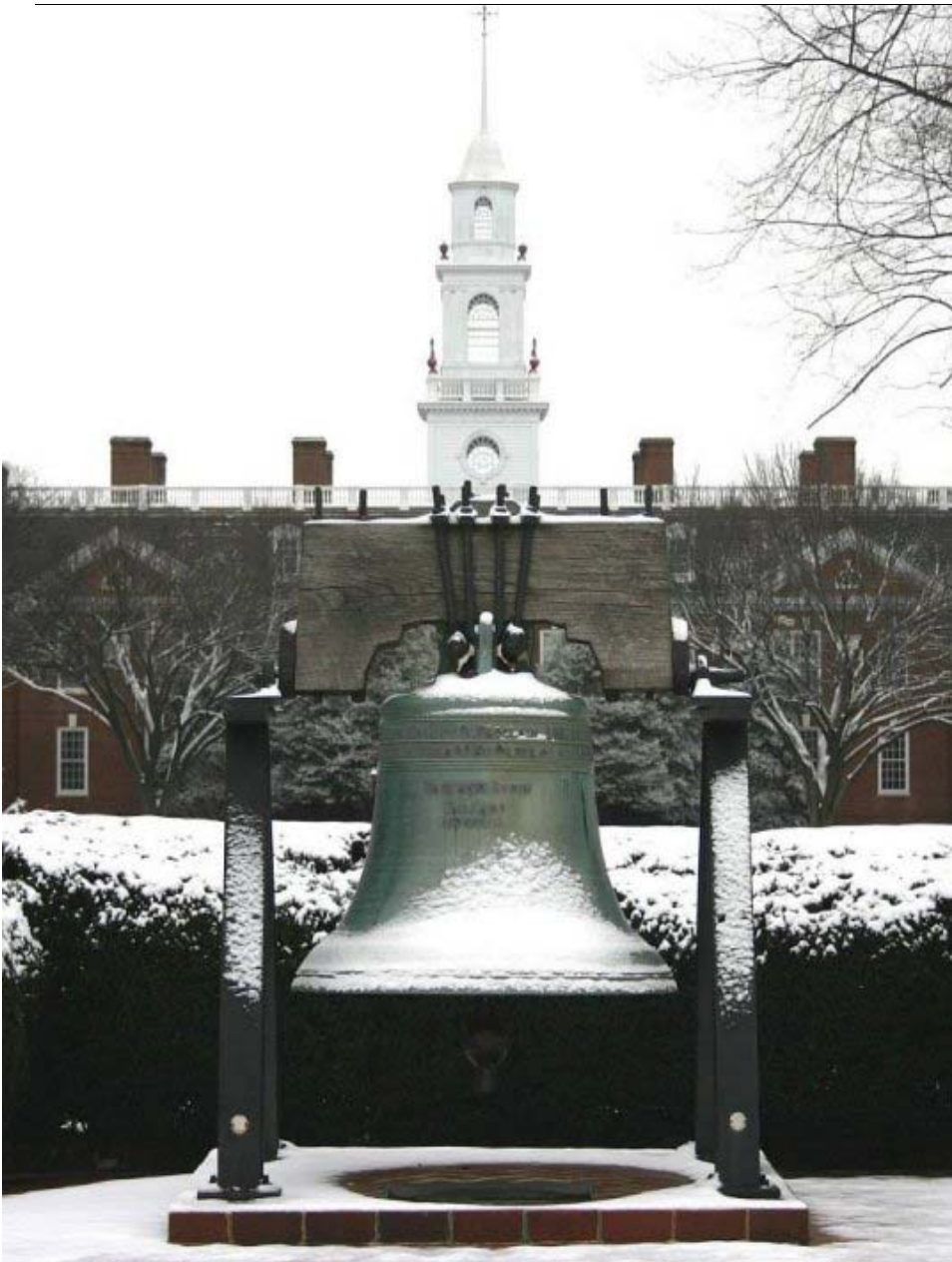

Delaware Register of Regulations

Issue Date: February 1, 2015

Volume 18 - Issue 8, Pages 598 - 662



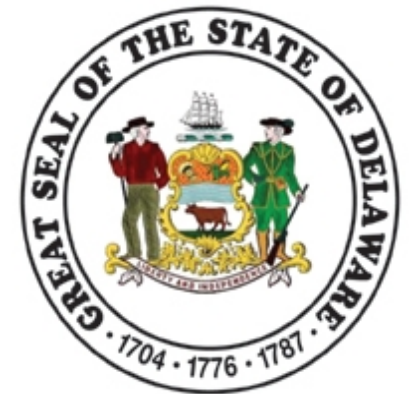
IN THIS ISSUE:

Regulations:

- Errata
- 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 January 15, 2015.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

599

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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
March 1	February 16	4:30 p.m.
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Executive Secretary; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Assistant Registrar of Regulations; **Holly Wagner**, Research Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

TABLE OF CONTENTS

601

Cumulative Tables..... 603

ERRATA

DEPARTMENT OF LABOR

Division of Industrial Affairs

1341 Workers' Compensation Regulations..... 609

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

5500 Bail Enforcement Agents, Sections 3.0, 8.0, 9.0, 10.0 and 12.0..... 610

EMERGENCY

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Public Health

4408 Facilities That Perform Invasive Medical Procedures..... 613

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

902 Gifted or Talented Education Plan..... 616
923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies..... 618
925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized
Education Programs..... 621

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Public Health

Office of Animal Welfare

Regulations for Animals Held in Shelter..... 622
4408 Facilities That Perform Invasive Medical Procedures..... 623

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3502 Striped Bass Spawning Season and Area Restrictions..... 624
3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit 624
3504 Striped Bass Possession Size Limit; Exceptions..... 624
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements .. 624
3506 Striped Bass; Total Length Measurement..... 624

Division of Waste and Hazardous Substances

1301 Regulations Governing Solid Waste (DRGSW)..... 629
1302 Regulations Governing Hazardous Waste (DRGHW)..... 631

DEPARTMENT OF STATE

Division of Professional Regulation

1725 Polysomnography Advisory Council..... 633
2700 Board of Registration for Professional Land Surveyors..... 634

TABLE OF CONTENTS

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2288 Special Group or Organization Registration Plates for Persons With Disabilities.....	635
---	-----

FINAL

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

202 Rent Increase Dispute Resolution Procedures.....	637
--	-----

DEPARTMENT OF EDUCATION

Office of the Secretary

817 Medications and Treatments.....	639
-------------------------------------	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment.....	642
--	-----

Division of Public Health

4451 Body Art Establishments.....	645
-----------------------------------	-----

Division of Social Services

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	646
---	-----

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators and Private Security Agencies.....	648
---	-----

