8.6.2 increases the amount of sales allowed by a permit-holder under the Department of Agriculture's on-farm kitchen permits from \$40,000 to \$50,000, to increase economic opportunity for agricultural entrepreneurs.

Notice of a public comment period of thirty (30) days on this proposed amended regulation was published in the *Delaware Register of Regulations* for July 1, 2013. This is the Department of Agriculture's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

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

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments on the proposal. Having received no comments opposed to adoption, the Department is now free to adopt the proposed amended regulations.

IV. ORDER

It is hereby ordered that the proposed amendments to the Department's regulations are adopted; the text of the final regulation shall be in the form attached hereto as Exhibit A; and the effective date of this Order shall be ten (10) days from date this Order is published in the *Delaware Register of Regulations*.

*Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 25 (17 DE Reg. 25). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

101 On-Farm Home Processing of Non-Potentially Hazardous Foods

OFFICE OF THE SECRETARY

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

ORDER

1201 Nutrient Management Certification Regulations

I. NATURE OF PROCEEDINGS

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 regulatory change set forth here is a result of this process.

Proposed amended regulation 11.1 reduces from 60 to 45 days the time that nutrient management certificate holders must file for renewal before their certificates expire, providing them with more flexibility in the renewal process.

Notice of a public comment period of thirty (30) days on this proposed amended regulation was published in the Delaware *Register of Regulations* for July 1, 2013. This is the Department of Agriculture's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

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

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments on the proposal. Having received no comments opposed to adoption, the Department is now free to adopt the proposed amended regulations.

IV. ORDER

It is hereby ordered that the proposed amendments to the Department's regulations are adopted; the text of the final regulation shall be in the form attached hereto as Exhibit A; and the effective date of this Order shall be ten (10) days from date this Order is published in the Delaware *Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 28 (17 DE Reg. 28). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1201 Nutrient Management Certification Regulations

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4826 (29 Del.C. §4826)

ORDER

206 Internet Lottery Regulations

AUTHORITY

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826(c) is proposing Regulations for the Delaware Lottery 10 **DE Admin. Code** 206 for Internet Lottery.

NATURE OF PROCEEDINGS:

Delaware Department of Finance ("Department"), Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4826 (29 **Del.C.** §4826) proposed amendments to 10 **DE Admin. Code** 206 in response to the signing of House Bill 333, the Delaware Gaming Competitiveness Act of 2012, on June 28, 2012 which authorized Internet Lotteries.

These amendments update Delaware Lottery regulations to include new Internet Lottery regulations. Internet Lotteries are defined by 29 **Del.C.** section 4801(i) as "all lottery games in which the player's interaction with the game operated by the Office occurs over the Internet (which, for purposes of this chapter, shall include any public or private computer or terminal network, whether linked electronically, wirelessly, through optical networking technology or other means), including Internet ticket games, the Internet video lottery and Internet table games." The proposed regulations will set forth parameters for minimum internal controls, vendor licensing, employee licensing, approval of gaming equipment, and other operational standards.

Notice of a public comment period of thirty (30) days on the Lottery's proposed regulations was published in the Delaware *Register of Regulations* for July 1, 2013 in accordance with 29 **Del.C.** §10115.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE:

Comments were received on the proposed Regulations from:

1. IGT:

IGT recommends that the definition of gaming employee is too broad.

Agency Response: The Lottery has reviewed these comments and has not implemented a change. Specific application of the definition may be determined on a case by case basis as required.

IGT recommends updating section 8.2.6 to remove requirement that a provider may not make changes to the internet gaming system during the trial period.

Agency Response: The Lottery has reviewed these comments and has modified this requirement.

IGT recommends updating section 8.2.9 to explicitly permit exceptions for social gaming sites.

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

IGT Requests clarification on definition of primary gaming server and secondary gaming server in sections 8.4 and 8.5.

Agency Response: The Lottery has reviewed these comments and has implemented a clarification in Section 8.5.

IGT recommends updating section 12.3.2 by replacing "immediately" with "as reasonably practical".

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

IGT recommends removing the requirement in section 13.1 for players to register for free play games.

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

IGT recommends removing the term "cellular" from section 13.4.3.

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

IGT recommends updating section 13.4.6 to include passports if not a US resident.

Agency Response: The Lottery has reviewed these comments and has implemented a change.

IGT recommends a less onerous process for Section 13, Self-Exclusion and recommends that players have the opportunity to self-exclude on-line. IGT also suggests updating 13.14.1.4 and 13.16.4 to "telephone number" and 13.14.1.5 and 13.16.5 to include alternative identification for non-US residents.

Agency Response: The Lottery has reviewed these comments and has implemented a change to sections 13.14.1.4 and 13.14.1.5. Although no change has been made to the self exclusion process, this does not prevent the use of on-line tools for self-imposed cooling off periods.

IGT recommends updating section 13.5 to perform identity and age verification upon deposit, not registration.

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

IGT recommends removing section 13.14.1.6 for on-line play.

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

IGT recommends allowing for shorter time frames for self-exclusion under section 13.14.2.

Agency Response: The Lottery has reviewed these comments and has not implemented a change.

Although no change has been made to the self-exclusion process, this does not prevent the use of on-line tools for self-imposed cooling off periods.

Recommends including language in 13.22.2 to include potential future “inter-jurisdictional agreements.”

Agency Response: The Lottery has reviewed these comments and has implemented a clarification.

IGT recommends adding “debit card” to Section 13.24.

Agency Response: The Lottery has reviewed these comments and not has implemented a change.

Such method of payment may be approved under section 13.24.3.

IGT recommends 3 years instead of 5 years in section 13.26.

Agency Response: The Lottery has reviewed these comments and has implemented a clarification.

IGT identified a numbering error beginning at 16.3.

Agency Response: The Lottery has reviewed these comments has implemented a change.

2. **Martin Shapiro** who submitted guidelines for online poker regulations. With no changes to specific regulations being suggested, no changes were made.

3. **Responsible Gaming Networks.**

Responsible Gaming Networks recommends that language in 13.22.2 regarding “reasonable assurance” be replaced with “complete assurance” criteria for geo-location.

Agency Response: The Lottery has considered this recommendation and has not implemented a change.

Responsible Gaming Networks recommends that the Internet Gaming System be required to centrally administer personal gaming limits across all internet gaming sites in the State of Delaware.

Agency Response: The Lottery has considered this recommendation and has not implemented a change.

Responsible Gaming Networks recommends updating 13.10.1 by adding the underlined language “The agency or licensed agents will provide a current copy of the official exclusion list to the technology provider for the purposes of screening applicants registering for, or currently attempting to play with, an Internet lottery gaming account.

Agency Response: The Lottery has considered this recommendation and has incorporated additional language in section 13.10.1.

Responsible Gaming Networks recommends that Delaware encourage responsible gaming by banning the use of credit cards as a method of depositing into an online gaming accounts and recommends eliminating section 13.24.1 of the Regulations.

Agency Response: The Lottery has considered this recommendation and has not implemented the suggested change.

Responsible Gaming Networks recommends alternative methods for age and identify verification, supports free play controls, and encourages Delaware to audit player losses.

Agency Response: The Lottery has reviewed these comments. With no amendments being requested, none were made with respect to these comments.

4. **Williams Interactive**, requested clarifications as they pertain to the Williams Interactive gaming system.

Agency Response: With no amendments being suggested, no changes were made as a result of such comments.

FINDINGS OF FACT:

The Lottery finds that the proposed regulations as set forth in the July 1 *Register of Regulations* and modified as referenced above, be adopted.

THEREFORE IT IS ORDERED that the proposed Internet Lottery Rules and Regulations are adopted and final

September 10, 2013.

Vernon Kirk, Director, Delaware Lottery

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

206 Internet Lottery Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

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

4202 Control of Communicable and Other Disease Conditions

ORDER

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing the Control of Communicable and Other Disease Conditions. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** §122(3).

On June 1, 2013 (Volume 16, Issue 12), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 2, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing the Control of Communicable and Other Disease Conditions were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

"Brenda Johnson, MT, CIC, Infection Preventionist, Nanticoke Memorial Hospital

"Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities (SCPD)

"Terri A. Hancharick, Chairperson, Governor's Advisory Council for Exceptional Citizens (GACEC)

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

Brenda Johnson, MT, CIC, Infection Preventionist, Nanticoke Memorial Hospital:

In the List of Notifiable Diseases/Conditions table, Central line related bloodstream infections in an intensive care unit is followed by (H). I do not see this identified below the table. Also, is "central line related bloodstream infection" considered to be synonymous to "central line associated bloodstream infection" (CLABSI)?

Agency Response: The Agency appreciates and acknowledges these comments. Central line related bloodstream infections in an intensive care unit are considered healthcare-associated infections. According to 7.6.4 Reporting Data, "Healthcare-associated infections required to be reported to the Department shall consist of the same HAIs required to be reported to CMS." HAIs are not included in Appendix I State of Delaware - List of Notifiable Diseases/Conditions. The Agency has removed "Central line related bloodstream infections in an intensive care unit (H)" from Appendix I State of Delaware - List of Notifiable Diseases/Conditions.

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) have the following observations:

1. Section 7.6.1 does not conform to the Delaware Administrative Code Style Manual. In the context of definitions, Section 3.1.2 "provides the following guidance: immediately after the defined word or term, insert the word "means". Definitions compiled in §7.6.1 do not conform to this protocol. For example, the reference to "Department" is as follows:

"Department" The Department of Health and Social Services.

Inserting "means" would enhance the "readability" of the definitions.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise section 7.6.1 to include the word "means" in the definitions of the terms in section 7.6.1 as appropriate to improve readability. Furthermore, to conform to the Delaware Administrative Code Style Manual, the Agency has also included the word "means" in the definitions of terms in section 1.0 Definitions as appropriate to improve readability.

2. In §7.6, definition of "CDC", the second sentence merits review for grammar. It recites as follows:

The CDC focuses national attention on developing and applying disease prevention and control (~~especially infectious diseases~~) recommendations for chronic and infectious diseases, environmental health, occupational safety and health, health promotion, prevention, and education activities designed to improve the health of people in the United States.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the sentence to read:

"The CDC is dedicated to protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. As the national public health agency for the United States, the CDC is committed to programs that reduce the health and economic consequences of the leading causes of death and disability, thereby ensuring a long, productive, healthy life for all people."

3. In §7.6, definition of "Freestanding surgical center", the second sentence has 103 words with many subparts and inappropriate punctuation. It should be reformatted and reworded. See Delaware Administrative Code Style Manual, §6.2.4. The references to ", or;" merit revision. The reference to "and/or" should be converted to "or". See Delaware Administrative Code Style Manual, §6.6.1.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the definition of "Freestanding surgical center" to read:

"means a facility that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization. The term does not include (1) a facility that is licensed as part of a hospital; (2) a facility that provides services or accommodations for patients who stay overnight; or (3) a facility that is used as an office or clinic for the private practice of a physician, podiatrist, or dentist."

4. In §7.6, definition of "Healthcare Facility", substitute "other facility" for "other facilities".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the definition of "Healthcare Facility" to read:

"means a correctional facility, dialysis center, freestanding surgical center, hospital, long-term care facility, psychiatric facility, or other facility as defined by the Centers for Medicaid and Medicare Services or the CDC."

5. In §7.6, definition of "Psychiatric facility", capitalize "facility" and substitute "persons with mental illness" for "mentally ill persons". See Title 29 **Del.C.** §608.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the definition of "Psychiatric facility" to read:

"means a Facility that is primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of persons with mental illness."

6. There are multiple references to "and/or the AHRQ, to name a few". See, e.g. §§7.6.5.2, 7.6.6.2, and 7.6.7.2. Consider substituting "or the AHRQ". See Delaware Administrative Code Style Manual, §6.6.1.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency agrees to revise the multiple references to "and/or the AHRQ, to name a few" to read:

~~"and/or the AHRQ, to name a few."~~

7. Section 7.6.15 purports, by State regulation, to supersede contrary federal law. DPH ostensibly lacks the

authority to supersede federal law by promulgation of a State regulation.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency has determined that Section 7.6.15 is consistent with the understanding that State law and regulations can be more stringent than Federal law. Therefore, the language in this section remains unchanged.

Based on comments received during the public comment period only non-substantive changes have been made to the proposed regulation. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

The public comment period was open from June 1, 2013 through July 2, 2013.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the Control of Communicable and Other Disease Conditions are adopted and shall become effective September 11, 2013, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, 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:**

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Section 2322 F(j) (19 Del.C. §§2322F(j))
19 DE Admin. Code 1341

ORDER

1341 Workers' Compensation Regulations
1342 Health Care Practice Guidelines
PART A Carpal Tunnel Syndrome Guidelines
PART B Chronic Pain Treatment Guidelines
PART C Cumulative Trauma Disorder Medical Treatment Guidelines
PART D Low Back Treatment Guidelines
PART E Shoulder Treatment Guidelines
PART F Cervical Treatment Guidelines
PART G Lower Extremity Treatment Guidelines

A public meeting was held on July 29, 2013, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Provider Certification, and Utilization Review, as well as revise the Health Care Practice Guidelines to reduce the frequency of some treatment, services, or procedures and clean up language inadvertently left in the original guidelines. In this final version, technical revisions were added to the anesthesia methodology and revenue neutral language. These changes align the regulations with the mandates in HB 175. The members of the Health Care Advisory Panel ("HCAP"), signed below, recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 17, Issue 1 (July 2013).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Exhibits Admitted Prior to and During the Public Meeting:

- Exhibit 1-*News Journal*, Affidavit of publication of notice of public meeting.
- Exhibit 2 -*Delaware State News*, Affidavit of publication of notice of public meeting.
- Exhibit 3 -State of Delaware Public Meeting Calendar electronic posting of today's meeting.
- Exhibit 4 - Written public comments from Rebecca Byrd, The Byrd Group, LLC, on behalf of AHCS (Automated HealthCare Solutions).
- Exhibit 5 -Written talking points from public comments given by Bob Byrd, The Byrd Group, LLC, on behalf of AHCS (Automated Healthcare Solutions)
- Exhibit 6- Written talking points from public comments given by Jayne Cannava, Esquire, Director of Government Affairs, Injured Workers' Pharmacy (IWP).

After the Panel concluded with their introductions, the public was invited to share their comments.

The following comments were made during the public meeting.

- Fee Schedule Instructions: First, Bob Byrd, of The Byrd Group, representing Automated Healthcare Solutions, provided comments about the complete prohibition of physician dispensing medications; the elimination of the physician dispensing fee; the use of more than one pricing index; and the repackaging reimbursement. Second, Jayne Cannava, Esquire, Director of Government Affairs, Injured Workers' Pharmacy, provided comments about the use of New York State as the pharmacy pricing model; the increased risk to payment in an environment when compensability is a frequent back and forth decision; low fees and blocked access-to-care; brand versus generic medications as a cost driver; the use of one pricing index - Medispan, because it more frequently updates fees; and payer response time to the new justification form; recommended AWP + 5% + \$4 dispensing. IWP may choose to stop serving Delaware injured workers given the new pay structure.
- Forms: No Public Comment
- Provider Certification: No Public Comment Utilization Review: No Public Comment
- Health Care Practice Guidelines: No Public Comment

The HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Provider Certification, and Utilization Review, as well as the revisions to the Health Care Practice Guidelines.

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The HCAP is persuaded that the proposals are consistent with administering the statutory directives in the workers' compensation law. In 2013, the Administrative Procedures Act changed to extend the public comment period 15 days past the date of the public meeting, which is August 13, 2013. Any further public comment received between July 29, 2013 and August 13, 2013, is included in the attached addendum, along with an e-mail reaffirmation from each Panel member present at the July 29, 2013, public meeting. If no further public comment was received, no addendum will exist.

RECOMMENDATION

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 29th day of July, 2013.

ADDENDUM TO JULY 29, 2013, RECOMMENDATION

A public meeting was held on July 29, 2013, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Provider Certification, and Utilization Review, as well as revise the Health Care Practice Guidelines to reduce the frequency of some treatment, services, or procedures and clean up language inadvertently left in the original guidelines. Pursuant to 29 **Del.C.** §10118(a), August 13, 2013, marks the deadline (15 days after the public meeting) to receive written public comments on the above revisions. This addendum lists the additional public comments received. The members of the Health Care Advisory Panel (HCAP) members present at the July 29, 2013, and

whose electronic signatures appear below, reaffirm their recommendation that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 17, Issue 1 (July 2013), with the properly noted subsequent technical revisions to the anesthesia methodology and revenue neutral language.

SUMMARY OF THE ADDITIONAL EVIDENCE AND INFORMATION SUBMITTED

Additional Exhibits Admitted:

- Exhibit 7 -Written comments submitted by Kevin C. Tribout, Executive Director of Government Affairs, PMSI
- Exhibit 8 - Written comments submitted by Sandy Shtab, Senior Manager, Government Relations, Healthsystems, which include a letter, two sample claim forms, and a copy of a publication from the National Council for Prescription Drug Programs (NCPDP) titled "Guidance for the Workers' Compensation Industry."
- Exhibit 9 -Written comments submitted by Todd Wilder, Executive Director, Americans for Patients Rights.
- Exhibit 10-Written comments submitted via e-mail by Melissa J. Petro, JD, MPH, Regional Director, State Government Affairs, Purdue Phama, L.P. on behalf of J. David Haddox, Vice President, Health Policy, Purdue Pharma L.P.
- Exhibit 11 -Written Comments submitted by Phil Pierson, Associate Counsel, American Insurance Association, which include a letter, "Suggested Language Concerning Compound Drug Pre-Authorization for Workers' Compensation Claimants," a copy of CWCI Research

Notes: "Current Trends in Compound Drug Utilization and Cost in the California Workers' Compensation System," and a copy of a preliminary report by the Texas Department of Insurance titled "Impact of the Texas Pharmacy Closed Formulary."

ADDITIONAL RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The HCAP received electronic copies of all the Exhibits 7-11, which were submitted after the July 29, 2013, and before the August 13, 2013, deadline to receive public comments. For each exhibit, a majority of the Panel reaffirmed their yes vote in favor of moving forward with the regulation changes. In light of the additional written public comments, the HCAP is still persuaded that these additional proposals are consistent with administrating the statutory directives in the workers' compensation law.

RECOMMENDATION

This addendum is respectfully included in the submission to the Secretary of Labor for consideration with a recommendation for adoption this 13th day of August, 2013.