Office of the Secretary

101 Regulations Governing the Relief from Disabilities Board.....	649
---	-----

DEPARTMENT OF STATE

Division of Professional Regulation

2700 Board of Registration for Professional Land Surveyors.....	651
---	-----

Public Service Commission

4001 Rules for the Provision of Telecommunication Services (Docket Nos. 10 and 45).....	653
---	-----

4003 Regulations Governing the Minimum Service Requirements for the Provision of Telephone Service for Public Use within the State of Delaware (Docket No. 20), Repeal of.....	653
---	-----

GENERAL NOTICES

DEPARTMENT OF STATE

Division of Professional Regulation

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.....	655
---	-----

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Education, Notice of Monthly Meeting.....	657
Dept. of Health and Soc. Svcs, Divs. of Mgmt. Svcs; Public Health, Notices of Public Hearings	657 - 658
Dept. of Natural Resources and Environmental Control, Divs. of Fish and Wildlife; Waste and Hazardous Substances, Notices of Public Comment Periods.....	659 - 660
Dept. of State, Div. of Professional Regulation; Notices of Public Hearings and Comment Periods	660 - 661
Dept. of Transportation, Div. of Motor Vehicles, Notice of Public Comment Period.....	661

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.).

CASH MANAGEMENT POLICY BOARD

Objectives and Guidelines for the Investment of State of Delaware Funds.....	18 DE Reg. 257 (Prop.) 18 DE Reg. 462 (Final)
Objectives and Guidelines for the Investment of State of Delaware Funds Designated as the Delaware Land and Water Conservation Trust Fund.....	18 DE Reg. 416 (Prop.)

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

Office of the Director

Guidelines Governing the Administration of the Neighborhood Building Blocks Fund.....	18 DE Reg. 273 (Prop.)
1301 Delaware Criminal Justice Information System Rules and Regulations..	18 DE Reg. 552 (Prop.)

DELAWARE ECONOMIC DEVELOPMENT OFFICE

Guidelines Governing the Administration of the Neighborhood Building Blocks Fund	18 DE Reg. 273 (Prop.) 18 DE Reg. 464 (Final)
--	--

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

501 Harness Racing Rules and Regulations, Sections 1.0 and 5.0.....	18 DE Reg. 418 (Prop.)
501 Harness Racing Rules and Regulations, Sections 6.0 and 7.0.....	18 DE Reg. 466 (Final)
501 Harness Racing Rules and Regulations, Section 7.0.....	18 DE Reg. 6 (Prop.) 18 DE Reg. 490 (Errata) 18 DE Reg. 491 (Prop.) 18 DE Reg. 492 (Prop.)
501 Harness Racing Rules and Regulations, Section 8.0.....	18 DE Reg. 493 (Prop.)
502 Delaware Standardbred Breeders' Fund Regulations.....	18 DE Reg. 493 (Prop.)

DEPARTMENT OF EDUCATION

Office of the Secretary

101 State Assessment System.....	18 DE Reg. 279 (Prop.) 18 DE Reg. 556 (Final)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	18 DE Reg. 31 (Final)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	18 DE Reg. 40 (Final)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	18 DE Reg. 48 (Final)
235 Teacher of the Year Award.....	18 DE Reg. 494 (Prop.)
245 Michael C. Ferguson Achievement Awards Scholarship.....	18 DE Reg. 340 (Prop.)
275 Charter Schools.....	18 DE Reg. 177 (Prop.) 18 DE Reg. 366 (Final)
290 Approval of Educator Preparation Programs.....	18 DE Reg. 57 (Final)
401 Major Capital Improvement Programs.....	18 DE Reg. 95 (Prop.) 18 DE Reg. 300 (Final)
405 Minor Capital Improvement Programs.....	18 DE Reg. 180 (Prop.) 18 DE Reg. 368 (Final)
415 Voluntary School Assessment.....	18 DE Reg. 100 (Prop.) 18 DE Reg. 304 (Final)
505 High School Graduation Requirements and Diplomas.....	18 DE Reg. 127 (Final)

CUMULATIVE TABLES

610 Limitations on Use of Seclusion and Restraint.....	18 DE Reg. 130 (Final)
817 Medications and Treatments.....	18 DE Reg. 419 (Prop.)
851 K to 12 Comprehensive Health Education Program.....	18 DE Reg. 104 (Prop.)
	18 DE Reg. 369 (Final)
915 James H. Groves High School.....	18 DE Reg. 343 (Prop.)
	18 DE Reg. 561 (Final)
923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies.....	18 DE Reg. 280 (Prop.)
	18 DE Reg. 562 (Final)
925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	18 DE Reg. 281 (Prop.)
	18 DE Reg. 564 (Final)
930 Supportive Instruction (Homebound).....	18 DE Reg. 7 (Prop.)
	18 DE Reg. 215 (Final)
Professional Standards Board	
1507 Alternative Routes to Teacher Licensure and Certification Program.....	18 DE Reg. 496 (Prop.)
1510 Issuance of Initial License.....	18 DE Reg. 218 (Final)
1512 Issuance and Renewal of Advanced License.....	18 DE Reg. 346 (Prop.)
1513 Denial of Licenses.....	18 DE Reg. 347 (Prop.)
1514 Revocation, Limitation, or Suspension of Licenses.....	18 DE Reg. 349 (Prop.)
1572 Teacher of Students Who Are Gifted and Talented.....	18 DE Reg. 350 (Prop.)
	18 DE Reg. 566 (Final)
1599 Delaware Educational Technology Standards.....	18 DE Reg. 224 (Final)
DEPARTMENT OF ELECTIONS	
Kent County	
1602 Policies and Procedures Regarding FOIA Requests.....	18 DE Reg. 58 (Final)
DEPARTMENT OF FINANCE	
Office of the State Lottery	
206 Internet Lottery Rules and Regulations.....	18 DE Reg. 182 (Prop.)
	18 DE Reg. 370 (Final)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Long Term Care Residents Protection	
3315 Rest (Family) Care Homes.....	18 DE Reg. 282 (Prop.)
	18 DE Reg. 569 (Final)
3325 Financial Capability Reporting.....	18 DE Reg. 497 (Prop.)
Division of Medicaid and Medical Assistance	
Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment (P.R.O.M.I.S.E.).....	18 DE Reg. 186 (Prop.)
	18 DE Reg. 371 (Final)
Freestanding Inpatient Rehabilitation Hospital Services.....	18 DE Reg. 509 (Prop.)
Nursing Facility Services – Preadmission Screening and Resident Review.....	18 DE Reg. 106 (Prop.)
Standards for the Coverage of Organ Transplant Services.....	18 DE Reg. 115 (Prop.)
	18 DE Reg. 310 (Final)
Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 2 - Telemedicine.....	18 DE Reg. 9 (Prop.)
	18 DE Reg. 227 (Final)
Title XIX Medicaid State Plan, Attachment 4.19B, Introduction - Page 4, Increased Medicaid Payment for Primary Care Services.....	18 DE Reg. 11 (Prop.)
	18 DE Reg. 229 (Final)
Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment.....	18 DE Reg. 424 (Prop.)

Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services.....	18 DE Reg. 429 (Prop.)
Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment, Premium Requirements.....	18 DE Reg. 183 (Prop.) 18 DE Reg. 375 (Final) 18 DE Reg. 504 (Prop.)
70000 Certification and Regulation of Medicaid Managed Care Organizations	
Division of Public Health	
4201 Cancer Registry.....	18 DE Reg. 63 (Final)
4203 Cancer Treatment Program.....	18 DE Reg. 67 (Final)
4405 Free Standing Surgical Centers.....	18 DE Reg. 14 (Prop.) 18 DE Reg. 378 (Final) 18 DE Reg. 119 (Prop.)
4407 Hospital Standards (Construction, Maintenance, and Operation).....	18 DE Reg. 390 (Final) 18 DE Reg. 133 (Final)
4410 Skilled Home Health Agencies (Licensure).....	18 DE Reg. 352 (Prop.)
4451 Body Art Establishments.....	18 DE Reg. 512 (Prop.)
4453 Cosmetology and Barbering.....	18 DE Reg. 191 (Prop.)
4454 Tanning Facilities Regulations.....	18 DE Reg. 392 (Final) 18 DE Reg. 135 (Final)
4468 Delivery of Hospice Services.....	
Division of Social Services	
Child Care Subsidy Program, Child Support Policies and Procedures.....	18 DE Reg. 514 (Prop.)
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	18 DE Reg. 354 (Prop.)
DSSM: 2000 Case Processing Procedures - Applications.....	18 DE Reg. 139 (Final)
2013 & 9037 Food Supplement Program - Income and EligibilityVerification System.....	18 DE Reg. 142 (Final)
3011 Delaware TANF Employment and Training Program Requirements.....	18 DE Reg. 143 (Final)
9013.1 Food Supplement Program - Household Definition.....	18 DE Reg. 147 (Final)
9060, Determining Income Deductions.....	18 DE Reg. 14 (Prop.) 18 DE Reg. 231 (Final) 18 DE Reg. 148 (Final)
11003 Determining Technical Eligibility for Child Care.....	18 DE Reg. 9 (Prop.)
11004.3.1, Service Priorities.....	18 DE Reg. 233 (Final)
 DEPARTMENT OF INSURANCE	
Office of the Commissioner	
403 Sale and Purchase of Options [Formerly Regulation 28], Repeal of.....	18 DE Reg. 283 (Prop.) 18 DE Reg. 467 (Final)
404 Derivative Instruments.....	18 DE Reg. 195 (Prop.) 18 DE Reg. 393 (Final)
607 Defensive Driving Course Discount (Automobiles and Motorcycles).....	18 DE Reg. 519 (Prop.)
1003 Credit for Reinsurance.....	18 DE Reg. 355 (Prop.) 18 DE Reg. 574 (Final)
 DEPARTMENT OF JUSTICE	
Fraud and Consumer Protection Division	
Rules and Regulations Pursuant to the Delaware Securities Act.....	18 DE Reg. 202 (Prop.) 18 DE Reg. 394 (Final) 18 DE Reg. 575 (Final)
 DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1341 Workers' Compensation Regulations.....	18 DE Reg. 357 (Prop.) 18 DE Reg. 577 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**Division of Air Quality**

1124 Control of Volatile Organic Compound Emissions..... 18 DE Reg. 121 (Prop.)

Division of Energy and Climate

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions..... 18 DE Reg. 432 (Prop.)

Division of Fish and Wildlife

3521 Weakfish Size Limits; Possession Limits; Seasons..... 18 DE Reg. 235 (Final)

3541 Atlantic Sharks..... 18 DE Reg. 525 (Prop.)

3801 Shellfish Aquaculture..... 18 DE Reg. 151 (Final)

Division of Waste and Hazardous Substances

1301 Regulations Governing Solid Waste (DRGSW)..... 18 DE Reg. 530 (Prop.)

Division of Watershed Stewardship

5101 Sediment and Stormwater Regulations..... 18 DE Reg. 204 (Prop.)

7401 Surface Water Quality Standards..... 18 DE Reg. 396 (Final)

7408 TMDLs for Nutrients for the Murderkill River Watershed..... 18 DE Reg. 312 (Final)

7408 TMDLs for Nutrients for the Murderkill River Watershed..... 18 DE Reg. 316 (Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**Division of State Police**

1300 Board of Examiners of Private Investigators & Private Security Agencies 18 DE Reg. 154 (Final)

18 DE Reg. 211 (Prop.)

18 DE Reg. 436 (Final)

1300 Board of Examiners of Private Investigators & Private Security Agencies 18 DE Reg. 468 (Final)

5500 Bail Enforcement Agents..... 18 DE Reg. 21 (Prop.)

18 DE Reg. 318 (Final)

18 DE Reg. 285 (Prop.)

18 DE Reg. 578 (Final)

Officer of the Alcoholic Beverage Control Commissioner

Alcoholic Beverage Control Regulations..... 18 DE Reg. 208 (Prop.)

1407 A Rule Pertaining to Movie Theaters..... 18 DE Reg. 209 (Prop.)

18 DE Reg. 398 (Final)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**Division of Family Services, Office of Child Care Licensing**

101 Rules for Early Care and Education and School-Age Centers..... 18 DE Reg. 438 (Prop.)

105 Residential Child Care Facilities and Day Treatment Programs..... 18 DE Reg. 122 (Prop.)

DEPARTMENT OF STATE**Division of Historical and Cultural Affairs**

100 Historic Preservation Tax Credit Program..... 18 DE Reg. 24 (Prop.)

18 DE Reg. 237 (Final)

Division of Professional Regulation**Controlled Substance Advisory Committee**

Uniform Controlled Substances Act Regulations..... 18 DE Reg. 92 (Emer.)