HEALTH CARE ADVISORY PANEL

G. B. Heckler, Jr. Chair
 Harry Gravell
 Joseph Straight
 James E. Downing
 A. Richard Heffron
 Dave Hollen
 Barry Bakst D.O.

Bruce Rudin Vice Chair
 Joseph J. Rhoades
 Douglas Briggs
 Theodore W. Becker, Jr.
 Wayne A. Smith
 Mrs. Theresa A. Smith

DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Provider Certification, Utilization Review, and Health Care Practice Guidelines. The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Provider Certification, Utilization Review, Health Care Practice guidelines are hereby adopted by the Delaware Department of Labor and made effective September 11, 2013.

TEXT AND CITATION

The proposed Fee Schedule Instructions and Guidelines; Forms; Provider Certification, Utilization Review; and Health Care Practice Guidelines notice appeared in the *Register of Regulations*, Volume 17, Issue 1 (July 1, 2013). The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), Forms, Provider Certification, Utilization Review, and Health Care Practice Guidelines are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: www.delawareworks.com.

John McMahon, Secretary of Labor

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

1341 Workers' Compensation Regulations

DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10115
(19 **Del.C.** §3122 & 29 **Del.C.** §10115)

1202 Unemployment Insurance Regulations

ORDER

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 19 **Del.C.** §3122, the State of Delaware, Department of Labor, Division of Unemployment Insurance (herein "the Division") proposed to amend its regulations. The Division's purpose in proposing these amendments was to streamline unemployment insurance procedures, reduce the number of regulations confronting unemployment insurance claimants and employers, reduce paperwork, and contribute to the efficient operation of the government of the State of Delaware.

Notice of a public comment period of thirty (30) days on the Division's proposed amended regulations was published in the Delaware *Register of Regulations* for July 1, 2013 as well as in two Delaware newspapers of general circulation in accordance with 29 **Del.C.** §10115. A public hearing was held on July 22, 2013 from 10am -12pm during which no public comments were received. This is the Division's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Division 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 Division's intention to adopt the proposed amended

regulations and was given ample opportunity to provide the Division with comments opposing the Division's plan including a public hearing. Thus, the Division 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 5th day of August, 2013, it is hereby ordered that:

1. The proposed amendments to the Division's regulations are adopted;
2. The text of the proposed amended regulations 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 Division reserves to itself the authority to issue such other and further orders in this matter as may be just and proper.

IT IS SO ORDERED.

W. Thomas MacPherson, Director DE Division of UI

*Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 36 (17 DE Reg. 36). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1202 Unemployment Insurance Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

1125 Requirements for Preconstruction Review

ORDER

Secretary's Order No. 2013-A-0031

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1125,
Requirements for Preconstruction Review, Section 2.5 ("Offsets")**

Date of Issuance: August 13, 2013

Effective Date of the Amendment: September 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review: Section 2.5 ("Offsets"). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-12. The Department published its initial proposed Regulation Amendments in the September 1, 2012 *Delaware Register of Regulations*, and held a public hearing on September 27, 2012. Public comment was received by the Department in this matter from three organizations, and the same was thoroughly addressed and responded to by the Department's Division of Air Quality in their Technical

Response Memorandum of July 22, 2013.

Any significant increase in volatile organic compound (VOC) or nitrogen oxide (NO_x) emissions (i.e., ozone precursors) from a new or modified major source is required to be "offset" by emission reductions from existing sources. Emission offset requirements apply only in non-attainment areas, and the primary reason Delaware is an ozone non-attainment area is emissions from the States of Connecticut, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin. 7 **DE Admin. Code** 1125 currently requires, among other things, that offsets be obtained from areas of equal to or higher non-attainment classification. However, while emission from all areas in the above referenced States are the primary reason Delaware is non-attainment, all such areas do not meet this criterion because they have not been appropriately classified as non-attainment by the EPA.

Because Delaware sources are well regulated, there is little opportunity to generate offsets from within Delaware. This lack of opportunity, coupled with the large impact of upwind emissions that are not eligible to generate offsets, has a negative impact on Delaware's air quality and economy. Clean, new industry (which is desirable) cannot be permitted in Delaware because offsets are not available, and an opportunity to reduce the upwind emissions that significantly impact Delaware is lost. The Department's revision to Section 2.5 of 7 **DE Admin. Code** 1125 will correct this by allowing Delaware to consider any area in the above mentioned states as having the same non-attainment classification as Delaware.

The likely affected public with regard to this proposed promulgation will be any new or modified major stationary source in Delaware subject to VOC or NO_x emission offset requirements, as such entities would benefit from the proposed broad offset area. Additionally, the public would benefit from improved air quality, due to the reduction in upwind emissions.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 8, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments.

With the adoption of this Order, Delaware will be enabled to broaden the geographic area from which Delaware stationary sources may obtain required emission offsets, specifically, allowing Delaware to consider any area in the States of Connecticut, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin as having the same non-attainment classification as Delaware, thereby providing greater opportunities for clean, new industry to be permitted in Delaware.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on September 27, 2012;
- 3.) The Department held a public hearing on September 27, 2012 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) broaden the geographic area from which Delaware stationary sources may obtain required emission offsets, specifically, allowing Delaware to consider any area in the States of Connecticut, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin as having the same non-attainment classification as Delaware, thereby providing greater opportunities for clean, new industry to be permitted in Delaware; (2) provide a more broad offset area for new or modified major stationary source in Delaware subject to VOC or NO_x emission offset

requirements; (3) provide the public additional health benefits from improved air quality, due to the reduction in upwind emissions; and, lastly, because (4) 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:**

1125 Requirements for Preconstruction Review

DIVISION OF AIR QUALITY

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

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Secretary's Order No.: 2013-A-0028

**RE: Approving Final Amendments to 7 DE Admin. Code 1138,
Emission Standards for Hazardous Air Pollutants for Source Categories,
Section 6.0: "Chromium Electroplating and Anodizing Tanks" and
Section 10: "Area Source Plating and Polishing Operations".**

Date of Issuance: August 13, 2013

Effective Date of the Amendment: September 11, 2013

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

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6.0, "Chromium Electroplating and Anodizing Tanks" and Section 10, "Area Source Plating and Polishing Operations".

Section 6.0 addresses the emissions of chromium compounds from chromium electroplating and chromium anodizing tanks. The purpose of this proposed regulatory amendment action is to reduce the public's exposure to hexavalent chromium, a known carcinogen, in a manner consistent with the EPA's residual risk revisions.

Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants ("HAPs") in the 1990 Amendments to the Clean Air Act. Congress stipulated that the EPA implement a 2-phase rulemaking process to reduce these health risks. In the first phase, under Section 112(d), the EPA was to adopt emission standards based on currently available control technologies; these standards were referred to as maximum achievable control technology (MACT) standards. In the second phase, under Section 112(f), the EPA was to assess the health risks remaining following the full implementation of the MACT standard. If the EPA found that the MACT standard achieved a reduction in emissions such that the public was protected with an ample margin of safety, no further action was required. If the assessment indicated that the public was not protected with an ample margin of safety, the EPA was to then adopt more stringent requirements; these second phase standards were referred to as "residual risk standards".

The EPA adopted the MACT standard applicable chromium electroplating and anodizing operations in 1995 as Subpart N in 40 CFR Part 63. Delaware adopted the federal Subpart N requirements as Section 6.0 in Regulation 1138 in 1999. In 2010 and 2011, the EPA undertook an extensive residual risk assessment and concluded that the public health was not protected with an ample margin of safety. The EPA amended the MACT standard

requirements and finalized the residual risk standard on September 19, 2012. The notable, more stringent changes in the residual risk standard included the reduction in the maximum allowable emission of chromium to the atmosphere, the prohibition for the continued use of certain fume suppressants, and the addition of new housekeeping procedures.

The Department's proposed amendments to Section 10 of 7 **DE Admin. Code** 1138 are based on changes that the EPA promulgated in September 2011 under 40 CFR Part 63, Subpart WWWW (Subpart 6Ws). Delaware's Section 10 requirements, like those of Subpart 6Ws, are applicable to area source plating and polishing operations.

Under Section 112(k) - Area Source Program - Congress mandated that the EPA identify at least 30 HAPs that posed the greatest threat to public health in urban areas, to identify the area source categories that emit any of those 30 HAPs, and to adopt regulations to address the emissions of those 30 HAPs from those area source categories. On July 1, 2008, the EPA promulgated an area source plating and polishing standard applicable to facilities in Delaware. This standard, found at 40 CFR, Part 63, Subpart WWWW, is applicable to a variety of electroplating and electroless plating operations, as well as the dry mechanical polishing of previously plated products, including products previously plated with chromium. The HAPs of concern in Subpart 6Ws are the compounds of cadmium, chromium, lead, manganese and nickel. Compounds of each of these metals, except manganese, have been classified as known or probable carcinogens. The systematic impacts of the various metal compounds differ; however, compounds of all of these metals can pose non-cancerous risks to the exposed public. On November 1, 2009, the Department adopted the requirements in Subpart 6Ws as Section 10 of 7 **DE Admin. Code** 1138.