100 Board of Accountancy..... 18 DE Reg. 155 (Final)

18 DE Reg. 212 (Prop.)

18 DE Reg. 320 (Final)

18 DE Reg. 157 (Final)

103 Regulations Governing Charitable Gambling Other Than Raffles

200 Board of Landscape Architecture, Section 7.0, Continuing Education as a Condition of Biennial Renewal.....

18 DE Reg. 287 (Prop.)

300 Board of Architects..... 18 DE Reg. 321 (Final)

500 Board of Podiatry..... 18 DE Reg. 124 (Prop.)

700 Board of Chiropractic..... 18 DE Reg. 213 (Prop.)

18 DE Reg. 579 (Final)

1000 Board of Pilot Commissioners..... 18 DE Reg. 238 (Final)

1100 Board of Dentistry and Dental Hygiene, Section 6.0, Continuing Professional Education.....	18 DE Reg. 399 (Final)
1400 Board of Electrical Examiners.....	18 DE Reg. 439 (Prop.)
1770 Respiratory Care Practice Advisory Council.....	18 DE Reg. 444 (Prop.)
1900 Board of Nursing, Section 6.0 Requirements & Procedures for Licensure	18 DE Reg. 322 (Final)
1900 Board of Nursing, Sections 8.0, 9.0 and 10.0.....	18 DE Reg. 445 (Prop.)
2000 Board of Occupational Therapy Practice.....	18 DE Reg. 532 (Prop.)
2500 Board of Pharmacy.....	18 DE Reg. 536 (Prop.)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	18 DE Reg. 290 (Prop.)
	18 DE Reg. 447 (Prop.)
2700 Board of Professional Land Surveyors.....	18 DE Reg. 126 (Prop.)
2900 Real Estate Commission.....	18 DE Reg. 447 (Prop.)
2930 Council on Real Estate Appraisers.....	18 DE Reg. 538 (Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	18 DE Reg. 451 (Prop.)
3500 Board of Examiners of Psychologists.....	18 DE Reg. 323 (Final)
4100 Board of Home Inspectors, Sections 4.0 and 10.0.....	18 DE Reg. 358 (Prop.)
4100 Board of Home Inspectors, Sections 4.0 and 18.0.....	18 DE Reg. 158 (Final)
4400 Delaware Manufactured Home Installation Board.....	18 DE Reg. 400 (Final)
5100 Board of Cosmetology and Barbering.....	18 DE Reg. 239 (Final)
Office of the State Bank Commissioner	
1114 Alternative Franchise Tax.....	18 DE Reg. 291 (Prop.)
2101 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2102 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2104 Minimum Disclosure and Agreement Requirements.....	18 DE Reg. 295 (Prop.)
2104 Minimum Disclosure and Agreement Requirements.....	18 DE Reg. 472 (Final)
2201 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2202 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2207 Exemption of Licensed Lenders.....	18 DE Reg. 159 (Final)
2302 Exemptions.....	18 DE Reg. 159 (Final)
2701 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2901 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2902 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
3401 Regulations.....	18 DE Reg. 159 (Final)
3402 Surety Bond or Irrevocable Letter of Credit.....	18 DE Reg. 159 (Final)
Public Service Commission	
1001 Rules of Practice and Procedure of the Delaware Public Service Commission.....	18 DE Reg. 160 (Final)
4001 Rules for the Provision of Telecommunication Services (Docket Nos. 10 and 45).....	18 DE Reg. 296 (Prop.)
4003 Regulations Governing the Minimum Service Requirements for the Provision of Telephone Service for Public Use within the State of Delaware (Docket No. 20).....	18 DE Reg. 296 (Prop.)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2224 Defensive Driving Course, Providers, and Instructors.....	18 DE Reg. 540 (Prop.)

Division of Planning and Policy

2309 Standards and Regulations for Subdivision Streets and State Highway Access	18 DE Reg. 240 (Final)
	18 DE Reg. 455 (Prop.)

Division of Transportation Solutions

2406 Policies and Procedures for Acquisition of Certain Real Property Interests	18 DE Reg. 456 (Prop.)
2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests.....	18 DE Reg. 545 (Prop.)

DIVISION OF RESEARCH
Office of the Registrar of Regulations

Regulation Governing Administrative Rulemaking Procedures.....	18 DE Reg. 161 (Final)
--	------------------------

EXECUTIVE DEPARTMENT
Office of Management and Budget
Division of Facilities Management

Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	18 DE Reg. 550 (Prop.)
4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	18 DE Reg. 547 (Prop.)

State Employees Benefits Committee

2001 Group Health Care Insurance Eligibility and Coverage Rules.....	18 DE Reg. 79 (Final)
--	-----------------------

Statewide Benefits Office

2007 Disability Insurance Program Rules and Regulations.....	18 DE Reg. 79 (Final)
--	-----------------------

Office of State Planning Coordination

Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts.....	18 DE Reg. 359 (Prop.)
--	------------------------

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF WORKERS' COMPENSATION**

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

1341 Workers' Compensation Regulations

*** Please Note:** *The submitted final order for 1341 Workers' Compensation Regulations for the January 2015 issue of the Delaware Register of Regulations erroneously contained an effective date of January 31, 2014. The final regulation was published in the January 2015 issue of the Delaware Register of Regulations (18 DE Reg. 577). The correct effective date is January 31, 2015. The order is reprinted below with the correct effective date.*

ORDER

A public meeting was held on November 24, 2014, by the Department of Labor to receive public comments relating to revised sections of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") to support the significant medical fee schedule changes and cost reductions mandated in House Bill 373. The members of the Workers' Compensation Oversight Panel ("Panel"), signed below, recommend the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 18, Issue 5 (November 2014).

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Exhibits Admitted Prior to and During the Public Meeting:

Exhibit 1 - *Delaware State News*, Affidavit of publication of notice of public meeting.

Exhibit 2 - *News Journal*, Affidavit of publication of notice of public meeting.

Exhibit 3 - State of Delaware Public Meeting Calendar electronic posting of today's meeting.

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

No additional comments were received during the public meeting.

The Panel 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").

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

The Panel 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 December 9, 2014. Any further public comment received between November 24, 2014 and December 9, 2014, is included in the attached addendum, along with an e-mail reaffirmation from each Panel member present at the November 24, 2014, 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 24th day of November, 2014.

WORKERS' COMPENSATION OVERSIGHT PANEL

A. Richard Heffron, Chair

Joseph J. Rhoades, Esq., Vice Chair

Barry Bakst, D.O.

Edward Capodanno

John Casey, Jr.

N. Lee Dotson

James Downing, M.D.

Anthony Frabizzio, Esq.

Christopher Kenny, Esq.

Samuel Lathem

Karen Jacobs, Esq.
Sajjad Savul, M.D.
Wayne Smith
Secretary John J. McMahon, Jr.

Bruce Rudin, M.D.
Theresa Smith
Joseph J. Straight, M.D.
Rhonda West

DECISION AND EFFECTIVE DATE

Having reviewed and considered the record and recommendations of members of the Workers' Compensation Oversight Panel to adopt revisions of the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), the revisions are hereby adopted by the Delaware Department of Labor and made effective **January 31, 2015**.

TEXT AND CITATION

The proposed Fee Schedule Instructions and Guidelines notice appeared in the *Register of Regulations*, Volume 18, Issue 5 (November 1, 2014). The Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions") are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the *Register of Regulations* web site at

<http://regulations.delaware.gov/register/november2014/proposed/18%20DE%20Reg%20357%2011-01-14.htm> .