Following the EPA's July 2008 promulgation, the plating and polish industry engaged the EPA in discussions of its ongoing concerns regarding Subpart 6Ws. The EPA agreed that certain aspects of Subpart 6Ws, "as promulgated have led to misinterpretations, inconsistencies, and confusion regarding the applicability of the rule" (76 FR 35746, June 20, 2011). Thus, on September 19, 2011, the EPA amended Subpart 6Ws to make several technical corrections and clarifications to the rule's existing language to provide clarity (see 76 FR 57915, Sept. 19, 2011). The primary change effected in this amendment was to clarify that Subpart 6Ws did not apply to any bench scale activities. At the same time, the EPA also made changes (1) to clarify industries' confusion on applicability of Subpart 6Ws to various types of plating operations; (2) to correct portions of the original text that was being misinterpreted; and (3) to correct several technical errors.

Under the current proposed regulatory action, the Department would review and incorporate the federal changes promulgated by the EPA in September 2011, where appropriate, in Section 10 of 7 **DE Admin. Code** 1138. There are four known plating and polishing operations in Delaware. Of these, only Industraplate (located in south Wilmington) and Standard Engineering (located in Stanton) were found to be subject to Section 10 when it was originally adopted by the Department in November of 2009. Because both affected sources are small business entities, the Department plans to work closely with the sources to ensure they understand the changes being made, as was done during the original 2009 adoption of Section 10.

The Department's Division of Air Quality commenced the regulatory development process for Section 6 with Start Action Notice 2012-22 and for Section 10 with Start Action Notice 2012-17. The Department published the initial proposed regulatory amendments in the June 1, 2013 *Delaware Register of Regulations* and held a public hearing on June 27, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 5, 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 revised Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed revised Amendments. While the Department received public comment from the regulated community at its workshops held in both New Castle and Sussex counties earlier this year (which was then incorporated into the proposed regulation), as noted in the Report, no members of the public attended the aforementioned hearing on June 27, 2013, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on July 12, 2013.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these revised Amendments. With the adoption of the revised regulatory amendments to 7 **DE Admin. Code**

1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6.0, "Chromium Electroplating and Anodizing Tanks", Delaware will be able to provide increased protection for Delaware citizens against potential adverse health effects linked to emissions of chromium compounds from chromium electroplating and chromium anodizing tanks, specifically, from exposure to hexavalent chromium, a known carcinogen, in a manner consistent with the EPA's residual risk revisions.

With the adoption of the revised regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 10, "Area Source Plating and Polishing Operations", Delaware will be enabled to incorporate the federal changes promulgated by EPA in September 2011, where appropriate, in Section 10. These changes include (1) clarification that Subpart 6Ws did not apply to any bench scale activities; (2) clarification on the applicability of Subpart 6Ws to various types of plating operations; (3) correction of portions of the original regulation language that was being widely misinterpreted; and (4) correction of several technical errors.

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 revised Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed revised Amendments, including at a public hearing;

3.) The Department held a public hearing on the proposed revised Amendments on June 27, 2013;

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 do not reflect any substantive change from the initial proposed regulation Amendments as published in the June 1, 2013, *Delaware Register of Regulations*;

6.) The recommended revised Amendments to Section 6 should be adopted as final regulation Amendments because Delaware will then be enabled to provide increased protection for Delaware citizens against potential adverse health effects linked to emissions of chromium compounds from chromium electroplating and chromium anodizing tanks, specifically, from exposure to hexavalent chromium, a known carcinogen, in a manner consistent with the EPA's residual risk revisions. Moreover, the revised Amendments to Section 6 are well supported by documents in the record;

7.) The recommended revised Amendments to Section 10 should be adopted as final regulation Amendments because Delaware will then be enabled to incorporate the federal changes promulgated by EPA in September 2011, where appropriate, in Section 10. These changes include (1) clarification that Subpart 6Ws did not apply to any bench scale activities; (2) clarification on the applicability of Subpart 6Ws to various types of plating operations; (3) correction of portions of the original regulation language that was being widely misinterpreted; and (4) correction of several technical errors. Moreover, the revised Amendments to Section 10 are well supported by documents in the record; and

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

Collin P. O'Mara, Secretary

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Section	Title	Related federal rule at 40 CFR Part 63
	Table of Contents	
1.0	Overview	
2.0	Reserved	

3.0	General Provisions	Subpart A
4.0	Requirements for Case-By-Case Control Technology Determinations for Major Sources	Subpart B
5.0	Perchloroethylene Air Emission Standards for Dry Cleaning Facilities	Subpart M
6.0	Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	Subpart N
7.0	Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers	Subpart Q
8.0	Emission Standards for Halogenated Solvent Cleaning	Subpart T
9.0	Emission Standards for Hospital Ethylene Oxide Sterilizers	Subpart WWWW
10.0	Emission Standards for Hazardous Air Pollutants for Area Source Plating and Polishing Operations	Subpart WWWW
11.0	Emission Standards for Hazardous Air Pollutants for Area Source Lead Acid Battery Manufacturing Plants	Subpart PPPP
12.0	Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production	Subpart RRR
13.0	Emission Standards for Hazardous Air Pollutants for Area Source Paint Stripping Operations	Subpart HHHHH
14.0	Emission Standards for Hazardous Air Pollutants for Area Source Miscellaneous Parts or Products Surface Coating Operations	Subpart HHHHH
15.0	Emission Standards for Hazardous Air Pollutants for Area Source Motor Vehicle or Mobile Equipment Surface Coating Operations	Subpart HHHHH
16.0	Emission Standards for Hazardous Air Pollutants for Area Source Asphalt Processing and Asphalt Roofing Products Manufacturing Operations	Subpart AAAAA
17.0	Emission Standards for Hazardous Air Pollutants for Area Source Prepared Feeds Manufacturing Facilities	Subpart DDDDD

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

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES
Office of Child Care Licensing
Criminal History Unit

Statutory Authority: 31 Delaware Code, Section 309 (31 Del.C. §309)
9 DE Admin. Code 301

ORDER

301 Criminal History Record Checks for Child Care Persons

Proposed amended Regulation 301 relating to Criminal History Record Checks for Child Care Persons 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 held. Public notice of the proposed amended Regulation 301 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 from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Office of Child Care Licensing (OCCL), Department of Services for Children, Youth and Their Families (DSCYF), Division of Family Services (DFS) has considered each comment and revised the draft as shown below.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the 301 Criminal History Record Checks for Child Care Persons as published below is adopted and shall be effective October 1, 2013.

Jennifer Ranji, Secretary

301 Criminal History Record Checks for Child Care Persons

1.0 Legal Base

1.1 ~~(Rule 1)~~ The legal base for these regulations is in ~~[the]~~ 31 Del.C. §309.

2.0 Purpose

2.1 ~~(Rule 2)~~ The overall purpose of these regulations is the protection of children who are in the care or custody of the Department. To this end, persons in residential child care facilities and/or employees or volunteers of the Department or a Department contractor will have their criminal history checked prior to employment or during a conditional period of employment. In addition, foster/respice/adoptive parents will have their criminal history checked prior to approval or during a period of provisional approval with the Department or contracted providers. Each employer may use his/her own employment/acceptance criteria which may be stricter than those described herein.

3.0 Definitions

~~(Rule 3)~~ "Child Care Person" means any person ~~[employed in a residential child care facility and/or employed by the Department or one of its contractors in a position which involves supervisory or disciplinary authority over a child or in a position which provides the opportunity to have direct access to/contact with (see "Direct Access" below) (Since definitions are not numbered we would have to use the definition title) a child without the presence of other employees or adults. This definition includes foster parents and volunteers. (See definitions "Foster Parents" and "Volunteer" below.) (Since definitions are not numbered we would have to use the definition title)]~~ who seeks employment for compensation, volunteers to provide direct child care service, or, for any reason, has regular direct access to children and/or adolescents under the age of 18 years. This definition shall include any employee or volunteer of the Department of Services for Children, Youth and Their Families or one of its contractors who has regular direct access to children and/or adolescents under the age of 18 years and foster parents.]

~~(Rule 4)~~ "Conditional Child Care Person" means a child care person who has been offered a position or has agreed to volunteer with the Department or one of its contractors or in a residential child care facility. Under the provisions of the law, a child care person may be hired on a temporary basis until the determination of suitability is made by the Department. Foster parents may be

provisionally approved prior to the results of the criminal background check and in accordance with the Division of Family Services policy. If a determination of unsuitability is made, the child care person will be dismissed and in the case of foster parents the conditional placement will be rescinded.

~~(Rule 5)~~ **"Criminal History Supervisor"** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies, ~~and procedures, and regulations.~~

~~(Rule 6)~~ **"Criminal History Specialist"** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for processing and reviewing criminal history information consistent with Departmental policies, procedures and regulations.

~~(Rule 7)~~ **"Department"** means the Department of Services for Children, Youth and Their Families.

~~(Rule 8)~~ **"Direct Access"** means the opportunity to ~~[approach children without the presence of] other adults in the course of one's assigned duties and responsibilities [another child care person, have personal contact with persons receiving care.]~~

~~(Rule 9)~~ **"Employer"** means any of the following:

- The Divisions within the Department of Services for Children, Youth and Their Families (PLEASE NOTE: The Divisions within the Department do not "employ" foster/adoptive parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)
- Any Delaware contractor who operates a program that provides regular direct access to children.
- Any Delaware contractor who provides foster care or adoption services.

~~(Rule 10)~~ **"Foster Parents"** means foster/respite/adoptive parents and all household members 18 years of age or older.

~~(Rule 11)~~ **"Residential Child Care Facility"** means any facility that provides care or treatment for children overnight or is a 24 hour facility. This facility is State owned and operated or is licensed by the Department to provide services.

~~(Rule 12)~~ **"Volunteer"** means any person who has direct access to children in the performance of unpaid duties and who will be in a facility or in the service of the Department for five (5) or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will be required to have a criminal history check under these regulations. (For limited, occasional, sporadic, one-time volunteer efforts that last less than five (5) days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

4.0 Individuals Subject To The Law

4.1 ~~(Rule 13)~~ Generally, child care persons subject to a criminal history record check shall be:

- 4.1.1 persons employed or volunteering in a residential child care facility; or
- 4.1.2 **[persons]** employed or volunteering with by the Department; or
- 4.1.3 foster/adoptive parents; or
- 4.1.4 **[persons]** employed or volunteering at an agency that contracts with the Department; who are in a position which involves:
 - 4.1.4.1 ~~Supervisory or disciplinary authority over children, or~~
 - 4.1.4.1.1 The opportunity to have direct access to or contact with a child without the presence of other employees or adults.

4.2 Residential Child Care Facilities and Department Contractors

- 4.2.1 ~~(Rule 14)~~ Criminal history record checks shall be conducted on the following **[employees child care persons]** of licensed residential child care facilities and Department contractors. This list is not necessarily all-inclusive, due to the various titles used in different facilities.
 - 4.2.1.1 Child care workers;
 - 4.2.1.2 Child care supervisors;
 - 4.2.1.3 Maintenance, transportation, kitchen, clerical workers;

- 4.2.1.4 Teachers, aides, principals;
- 4.2.1.5 Administrators, coordinators, directors, and administrative staff;
- 4.2.1.6 Volunteers as defined in 3.0;
- 4.2.1.7 Social Workers;
- 4.2.1.8 Recreation staff;
- 4.2.1.9 Medical staff.
- 4.3 Foster/Adoptive Parents as defined in 3.0
 - 4.3.1 ~~(Rule 15)~~ Criminal history record checks shall be conducted on:
 - 4.3.1.1 Applicants for foster/respice care within the Department and in licensed child placing agencies providing foster care.
 - 4.3.1.2 Applicants for adoption within the Department and in licensed child placing agencies providing adoption services.
 - 4.3.1.3 Petitioners in relative adoptions.
 - 4.3.1.4 Interstate applicants for adoption or foster placement when a child is from another state and is being placed in Delaware and when a Delaware child is being placed in another state.
 - 4.3.1.5 ~~A criminal history check will not be required in a stepparent adoption.~~
- 4.4 Department Employees
 - 4.4.1 ~~(Rule 16)~~ Criminal history record checks shall, ~~at the discretion of the Cabinet Secretary, be conducted on individuals filling the following positions within the Department:~~ be conducted on all Department employees and volunteers.
 - 4.4.1.1 ~~all Division of Management Support Services employees~~
 - 4.4.1.2 ~~all Division of Family Services employees~~
 - 4.4.1.3 ~~all Division of Youth Rehabilitative Services employees~~
 - 4.4.1.4 ~~all Division of Child Mental Health employees~~
- 4.5 Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

5.0 Criminal History Record Check Process

- 5.1 ~~(Rule 17)~~ The employer shall require each individual subject to the law, either as soon as that individual has accepted a position, or has agreed to serve as a volunteer, or no later than the fifth working day to complete the Criminal History Record Request form and be fingerprinted. In the case of foster parents, the Criminal History Record Request form and fingerprinting must be completed prior to completion of pre-service training or the home study process.
- 5.2 ~~(Rule 18)~~ The child care person or foster parent goes to a designated Delaware State Police ~~Barrack Troop~~ and has two sets of fingerprints taken.
- 5.3 ~~(Rule 19)~~ The Delaware State Police follow established State Bureau of Identification procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of Investigation. A report of the child care person's or foster parent's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History ~~Specialist Unit~~.
- 5.4 ~~(Rule 20)~~ Simultaneously, the Criminal History Specialist conducts a review of the Child Abuse Protection Registry to determine if the child care person is named as a perpetrator in a substantiated report of child abuse or neglect.
- 5.5 ~~(Rule 24)~~ When the Criminal History Specialist receives the information from the State Bureau of Identification, Child Abuse Protection Registry, and Federal Bureau of Investigation she/he reviews that information, along with the Criminal History Record Request form. This review is guided by the criteria specified in Regulations 6.1-7.2.

- 5.6 ~~(Rule 22)~~ When there is no record, the Criminal History Specialist provides notification to the appropriate Division Director, who notifies the employer or child placing agency and the child care person or foster parent.
- 5.7 ~~(Rule 23)~~ When there is a criminal history, the Criminal History Specialist provides a written summary of the findings of the check with a recommendation to the appropriate Division Director.
- 5.8 ~~(Rule 24)~~ The appropriate Division Director makes the determination of suitability for employment, volunteering or foster parenting and notifies the child care person or foster parent and employer or child placing agency, with a copy of the findings attached.
- 5.9 ~~(Rule 25)~~ In the event that the child care person or foster parent has reason to provide additional information regarding the information in her/his criminal history check, an administrative review will be held, as delineated in regulations 9.1-9.10.

6.0 Criteria For Prohibited Offenses

- 6.1 ~~(Rule 26)~~ Child care persons or foster parents convicted of a sexually related offense(s) or other offenses against children shall be prohibited from employment, volunteering[,] or foster care/adoption without consideration of other criteria. ~~[The prohibited offenses shall include but not be limited to:~~
- ~~6.1.1 Incest~~
 - ~~6.1.2 Unlawful sexual contact~~
 - ~~6.1.3 Rape~~
 - ~~6.1.4 Continuous sexual abuse of a child~~
 - ~~6.1.5 Sexual exploitation of a child~~
 - ~~6.1.6 Abandonment of child~~
 - ~~6.1.7 Sexual solicitation of a child~~
 - ~~6.1.8 Unlawful dealing with a child~~
 - ~~6.1.9 Unlawfully dealing in material depicting a child engaging in a prohibited sexual act~~
 - ~~6.1.10 Murder of a child.~~
 - ~~6.1.11 Endangering the welfare of a child]~~
- 6.2 ~~(Rule 27)~~ The Adoption and Safe Families Act of 1997 prohibits individuals from becoming foster or adoptive parents if they have the following felony convictions:
- 6.2.1 Child abuse or neglect, spousal abuse, crimes against children (including child pornography), and crimes involving violence including rape, sexual assault and homicide committed at any time.
 - 6.2.2 Physical assault, battery and drug related offenses committed within the past five years.

7.0 Criteria For Unsuitability

- 7.1 ~~(Rule 28)~~ Information received from the criminal history record and Child Abuse Protection Registry checks shall be reviewed by the Criminal History Specialist and Division Director on the basis of the following criteria for a determination of suitability for employment, volunteering, or foster care/adoption.
- 7.1.1 Type[s] of ~~[offense(s)/child abuse or neglect activity~~ criminal conviction(s) and/or substantiation(s)]
- 7.1.1.1 ~~[Offenses Criminal convictions]~~ other than those that are prohibited shall be reviewed in consideration of other criteria below. Other convictions ~~[and arrests]~~ for offenses which may make a child care person unsuitable for employment or volunteering, or may make a prospective foster parent unsuitable for foster parenting, are those in the Delaware Code, Titles 11 and 16 which may contain (but are not limited to) the following characteristics:
 - 7.1.1.1.1 ~~[Offenses Criminal conviction(s)]~~ against the person where physical harm or death has taken place
 - 7.1.1.1.2 ~~[Offenses Criminal conviction(s)]~~ involving weapons, explosive devices or threat of harm

- 7.1.1.1.3 ~~[Offenses Criminal conviction(s)]~~ involving public indecency and obscenity which may have been the result of plea bargain situations
- 7.1.1.1.4 ~~[Offenses Criminal conviction(s)]~~ that show a disregard of others, such as reckless endangering, arson
- 7.1.1.1.5 ~~[Criminal conviction(s)]~~ cruelty to animals or deviant behavior such as abusing a corpse
- 7.1.1.1.6 ~~[Offenses Criminal conviction(s)]~~ against the Uniform Controlled Substances Act
- 7.1.1.2 The ~~[criminal conviction(s) contained in section 7.1.1.1. and/or]~~ existence of a substantiated ~~[report case]~~ of child abuse or neglect involving the child care person or foster parent as perpetrator shall be reviewed in consideration of other criteria below.
- 7.1.2 Frequency of ~~[offense(s) conviction(s)/substantiation(s)]~~
- 7.1.3 Length of time since the ~~[offense(s) conviction(s)/substantiation(s)]~~
- 7.1.4 Age at the time of the ~~[offense(s) conviction(s)/substantiation(s)]~~
- 7.1.5 Severity of the ~~[offense(s) conviction(s)/substantiation(s)]~~
- 7.1.6 Record since the ~~[offense(s) conviction(s)/substantiation(s)]~~
- 7.1.7 Relationship of the ~~[offense(s) conviction(s)/substantiation(s)]~~ to the type of job assignment and/or responsibilities of the child care person or foster parent
- 7.1.8 Policies of the ~~[agency Department]~~
- 7.2 ~~(Rule 29)~~ Failure by a child care person or foster parent to disclose relevant criminal history or child abuse—protection registry information on the Criminal History Record Request form that is subsequently disclosed as a result of the criminal history record check may be grounds for immediate termination of an employee or denial of approval for foster or adoptive care.