DEPARTMENT OF LABOR

John McMahon, Secretary of Labor

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

5500 Bail Enforcement Agents

Statutory Authority: 24 Delaware Code, Section 5504(a) (24 **Del.C.** §5504(a))
24 **DE Admin. Code** 5500

5500 Bail Enforcement Agents

*** Please Note:** *The submitted final regulation for 5500 Bail Enforcement Agents for the January 2015 issue of the Delaware Register of Regulations contained a citation error in subsection 9.2.1. The final regulation was published in the January 2015 issue of the Delaware Register of Regulations (18 DE Reg. 578). The corrected regulation is reprinted below. The effective date as to the amendments to 5500 Bail Enforcement Agents remains the same.*

ORDER

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 3.0 - Use of Animals
- Rule 8.0 – Apprehension Procedures
- Rule 9.0 – Notification of Arrest (deletion)
- Rule 9.0 – Electronic Control Device (ECD) (adoption)
- Rule 10.0 – Suspensions and Revocations
- Rule 12.0 – Prohibited Acts

the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.

2. The Board expressed its desire to adopt the amendment to Rules 3.0, 8.0, 10.0 and 12.0 in order to clean up the verbiage and remain consistent with wording throughout the Rules & Regs. The Board expressed its desire to adopt the amendment to delete (existing) Rule 9.0 in its entirety in accordance with Governor Markell's Directive to remove redundant rules. The Board expressed its desire to adopt the amendment to create a (new) Rule 9.0 allowing BEA's to carry these devices and mandates the training and instructors.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of Rules 3.0, 8.0, 10.0 and 12.0 will clean up the verbiage and remain consistent with wording throughout the Rules & Regs. The Board finds that the deletion of (existing) Rule 9.0 will delete this rule in its entirety in accordance with Governor Markell's Directive to remove redundant rules. The Board finds that the adoption of (new) Rule 9.0 will create a rule allowing BEA's to carry these devices and mandates the training and instructors.

5. The Board finds that these adoptions will have no adverse impact on the public.

6. The Board finds that the amendments are well written and describe the intent to adopt Rules 3.0, 8.0, 10.0 and 12.0 to clean up the verbiage and remain consistent with wording throughout the Rules & Regs. The Board finds that the amendment for (existing) Rule 9.0 is well written and describes its intent to adopt the rule to delete this rule in its entirety in accordance with Governor Markell's Directive to remove redundant rules. The Board finds that the amendment for (new) Rule 9.0 is well written and describes its intent to adopt the rule to create a rule allowing BEA's to carry these devices and mandates the training and instructors.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be January 11, 2015.

13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A and executed simultaneously on the 25th day of November 2014.

Major Melissa A. Zebley, Chairman

Rebecca L. Byrd, Esquire

Mr. R. Dale Hamilton (absent)

Mr. Kevin C. Jones

Director John Yeomans (absent)

Mrs. Jennifer A. Esposito

Mr. Jack McGhee, II

Ms. Robin David

5500 Bail Enforcement Agents (Break in Continuity of Sections)

9.0 Electronic Control Device (ECD)

9.1 In order for a BEA to carry/use an electronic control device (ECD), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.

9.2 ECD Instructors

9.2.1 All ECD instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 Del.C. Ch. 55.

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

5500 Bail Enforcement Agents

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

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

Statutory Authority: 16 Delaware Code, Section 122(3)y and z (16 **Del.C.** §122(3)y and z)
16 **DE Admin. Code** 4408

ORDER**4408 Facilities that Perform Invasive Medical Procedures****NATURE OF THE PROCEEDINGS:**

This emergency regulation is being promulgated to ensure the inclusion of all facilities that perform surgical abortions. This includes aligning the regulatory definition of "anesthesia" to reflect every type of anesthesia used to perform surgical abortions. This emergency regulation adoption is necessary while the proposed rulemaking process is being completed to ensure the safe and sanitary conditions of facilities that perform invasive medical procedures. Delaware Health and Social Services ("Department") / Division of Public Health has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT:

The proposed provides notice to the public that the Division of Public Health (DPH) intends to amend the regulatory definition of "anesthesia" to include all types of anesthesia, including local anesthesia, used to perform surgical abortions. Therefore, facilities that perform surgical abortions will be required to register with the Department and obtain accreditation from an approved accreditation agency.

Statutory Authority

- 16 **Del.C.** §122(3)(y and z)

SUMMARY OF THE PROPOSED AMENDMENT:

Currently, the regulatory definition of anesthesia has three exclusions: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain. To ensure the provision of surgical abortions in a safe and sanitary setting, the definition of "anesthesia" has been revised to include all types of anesthesia when used in conjunction with performing a surgical abortion. With the exception of surgical abortions, the exclusions to anesthesia are still effective for other invasive medical procedures.

The current regulatory definition of "anesthesia" is:

"Anesthesia" means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia. This definition excludes: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

The amended definition of "anesthesia" is:

"Anesthesia" means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia and all anesthesia, including local anesthesia, used for surgical abortions. For invasive medical procedures other than surgical abortions, the following shall be excluded from the definition of anesthesia: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

Please note that this emergency regulation is also published concurrently herein under "Proposed Regulations" to allow for a thirty-day public comment period.

FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of these rule amendments to change the definition of "anesthesia". The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure the safe and sanitary conditions of facilities that perform invasive medical procedures, specifically, the updated regulatory definition of "anesthesia" be adopted on an emergency basis without prior notice or hearing.

Rita M. Landgraf, Secretary, DHSS

4408 Facilities that Perform Invasive Medical Procedures
(Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

"Anesthesia" means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia and all anesthesia, including local anesthesia, used for surgical abortions. For invasive medical procedures other than surgical abortions, the following shall be excluded from the definition of anesthesia: ~~This definition excludes:~~ (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

(Break in Continuity Within Section)

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

4408 Facilities that Perform Invasive Medical Procedures

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(b) (14 **Del.C.** §122(b))

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****902 Gifted or Talented Education Plan****A. Type of Regulatory Action Required**

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to add 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. This regulation is being created pursuant to 14 **Del.C.** §3126, which states that the extent of programs and facilities provided for children determined to be gifted or talented shall be in accordance with the rules and regulations of the Department. This regulation develops the rules and regulations relative to standards for identifying gifted or talented students, and the development, implementation and monitoring of programs for gifted or talented children.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **March 5, 2015** to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

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

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation continues to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.

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

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 the subject to be regulated does not change because of the regulation.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be a cost to school districts and charter schools for specialized training for teachers to teach specific for gifted or talented students, but schools may also utilize existing staff if qualified to teach gifted or talented students.

902 Gifted or Talented Education Plan

1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by professionally qualified person(s), may require differentiated educational program(s) or service(s) beyond those normally provided by the regular school program in order to address the individual's capabilities.

2.0 Definitions

"**Gifted or Talented Education Plan (Plan)**" means a document developed by a school district or charter school for the development, implementation and evaluation of appropriate services for gifted or talented students.

"**Gifted or Talented Student**" means a student in the chronological age group four (4) through the end of the school year in which the child attains the age of 21 or until receipt of a regular high school diploma, whichever occurs first, who meets the following definition of gifted or talented:

A child capable of high performance with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

General intellectual ability;

Specific academic aptitude;

Creative or productive thinking;

Leadership ability;

Visual and performing arts ability; or

Psychomotor ability.