8.0 Sanctions

- 8.1 ~~(Rule 30)~~ Sanctions against employers (division/facility/ agency) shall be applied and enforced in the following circumstances:
 - 8.1.1 An employer fails to require criminal history record checks for affected employees, volunteers, or applicants for foster care or adoption.
 - 8.1.2 An employer knowingly hires or approves a child care person who is prohibited from employment or foster care or adoption as a result of a conviction for a prohibited offense.
 - 8.1.3 An employer does not comply with the final recommendation of an administrative review.
- 8.2 ~~(Rule 31)~~ Sanctions applied to contracted agencies, residential facilities, and child placing agencies for violation of the law or the regulations may include:
 - 8.2.1 Amendment or dissolution of any agreements with the Department to provide the contracted service
 - 8.2.2 Removal of children from placement
 - 8.2.3 Suspension of future child referrals
 - 8.2.4 Revocation of licensure
- 8.3 ~~(Rule 32)~~ Sanctions against Department Divisions for violation of the law or regulations shall be applied to responsible staff by the Secretary on a case-by-case basis and may include:
 - 8.3.1 Involuntary reassignment
 - 8.3.2 Discipline up to and including dismissal

9.0 Administrative Review

Criminal history is only one factor being considered in the hiring or approval process. If the employer makes an adverse judgment based on any criterion other than criminal history, this administrative review process does not apply.

- 9.1 ~~(Rule 33)~~ Any child care person or foster parent who is denied, recommended for termination, terminated from employment, volunteering or foster care as a result of an adverse judgment made on the basis of a criminal history record check shall be entitled to an administrative review.
- 9.2 ~~(Rule 34)~~ The child care person will be notified of the right to an administrative review when a determination of unsuitability has been made.
- 9.3 ~~(Rule 35)~~ If the child care person believes the criminal history information is incorrect or incomplete, she/he shall submit a request for a review of the facts of the criminal history to the Criminal History Specialist in writing or reduced to writing within five (5) working days of the receipt of the decision for denial/recommending termination/ termination of employment, volunteering, foster care or adoption resulting from a determination of unsuitability. When the corrected information is obtained by the child care person, it will be reviewed by the Criminal History Specialist's Supervisor and the Criminal History Specialist. A recommendation will be issued to the appropriate Division Director based on the corrected information. The Division Director makes a final decision and notifies the child care person, foster or adoptive parent and copies the employer or child placing agency and the Criminal History Specialist.
- 9.4 ~~(Rule 36)~~ If the child care person believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he shall submit a written or reduced to writing request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with a copy to the employer and the Criminal History Specialist. This shall be submitted within 10 working days of the receipt of the decision for denial, recommendation to terminate employment, volunteering, foster care, or adoption resulting from a determination of unsuitability. The Division Director makes a final decision and notifies the child care person or foster parent and copies the employer or child placing agency and the Criminal History Specialist.
- 9.5~~[-4]~~ If the individual had previously requested a review of the facts of the criminal history, the request for an administrative review shall be submitted within five (5) working days of the receipt of the decision based on the results of that review.
- 9.5.~~[21]~~ The child care person may also request to give an oral presentation at her/his administrative review.
- 9.6 ~~(Rule 37)~~ When a child care person has requested a review of the facts of the criminal history and/or an administrative review, the following shall apply:
- 9.6.1 The child care person shall be removed from direct access to children or provisions made for on-site supervision of the person during working hours pending the results of the review.
- 9.6.2 In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.
- 9.6.3 In the case of adoptive parents, the application shall remain active, but children may be removed from the home pending results of the review.
- 9.6.4 The employer shall notify the Criminal History Specialist of the action taken with the child care person pending the results of the administrative review. (This notification is in addition to following established procedures already governing state personnel or individual facilities or agencies.)
- 9.7 ~~(Rule 38)~~ In the case of a review of a decision involving a Department operated facility or Department staff, the Division Director (or designee) shall conduct the review in conjunction with Personnel and within the context of these regulations, merit rules/labor agreements and the employment status of the child care person. The Criminal History Specialist shall be present as a witness.
- 9.8 ~~(Rule 39)~~ When the review involves a Division of Family Services approved foster parent, the Director of the Division of Family Services (or designee) shall conduct the review with the County Foster Home Coordinator staffing the review and the Criminal History Specialist present as a witness.
- 9.9 ~~(Rule 40)~~ In the case of a review of a decision involving a contracted facility or child placing agency, the Director (or designee) of the contracting Division shall conduct the review with the employer staffing the review and the Criminal History Specialist present as a witness.

- 9.10 ~~(Rule 41)~~ The employer and the child care person shall be bound by the final decision of the administrative review which is made by the Division Director or designee. If the employer does not accept the decision, sanctions shall apply.

10.0 Employer Responsibilities

- 10.1 ~~(Rule 42)~~ The employer (division/facility/agency) shall ensure that a Criminal History Record Request has been completed as specified by law and that the employer copy is maintained in the personnel/application file. Employers shall direct child care persons to the State Police to have fingerprints taken and shall ensure the completion of this process.
- 10.1.1 The employer whenever possible, will notify the Criminal History Specialist if a child care person is terminated prior to completion of the criminal history check process.
- 10.1.2 The employer shall require all child care persons and foster parents to notify **[them the employer]** of any subsequent arrests or charges as a condition of continued employment or approval.
- 10.2 ~~(Rule 43)~~ When the employer is notified of a history of prohibited **[offense(s) convictions/substantiations]**, the employer shall immediately take steps to terminate the child care person. A copy of this letter shall be sent to the Criminal History Specialist and a copy maintained in the personnel/application file.
- 10.3 ~~(Rule 44)~~ In the event that a child care person requests an administrative review, the employer shall notify the Criminal History Specialist of the action taken to remove the child care person from direct access to children pending the results of the review. The employer shall abide by the decision of the administrative review. Copies of written documentation related to the administrative review shall be maintained in the personnel/application file.

11.0 Confidentiality

Title 11, subsection 8513 (c) (1) of the Delaware Code permits the State Bureau of Identification to furnish information pertaining to the identification and conviction data of any person of whom the Bureau has record individuals and agencies for the purpose of employment of the person whose record is sought, provided the use of the conviction data is limited to the purpose for which it was given.

- 11.1 ~~(Rule 45)~~ The Department shall ensure that written and electronically recorded criminal history record information shall be stored in a systematic manner, to provide for the security and confidentiality of records and to protect against any anticipated threats to their security and integrity.
- 11.2 ~~(Rule 46)~~ The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment or approval to provide child care services for child care persons or foster parents as defined in these regulations.
- 11.3 ~~(Rule 47)~~ The Department shall not release to employers as defined in these regulations copies of actual ~~written reports of criminal history records prepared by the State Bureau of Identification, Federal Bureau of Investigation or Division of Family Services~~ criminal history records.
- 11.4 ~~(Rule 48)~~ The Department shall provide to employers and child care persons or foster parents written summaries of criminal record information for a child care person or foster parent whose criminal history record check results in a finding of prohibited offense(s), other arrests and convictions, or information that the individual is named in the Child Abuse Protection Registry as the perpetrator of a substantiated report of child abuse or neglect.
- 11.5 ~~(Rule 49)~~ The following procedure shall be established to permit the review of criminal history record files by the child care person or foster parent:
- 11.5.1 An individual shall submit a request in writing to the Criminal History Specialist for the on-site review of his/her criminal history record file.
- 11.5.2 An appointment shall be made for the individual to review the record in the offices of the Office of Child Care Licensing. Identification will be required at the time of the review.
- 11.5.3 The record shall be reviewed in the presence of the Criminal History Specialist.

- 11.5.4 Written documentation of the date and time of the review and the name of the reviewer shall be filed in the criminal history record file for the child care person or foster parent.
- 11.5.5 The Department shall ensure that criminal history record files (written and computer-generated) shall not be removed from the secure files for any purpose other than to permit review by the named child care person or foster parent.
- 11.6 (~~Rule 50~~) Criminal history record information shall not be disseminated to any persons other than the child care person or foster parent whose record is being sought and his/ her employer, the Division Director or **[County]** Foster Home Coordinator, in compliance with 11 **Del.C.** §8513(d).
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DIVISION OF FAMILY SERVICES
Office of Child Care Licensing
Criminal History Unit

Statutory Authority: 11 Delaware Code, Section 8563 (11 **Del.C.** §8563)
9 DE Admin. Code 302

ORDER

302 Child Abuse Registry Checks for Child Care and Health Care Persons

Proposed amended Regulation 302 relating to Child Protection Registry Checks for Child Care, Health Care, and Public School Persons 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 held. Public notice of the proposed amended Regulation 302 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 from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Office of Child Care Licensing (OCCL), Department of Services for Children, Youth and Their Families (DSCYF), Division of Family Services (DFS) has considered each comment and revised the draft as shown below.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the 302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons as published below is adopted and shall be effective October 1, 2013.

Jennifer Ranji, Secretary

302 Child Abuse Protection Registry Checks for Child Care[, and] Health Care[, and Public School] Persons

1.0 Legal Base

The legal base for these regulations is in ~~the 19~~ 11 Del.C. §708 8563.