"**Relative Caregiver**" means, pursuant to 14 Del.C. §202 (f)(1), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the student.

3.0 Development and Components of the Plan

PROPOSED REGULATIONS

- 3.1 Each school district or charter school shall have a Plan for educational services for identified gifted or talented students. The Plan, at a minimum, shall:
- 3.1.1 Outline goals and specific outcomes;
 - 3.1.2 Provide for a communication process, which shall include procedures to inform parent(s), guardian(s) or Relative Caregiver(s) of a student's participation in the gifted or talented education program;
 - 3.1.3 Establish procedures for requiring each teacher assigned to teach gifted or talented students to be certified in gifted and talented education in accordance with the applicable Professional Standards Board regulation.
 - 3.1.4 Provide the process for identification of gifted or talented students;
 - 3.1.5 Be developed with input from various stakeholder groups including parents;
 - 3.1.6 Outline an identification process that ensures all students have an equal opportunity to be identified and participate in the program;
 - 3.1.7 Establish procedures for consideration of the identification and placement of a student who was identified as gifted or talented in the school district or charter school from which the student transferred; and
 - 3.1.8 Provide for an evaluation of the Gifted or Talented Education Plan provided for its gifted or talented students.
- 3.2 The Plan shall be provided to the Department of Education by July 15, 2015 for implementation no later than the 2015-2016 school year, and each year thereafter. A school district or charter school may request an extension for implementation to occur no later than the 2016-2017 school year;
- 3.3 Each Plan shall be reviewed by the Department of Education for compliance with this regulation, and any substantive changes to the Plan shall be provided for review for compliance with this regulation.
- 3.4 The Department of Education shall periodically review the Plan for compliance.

4.0 Department of Education Responsibilities

The Department of Education shall maintain a resource guide of best practices, on its website, that a school district or charter school may use in the development and implementation of its Plan.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 923

PUBLIC NOTICE

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

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

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 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. This regulation is being amended as requested by the Governor's Advisory Council for Exceptional Citizens in regard to Senate Bill 229 of the 147th General Assembly in order to presumptively include the eligibility for extended school year reading services in a student's IEP for students who are not beginning to read by age seven.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or

before April 5, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above. Pursuant to the federal Individuals with Disabilities Education Act (IDEA) this regulation requires a 60 day comment period.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to improve student achievement as measured against state achievement standards by clarifying the eligibility for extended school year reading services for students who are not beginning to read by age seven.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations does not change the decision making at the local board and school level.

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

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 the subject to be regulated does not change because of the amendment.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no known costs to implementing this regulation beyond what was envisioned in the law.

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)**6.0 Extended School Year Services*****(Break in Continuity Within Section)***

6.5 *Determining need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.*

(Break in Continuity Within Section)

6.5.4 *Reading acquisition: For a child who is not beginning to read by age seven, or who is beyond age seven and not yet beginning to read, the team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goal(s) related to reading will not be*

PROPOSED REGULATIONS

~~achieved. If extended school year services are needed related to reading acquisition, the IEP team must describe the evidence-based interventions that will be provided to address the child's reading deficits.~~

- ~~6.5.4.1 For purposes of the extended school year services (ESY) determination, a child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.~~
- 6.5.54 Vocational factor: For children ages 16-20 whose IEPs contain vocational or employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.
- 6.5.65 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.
- 6.6 Extended school year services are to be based on needs and goals or objectives found within the child's IEP of the school year, though activities may be different.
- 6.7 Reading acquisition: Notwithstanding any contrary provision in this section, if a child is not beginning to read by age seven, or is beyond age seven and not yet beginning to read, the team shall presumptively include extended year services in the IEP which incorporate evidence-based interventions that address the child's inability to read. The team may decline to include such extended school year services in the IEP only if the team provides a specific explanation in the IEP why such services are inappropriate.
- 6.7.1 For purposes of this subsection, a child is beginning to read if the child demonstrates phonological awareness and ability to use letter sound knowledge and decode unknown words.
- 6.78 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, as identified on the child's IEP.
- 6.89 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled children for the sole purpose of satisfying the LRE requirements for children receiving extended school year services.
- 6.910 Transportation shall be provided to children except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.
- 6.101 Written notice shall be provided to parents advising them that the IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.
- 6.142 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

Non-regulatory Note: Districts are encouraged to complete this process by May 1 so that appropriate planning and preparation can occur.

(Authority: 20 U.S.C. 1412(a)(1); 14 Del.C. §3110)

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

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 925

PUBLIC NOTICE

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

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

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 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended as requested by the Governor's Advisory Council for Exceptional Citizens in regard to Senate Bill 229 of the 147th General Assembly in order to clarify that eligibility for reading-based extended school year services shall be determined in accordance with 14 DE Admin. Code 923.6.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 5, 2015 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above. Pursuant to the federal Individuals with Disabilities Education Act (IDEA) this regulation requires a 60 day comment period.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation may result in an improvement in student achievement as measured against state achievement standards as it addresses reading services and supports for IEPs for students with disabilities who are not beginning to read by age seven.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.

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

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 the subject to be regulated does not change because of the amendment.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are

no known costs to implementing this regulation beyond what was envisioned in the law.

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

24.0 Development, Review, and Revision of IEP

(Break in Continuity Within Section)

24.2 Consideration of special factors: The IEP Team shall:

(Break in Continuity Within Section)

24.2.7 *In the case of any child with limited reading proficiency, consider the reading services, supports and evidence-based interventions as those relate to the child's IEP;*

24.2.7.1 *For a child who is not beginning to read by age seven, or who is beyond age seven and is not yet beginning to read, enumerate the specific, evidence-based interventions that are being provided to that child to address the child's inability to read. Eligibility for reading-based extended school year services shall be determined in accordance with 14 DE Admin. Code 923.6.0.*

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

925 Children with Disabilities Subpart D

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

OFFICE OF ANIMAL WELFARE

Statutory Authority: 16 Delaware Code, Sections 3004F(d) and 3008F9(a)
(16 Del.C. §§3004F(d) & and 3008F9(a))

PUBLIC NOTICE

Regulations For Animals Held in Shelter

On February 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare, plans to publish proposed regulations for Animals Held in Shelter and hold them out for public comment per Delaware law.

The regulation has been established to promote and ensure the protection and care of companion animals in animal shelters and to increase opportunities for their placement and adoption. They also establish requirements for humane euthanasia of animals held in animal shelters.

These regulations apply to animal shelters only, and define:

- minimum standards of care and treatment;
- requirements for adoption and recovery;
- acceptable standards, methods and procedures of euthanasia;
- training and certification requirements for certified euthanasia technicians;
- record keeping obligations; and

- procedures for inspections and complaints.