2.0 Purpose

The overall purpose of these regulations is the protection for the "vulnerable" population in child care, public schools and health care facilities. To this end, persons seeking employment in a licensed child care facility, public school or health care facility shall submit to a Child Abuse Protection Registry check. A search of the Child Abuse Protection Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

3.0 Definitions

“Child Abuse Protection Registry” means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect since August 1, 1994.

“Child Abuse Protection Registry Check” means a computer search of the Child Abuse Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

“Child Care Facility” means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.

“Child Care Person” means any person ~~[in a child care facility in a position which provides the opportunity to have direct access to children without the presence of other employees or adults seeking employment in a child care facility with regular direct access to children in care. This definition shall also include any person applying for a license to operate a child care facility]~~.

“Conditional Child Care Person” means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child ~~abuse~~ protection registry check by the employer.

“Conditional Health Care Person” means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child ~~abuse~~ protection registry check by the employer.

“Conditional Public School Person” means a public school person who has been offered a position or has agreed to volunteer in a public school. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.

“Criminal History Unit” means the Unit located in the Division of Family Services that is responsible for ~~the implementation of~~ conducting the Child Abuse Protection Registry checks for child care, public school and health care persons.

“Department” means the Department of Services for Children, Youth and Their Families or any of the Divisions.

“Direct Access” means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.

“Division of Family Services” means the Division that maintains the Child Abuse Protection Registry.

“Employer” means any child care facility, public school or health care facility as defined.

“Health Care Facility” means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.

“Health Care Person” means any person ~~[seeking employment] in a health care facility [in a position which provides the opportunity to have direct access to persons receiving care without the presence of other employees or adults]~~.

“Person Seeking Employment” means any person applying for employment in a ~~child care~~ public school or public school district, ~~any person applying for employment in a health care facility that affords direct access to persons receiving care at such a facility or child care facility,~~ or a person applying for licensure to operate a child care facility. **[This definition also includes volunteers.]**

“Person Seeking Employment With a Public School” means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.

“Public School” means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.

“**Volunteer**” means any person who has direct access to persons receiving care during the performance of unpaid duties.

4.0 Persons Subject to the Law

- 4.1 Persons subject to the law shall be those persons who are hired or apply for the status described below on or after ~~January 1, 1998~~ February 1, 2003.
- 4.1.1 Child care, public school and health care persons subject to the Child Abuse Protection Registry check shall be persons **[seeking employment]** in a child care, public school or health care facility who **[are in a position which involves:]**
- 4.1.1.1 ~~Supervisory or disciplinary authority over persons receiving care, or~~
- 4.1.1.2 **[The opportunity to]** have direct access to persons receiving care **[. without the presence of other employees or adults.]**

5.0 Employer Responsibilities

- 5.1 No employer who operates a child care facility, public school or health care facility shall hire any person without requesting a Child Abuse Protection Registry check for that person. The Child Abuse Protection Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.
- 5.2 The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Abuse Protection Registry check. The release is a form developed by the Department.
- 5.3 Any person hired prior to the employer receiving the results of the Child Abuse Protection Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Abuse Protection Registry check.

6.0 Child ~~[Abuse Protection]~~ Registry Check Process

- 6.1 The child care, public school or health care person completes and signs a release form in order for a Child Abuse Protection Registry check to be conducted.
- 6.2 Upon ~~receipt of the~~ verification of the signed release, the Criminal History Unit will conduct a Child Abuse Protection Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.
- 6.3 When the person is not listed in the Child Abuse Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.
- 6.4 When the person is listed in the Child Abuse Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.

7.0 Review of Department Records

- 7.1 When a person is listed in the Child Abuse Protection Registry as a perpetrator **[, they that person]** will be allowed the opportunity to review the record information maintained by the Division of Family Services.
- 7.2 The following procedures shall be established to permit the review of record information **[:- :]**
- 7.2.1 The person shall submit a request in writing to the address Child Protection Registry [Substantiation] Hearing Coordinator provided as part of the results of the Child Abuse Protection Registry Request check.
- 7.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.
- 7.2.3 The review shall take place in the presence of a Division of Family Services staff member. ~~The employer may also be present.~~

[8.0 Voluntary Child Protection Registry Checks

- 8.1 Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this regulation may voluntarily submit to the provisions of this regulation at such person's or organization's expense pursuant to procedures established by the Department of Services for Children, Youth and Their Families. The provisions of 11 Del.C. §8562 do not apply to such persons or organizations.]

[~~8-9~~ 9.0]Confidentiality

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

[~~9-9~~ 10.0]Penalty

Any employer who hires a person seeking employment without requesting and receiving a Child Abuse Protection Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 Del.C. §5306(a)(1))
24 DE Admin. Code 5300

5300 Board of Massage and Bodywork**ORDER**

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on June 20, 2013 at a scheduled meeting of the Delaware Board of Massage and Bodywork ("the Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The Board proposed extensive revisions to the rules and regulations. Certain revisions implement amendments to the Board's licensing law, Chapter 53 of Title 24 of the **Delaware Code**. In particular, all certified massage technicians shall be required to provide clients with client disclosure forms stating that services will be provided by a certified massage technician and not by a licensed massage therapist. This disclosure form will further advise clients that certified massage technicians are not authorized to treat medically diagnosed conditions. The revisions also add Standards of Professional Conduct for licensees and fines for unlicensed practice. The rules and regulations pertaining to continuing education have been revised to specify that, effective the 2014 - 2016 renewal period, all licensees must complete 24 hours of continuing education. Finally, the rules and regulations are updated for clarity and consistency.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 16, Issue 11, on May 1, 2013. Notice of the June 20, 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 July 5, 2013, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on August 15, 2013.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

Board Exhibit 3: Documentation from the Health and Safety Institute pertaining to CPR certification.

The Board received no verbal comment.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations.

Pursuant to 24 **Del.C.** §5306(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed amendments implement amendments to the Board's licensing law, including addition of the requirement that all certified massage technicians must provide clients with client disclosure forms stating that services will be provided by a certified massage technician and not by a licensed massage therapist. The proposed revisions also add Standards of Professional Conduct for licensees and fines for unlicensed practice. Finally, effective the 2014 - 2016 renewal period, all licensees will be required to complete 24 hours of continuing education. Currently, certified massage technicians are required to complete 12 hours of continuing education.

With respect to review of Board Exhibit 3, documentation from the Health and Safety Institute, the Board finds that proposed Rule 2.6 gives the Board discretion to approve CPR classes, and, at this time, Rule 2.6 does not need to be amended to specifically include the Health and Safety Institute's program.

The Board concludes that adoption of the rules and regulations as amended advances public protection and serves to enhance professional standards and is, therefore, in the best interest of the public.

Decision and Effective Date

The Board 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 15th day of August, 2013.

DELAWARE BOARD OF MASSAGE AND BODYWORK

Holly Overmyer, Professional Member President	Patricia Schumann-Draper, Professional Member
Sandra Jachimowski, Professional Member Vice President	Gordon Gelley, Public Member
Sharon Harris, Public Member Secretary	Rachel Dunning, Public Member
Kari Ainsworth, 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 1167 (16 DE Reg. 1167). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5300 Board of Massage and Bodywork

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

REGISTER NOTICE
SAN# 2013-08

1. TITLE OF THE REGULATIONS:

Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section 11(e) – Program Compliance

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

Currently, the Department performs parking lot surveys, recording vehicles registration tag numbers that have expired. The surveys are part of the commitment in the Inspection and Maintenance State Implementation Plan to track compliance with Regulation 1131 which requires a biennial vehicle emission inspection. Applicable vehicles without a proper registered vehicle can be presumed to be in non-compliance with Regulation 1131. The survey results are made part of the Department's annual I/M report sent to EPA. The purpose of the proposed amendment is to change the methodology by which compliance with Regulation 1131 is monitored by the Department. The proposal would remove the parking lot survey data from the report and put in its place expired vehicle registration arrest data provided by the Delaware Justice Information System.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

This action is not a regulation and does not have a sunset date.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on September 25, 2013 beginning at 6:00 PM in Room 220, at the Kent County Administrative Complex located at 555 Bay Rd, Dover, DE. Interested parties may submit comments in writing to: Philip Wheeler, DNREC Division of Air Quality, 655 South Bay Road, Dover Delaware, 19901.

7. PREPARED BY:

Philip Wheeler (302) 739-9402 June 20, 2013 Email address: philip.wheeler@state.de.us

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

Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section 11(e) – Program Compliance

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Wednesday, September 11, 2013 beginning at 1:30 p.m. A conference session and business meeting will be held on the following day, Thursday, September 12, 2013 beginning at 12:15 p.m. The hearing, conference session and meeting are open to the public and will be held at The Enterprise Center at Burlington County College, 3331 Route 38, Mount Laurel, New Jersey. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, September 19, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****Medicaid Provider Screening Requirements and Enrollment Fee and Program Integrity****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Medical Assistance Program (DMAP) Manual specifically, the General Policy Provider Manual regarding *Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity*.

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 September 30, 2013.

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

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Delaware Medical Assistance Program (DMAP) Manual specifically, the General Policy Provider Manual regarding *Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity*.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**Medicaid Reimbursement for Prescription Drugs – Multi-State Purchasing Pool Supplemental Drug Rebate Agreement****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan to modify the *Multi-State Purchasing Pool Supplemental Rebate Agreement* for pharmaceutical products.

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 September 30, 2013.

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

DIVISION OF PUBLIC HEALTH
4305 Trauma System
PUBLIC NOTICE

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 Trauma System Regulations. The proposed revisions to the Trauma System regulations bring the Delaware Statewide Trauma System and its components into alignment with the current revision of the American College of Surgeons' Committee on Trauma's Resources for Optimal Care of the Injured Patient 2006. The revisions were developed and recommended by the stakeholders who serve on the state Trauma System Committee and primarily are related to documentation of the requirements for Trauma System Participating Hospitals, modification of the Trauma Registry inclusion criteria to be in alignment with the National Trauma Data Bank criteria, updating of the Trauma Center Designation Process, and relocation of the Prehospital Trauma Triage Scheme to the Advanced and Basic Life Support Standing Orders.

On September 1, 2013, the Department plans to publish proposed amendments to the State of Delaware Trauma System Regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the September 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) 223-1789.

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, October 3, 2013 at:

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

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

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

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

The action concerning the determination of whether to adopt the proposed regulation will be based upon the

results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DSSM 11002.9, *Definition and Explanation of Terms*, is amended to clarify the definition of "relative" for child care certificate approvals. The current definition is vague and leads eligibility determination workers to the Delaware Temporary Assistance for Needy Families (TANF) policy definitions. The proposed rule change is intended to ensure that eligible relatives provide authorized child care services.

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
302 Captive Insurance Financial Regulation
PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amended Department of Insurance Regulation 302 relating to the Captive Insurance Financial Regulation. The docket number for this proposed amended Regulation is 2242-2013.

The proposed amended Regulation supports Delaware's Captive Insurance Program (18 **Del.C.** Ch. 69) and allows Delaware to adopt a national model audit requirement for Risk Retention Groups, maintaining Delaware's accreditation standing. The Delaware Code authority for the proposed change is 18 **Del.C.** §311 and §6915; 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

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, Monday, September 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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR QUALITY

**Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section
11(e) – Program Compliance**

PUBLIC NOTICE

Currently, the Department performs parking lot surveys, recording vehicles registration tag numbers that have expired. The surveys are part of the commitment in the Inspection and Maintenance State Implementation Plan to track compliance with Regulation 1131 which requires a biennial vehicle emission inspection. Applicable vehicles without a proper registered vehicle can be presumed to be in non-compliance with Regulation 1131. The survey results are made part of the Department's annual I/M report sent to EPA. The purpose of the proposed amendment is to change the methodology by which compliance with Regulation 1131 is monitored by the Department. The

proposal would remove the parking lot survey data from the report and put in its place expired vehicle registration arrest data provided by the Delaware Justice Information System.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on September 25, 2013 beginning at 6:00 PM in Room 220, at the Kent County Administrative Complex located at 555 Bay Rd, Dover, DE. Interested parties may submit comments in writing to: Philip Wheeler, DNREC Division of Air Quality, 655 South Bay Road, Dover Delaware, 19901.

DIVISION OF AIR QUALITY**1140 Delaware National Low Emission Vehicle Program****PUBLIC NOTICE**

Division of Air Quality is proposing amendments to, 7 **DE Admin. Code** 1140- *Low Emission Vehicle Program*. The purpose of this action is to 1) remove the requirements that provide for prospective incorporation of revisions made by California, and 2) update certain provisions and adopt by reference the applicable sections within Title 13 of the California Code of Regulations that comprise California's Low Emission Vehicle (LEV) III standard and the Greenhouse Gas (GHG) standard, also known as the Advanced Clean Cars Program for model years 2015 to 2025.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Monday, September 23, 2013 beginning at 6:00 PM at the Richardson & Robbins Auditorium, 89 Kings Highway, Dover Delaware 19901. Interested parties may submit comments in writing to: Deanna Cuccinello, DNREC Division of Air Quality, at 655 South Bay Road, Suite 5N, Dover, DE 19901.

DIVISION OF AIR QUALITY**1147 CO₂ Budget Trading Program****PUBLIC NOTICE**

Division of Air Quality is proposing amendments to, 7 **DE Admin. Code** 1147- CO₂ Budget Trading Program, which addresses Carbon Dioxide (CO₂) emissions from Electric Generating Units (EGUs). The proposed amendments are based on the changes made to the Regional Greenhouse Gas Initiative (RGGI) Model Rule, which is the template used by RGGI participating states in their individual rulemaking process. The amendments included a change in the size and structure of Delaware's CO₂ allowance budget as well as other program modifications.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, September 25, 2013 beginning at 6:00 PM at the Kent County Building located at 555 S. Bay Road Dover Delaware 19901. Interested parties may submit comments in writing to: Babatunde Asere, DNREC Division of Air Quality, at 655 South Bay Road, Suite 5N, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE**PUBLIC NOTICE****3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit**

The Atlantic States Marine Fisheries Commission approved an Interstate Fishery Management Plan (FMP) for Black Drum in May 2013. The plan was initiated to address a significant increase in harvest in the commercial and recreational fisheries. The FMP requires all states to maintain current regulations for black drum and ultimately adopt a coastwide minimum size limit of at least 14 inches by January 1, 2016. Delaware's current regulations include a 16-inch minimum size limit and a 3 fish recreational size limit. However, these measures as well as Delaware's commercial fishery management measures only apply to the Delaware River and Delaware Bay. Therefore, in support of the spirit of the FMP, the present action seeks to expand the applicability of Delaware's current restrictions statewide (to include all tidal waters of state). Such action will ensure compliance with the new FMP until modified through amendment or addendum.

The hearing record on proposed amendments to 3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit will be open September 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 30, 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
3588 Atlantic Menhaden

The recent population assessment of Atlantic menhaden (*Brevoortia tyrannus*) showed a decline in population abundance and low recruitment rates. Estimates of fishing mortality show that overfishing is occurring and, in response, the Atlantic States Marine Fisheries Commission (ASMFC) adopted Amendment 2 to the Interstate Fisheries Management Plan for Atlantic Menhaden. Amendment 2 is designed to minimize the chance of a population decline due to overfishing; reduce the risk of recruitment failure; reduce impacts to species which are ecologically dependent on Atlantic menhaden; and minimize adverse effects on participants in the fishery.

Implementation of Amendment 2 required that states submit implementation plans for approval by the ASMFC's Atlantic Menhaden Management Board. The Board approved Delaware's implementation plan at its 22 May 2013 meeting. The purpose of the present action is to formally adopt the management measures contained in Delaware's Atlantic menhaden implementation plan. The action will establish Delaware's annual Atlantic menhaden quota consistent with Amendment 2; establish timely reporting by the fishery; provide for closure of the fishery upon reaching quota; and establish a daily by-catch limit.

The hearing record on the inclusion of a new 3588 Atlantic Menhaden to the Tidal Finfish Regulations (7 **DE Admin. Code** 3500) will be open September 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 30, 2013 beginning at 6:30 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** 1106(a)(1), proposes to add a new section to its regulations, 12.0, et. al.. The proposed addition defines unprofessional conduct within the practice of dentistry and dental hygiene and lists examples of such conduct.

The Board will hold a public hearing on the proposed rule change October 17, 2013 at 1:30 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 1, 2013.

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 October 16, 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 October 31, 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 November 20, 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

4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed additions at 3.5 and 10.1.2 seek to allow applicants for trainee status to obtain partial credit for inspections performed before November 4, 2013, as long as the application is submitted on or before November 4, 2013. The addition at 10.1.1 seeks to allow trainee applicants to obtain full credit for supervised inspections performed prior to November 4, 2013, and the proposed amendment at 3.5 seeks to decrease the overall number of supervised inspections a trainee licensee must complete in order to become a fully licensed home inspector. The addition at 5.1 seeks to allow the Board to pre-approve qualifying education courses for applicants.

The Board will hold a public hearing on the proposed regulation change on September 24, 2013 at 9:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until October 9, 2013 pursuant to 29 **Del.C.** §10118(a). The Board will deliberate on the proposed changes at its regularly scheduled meeting on October 9, 2013 at 9:30 a.m.

PUBLIC SERVICE COMMISSION

PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS TO IMPLEMENT THE PROVISIONS
OF 26 DEL.C. CH. 10 RELATING TO THE CREATION OF
A COMPETITIVE MARKET FOR RETAIL ELECTRIC
SUPPLY SERVICE (OPENED APRIL 27, 1999;
RE-OPENED JANUARY 7, 2003; RE-OPENED
SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER
7, 2010; RE-OPENED JULY 17, 2012

PSC REGULATION DOCKET NO. 49

EXHIBIT “B”

NOTICE OF PROPOSED RULE-MAKING AMENDING “RULES FOR CERTIFICATION AND REGULATION OF ELECTRIC SUPPLIERS”

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 **DE Admin. Code** §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform. Pursuant to PSC Order No. 8187 a workgroup was formed and met several times to address the issues above.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **October 1, 2013**. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Reg. Doc. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to psc@state.de.us, include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before **October 1, 2013**, but the last date to submit written comments will be on **November 16, 2013**.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on **October 22, 2013 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8424 (July 30, 2013) (the "Order") and the proposed revised Supplier Rules in the September 2013 issue of the *Delaware Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules at the PSC's website located at <http://depssc.delaware.gov/electric.shtml>.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, with the first 20 pages being free of charge. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 **Del.C.** ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE 19801. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to psc@state.de.us, please include "Reg. Doc. 49" as the subject of the email.