SUMMARY

These regulations are promulgated by the Delaware Department of Health and Social Services pursuant to 16 Del.C. §§3004F(d) and 3008F(a) pertaining to animals held in shelter and shall apply to any animal shelter in Delaware.

The purpose of the regulations is to promote and ensure the protection and care of companion animals in animal shelters and to increase opportunities for their placement and adoption. They also establish requirements for humane euthanasia of animals held in animal shelters. The regulations apply to animal shelters only, and define: minimum standards of care and treatment; requirements for adoption and recovery; acceptable standards, methods and procedures of euthanasia; training and certification requirements for certified euthanasia technicians; record keeping obligations; and procedures for inspections and complaints.

NOTICE OF PUBLIC HEARING

The Office of Animal Welfare Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss proposed regulations for animals held in shelter.

The public hearing will be held on February 23, 2015 at 10:00 a.m. in the Farmington/Felton Room, DelDOT, 800 Bay Road, Dover, DE 19903.

Copies of the proposed regulation are available for review in the February 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Animal Welfare Section at 302-255-4626.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation as a supplement to or in lieu of oral testimony should submit such comments by Wednesday, March 10, 2015 to:

Christina Motoyoshi, Deputy Director
Office of Animal Welfare
Delaware Division of Public Health
Carvel Building
1901 N. Dupont Hwy
New Castle, DE 19720
Email: christina.motoyoshi@state.de.us
Fax: (302) 255-4621

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

Regulations For Animals Held in Shelter

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)y and z (16 Del.C. §122(3)y and z)
16 DE Admin. Code 4408

PUBLIC NOTICE

4408 Facilities that Perform Invasive Medical Procedures

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4408 Facilities That Perform Invasive Medical Procedures.

Proposed amendments change the definition of "Anesthesia" in the 4408 Facilities That Perform Invasive

Medical Procedures.

On February 1, 2015, the Department plans to publish proposed amendments to the 4408 Facilities that Perform Invasive Medical Procedures and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the February 1, 2015 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Nathan MacCormack by 4:30 p.m. on Tuesday, March 3, 2015 at:

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

4408 Facilities that Perform Invasive Medical Procedures (Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

"Anesthesia" means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia and all anesthesia, including local anesthesia, used for surgical abortions. For invasive medical procedures other than surgical abortions, the following shall be excluded from the definition of anesthesia: This definition excludes: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.

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

4408 Facilities that Perform Invasive Medical Procedures

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d), 903(e)(2)a and 903(e)(3)
 (7 Del.C. §901(c & d), 903(e)(2)a and 903(e)(3))
 7 DE Admin. Code 3500

REGISTER NOTICE #2014 - 12 3500 Tidal Finfish

1. TITLE OF THE REGULATION:

3502 Striped Bass Spawning Season and Area Restrictions,
 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit,
 3504 Striped Bass Possession Size Limit; Exceptions,
 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements,

3506 Striped Bass; Total Length Measurement.

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

The purpose of this action is to adopt provisions consistent with Addendum IV to Amendment 6 to the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for Atlantic Striped Bass. Addendum IV adopted new biological reference points based on the results of the 2013 benchmark stock assessment. The assessment indicated that the 2012 spawning stock biomass (SSB) was well below the target SSB and was approaching the overfished threshold. Projections show that SSB is likely to fall below the threshold in coming years. In response, Addendum IV requires states to reduce their coastal striped bass harvest by 25%.

Delaware will accomplish the specified 25% commercial fishery reduction through a direct administrative adjustment to the annual commercial quota. The 25% recreational fishery reduction will be achieved through a specific combination of lengths, seasons and possession limits approved by the Commission.

This action also seeks to clarify the commercial tagging and reporting requirements and proposes minor editorial changes, not intended to change meaning.

3. POSSIBLE TERMS OF THE AGENCY ACTION: None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT: §901(c & d), § 903(e) (2)a & 903(e) (3), Title 7 Delaware Code

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL: N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** §§3502, 3503, 3504, 3505, 3506 pertaining to striped bass will be open February 1, 2015. 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 February 23, 2015 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

Bass (Striped Bass; Black Sea Bass)

Option	Size Limit(s)	Possession Limit(s)	Open Season/Areas
B5	≥ 33 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
B6	28 - 34 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
B7	28 - 34 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 36 inches	1	
B8	28 - 36 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥38 inches	1	
B9	28 - 37 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 40 inches	1	
CE1	28 - 37 inches and ≥ 44 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31 and summer slot (*)
	*20 - 25 inches	2	

3502 Striped Bass Spawning Season and Area Restrictions.(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.
- 2.0 It ~~shall be~~ is unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.
- 3.0 It ~~shall be~~ is unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.
- 4.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a ~~draft~~ drift gill net of multi- or monofilament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.
- 5.0 It ~~shall be~~ is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.
- 6.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season defined in 3502 section 1.0 and in the areas defined in 3502 section 2.0 with natural bait using any hook other than ~~3504~~ a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It ~~shall be~~ is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It ~~shall be~~ is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- 3.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession ~~more than two (2)~~ **[TBD from Table]** striped bass per day (**a day being 24 hours**) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.
- 4.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to have in possession ~~more than two (2)~~ **[TBD from Table]** striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

3504 Striped Bass Possession Size Limit; Exceptions.(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession any striped bass ~~that measures less than twenty-eight (28) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than 20 inches and not greater than 26 inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August [TBD from Table].~~
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it ~~shall be~~ is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the

Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.

- 3.0 It ~~shall be~~ is unlawful for any person to possess a striped bass that measures ~~less than 28 inches~~ **[TBD based on Table]**, total length, unless said striped bass is in one or more of the following categories:
- 3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or
- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 It ~~shall be~~ is unlawful for any person to land any striped bass that measures ~~less than twenty eight (28) inches in total length at any time~~ **[TBD based on Table]**, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 7.0 It ~~shall be~~ is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It ~~shall be~~ is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It ~~shall be~~ is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.

PROPOSED REGULATIONS

- 2.0 It ~~shall be~~ is unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by March 15.
- 3.0 It ~~shall be~~ is unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.
- 4.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the February 15 - May 31 gill net fishery, 10% of the State's commercial quota for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.
- 5.0 It ~~shall be~~ is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.
- 6.0 It ~~shall be~~ is unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass if said striped bass is taken by hook and line. Said tag shall be locked into place immediately upon completing fishing each gill net or gill net series if said striped bass is taken by anchor gill net or immediately after retrieving each gill net into the boat at the conclusion of each drift if said striped bass is taken by drift gill net.
- 7.0 The Department ~~shall~~ may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.
- 8.0 It ~~shall be~~ is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.
- 9.0 It ~~shall be~~ is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.
- 10.0 It ~~shall be~~ is unlawful for ~~any commercial food fisherman~~ to apply a any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 11.0 It ~~shall be~~ is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

- 12.0 The Department ~~shall~~ may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.
- 13.0 Each commercial food fisherman participating in a striped bass fishery shall file ~~an acceptable a~~ complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file ~~an acceptable a~~ complete and accurate report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

3506 Striped Bass; Total Length Measurement.

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

- 1.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for ~~any commercial finfisherman~~ to possess any striped bass for which the total length has been altered in any way ~~prior to selling, trading or bartering~~ for the purpose of retaining said striped bass in accordance with §3504.

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

3500 Tidal Finfish

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 DE Admin. Code 1301

**REGISTER NOTICE
SAN # 2014-11****1301 Regulations Governing Solid Waste****1. TITLE OF THE REGULATIONS:**

Delaware's Regulations Governing Solid Waste (DRGSW)

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

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the solid waste transporter exemptions and to remove the obsolete dry waste transporter section as dry waste transporters are no longer treated any differently than solid waste transporters. SHWMS also proposes to replace "approval" with "permit" in the composting and recycling section to increase enforceability and oversight available to the Department and to provide greater consistency and fairness. SHWMS also proposes to delete the provision allowing facilities solely accepting source separated materials to not be considered a transfer station as there is no legitimate reason to treat facilities accepting source separated vs. non-source separated materials differently. SHWMS also proposes to modify the provision addressing approval or denial of a permit to add additional guidance as to when a permit can be modified, denied, terminated, or revoked for greater transparency and fair application. To ease the regulatory burden for small businesses generating only a small amount of infectious waste, SHWMS proposes a modification to the infectious waste regulations allowing sharps to be transported without a transporter permit if certain conditions are met. Finally, SHWMS also proposes to add a definition for "non-commercial capacity" and to correct a mistake in the

name of the Section.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 **Delaware Code**, Chapter 60.

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

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGSW will be held on Thursday, February 26, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bethany Fiske, Environmental Scientist III, Solid and Hazardous Waste Management Section - (302) 739-9403

Regulatory Flexibility Act Compliance Form

Background: The Regulatory Flexibility Act (29 **Del.C.** Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

Instructions: This form must accompany your Register Notice and the proposed regulation prior to being published in the *Register of Regulations*. **Please explain your considerations for each of the following factors (attach additional pages or documents as needed):**

- 1) The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:
No additional reports are anticipated for the amendments being considered.
- 2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:
The composting and recycling approval section is being modified to read "Composting and Recycling Permits." This will requires those individuals and/or business that fall under this section to seek a composting and recycling permit, which may have an associated permit fee.
For all other amendments, no other measures or investment costs are anticipated.
- 3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:
No legal, consulting, or accounting services are anticipated for the amendments being considered.
- 4) The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:
Small businesses involved in composting and recycling should be able to absorb the any costs as a cost of doing business. Potentially, there may be a permit fee but no other costs are anticipated. Additionally, the amendment will actually affect competition in the marketplace in a positive manner as an equalizer since composting and recycling business will be treated as the same as all other solid waste businesses in regards to the requirement of obtaining a permit.
For all other amendments, no other measures or investment costs are anticipated.

- 5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:
The agency has already developed the regulations in such a way that small businesses can be afforded lesser standards for compliance with lesser economic impact on the business owners in regard to transportation of solely sharps generated by Small Quantity Generators of infectious waste in not requiring a transporter permit if certain restrictions are met.
Requiring permits for composting and recycling facilities is a change that affects all composting and recycling facilities, regardless of the size of the composting and recycling business. It would create additional cost for the agency to treat small composting and recycling businesses differently than large composting and recycling businesses.
For all other amendments, setting lesser standards for compliance by individuals or small businesses is not applicable.
- 6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.
There is a desire to allow less stringent requirements for transportation of sharps from Small Quantity Generators of infectious waste. By allowing the transportation of small amounts of sharps without a transporter permit (with certain restrictions), small businesses will incur an economic benefit in that they do not need to pay for a permitted transporter. The amendment will provide an easier avenue to properly dispose of small amounts of sharps only waste using USPS, FedEx, UPS, or similar company, as opposed to contracting with a permitted transporter serving large infectious waste generators such as hospitals. The requirement eases the logistics of transportation arrangements, which reduces costs. While there may be some public interest in treating small recycling and composting businesses differently than large recycling and composting businesses, there is also the public desire to treat all businesses fairly and equally. Additionally, the public has a desire for simplicity and adding another layer to the regulations will not further that goal.
- 7) What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?
The agency is proposing to adopt an amendment to allow Small Quantity Generators of infectious waste to transport sharps via an unpermitted transporter (with certain restrictions).

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

1301 Regulations Governing Solid Waste

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 Del.C., Ch. 60 and 63)
7 DE Admin. Code 1302

REGISTER NOTICE SAN #2014-10

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware's Regulations Governing Hazardous Waste (DRGHW)

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

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to clarify the requirement of Small Quantity Generators of hazardous waste to document employee hazardous waste training. SHWMS also proposes to clarify the requirement of

documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities.

To facilitate the electronic transmission of the uniform manifest form and make the use of the uniform manifest much more cost-effective and convenient for users, SHWMS proposes to adopt the federal e-manifest rule.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 **Delaware Code**, Chapters 60 and 63.

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

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Thursday, February 26, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bethany Fiske, Environmental Scientist III, Solid and Hazardous Waste Management Section - (302) 739-9403

Regulatory Flexibility Act Compliance Form

Background: The Regulatory Flexibility Act (29 **Del.C.** Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

Instructions: This form must accompany your Register Notice and the proposed regulation prior to being published in the *Register of Regulations*. **Please explain your considerations for each of the following factors (attach additional pages or documents as needed):**

- 1) The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:
Small Quantity Generators of hazardous waste are currently required to train employees who handle hazardous waste. The proposed amendments will require documentation of such training. Owners or operators of treatment, storage, and disposal facilities are currently required to perform weekly inspections of their hazardous waste storage areas. The proposed amendments will require documentation of such inspections. Both of these amendments will incur minimal cost as the requirement to perform is already present; the amendment only clarifies that documentation is required.
No additional reports are anticipated for the E-manifest amendment.
- 2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:
No other measures or investments costs are anticipated for the amendments being considered.
- 3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:
No legal, consulting, or accounting services are anticipated for the amendments being considered.
- 4) The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:

The cost of documentation for Small Quantity Generators of hazardous waste and owners or operators of treatment, storage, and disposal facilities is very minimal and the cost can easily be absorbed into the cost of doing business.

- 5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:

The proposed amendments do not address additional requirements; instead the proposed amendments require documentation of requirements that are already in place. Setting lesser standards of compliance for individuals and/or small businesses is not applicable in this case.

For the E-manifest amendment, setting lesser standards for compliance by individuals or small businesses is not applicable.

- 6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

The proposed amendments do not address additional requirements; instead the proposed amendments require documentation of requirements that are already in place. Setting lesser standards of compliance for individuals and/or small businesses is not applicable in this case.

For the E-manifest amendment, setting lesser standards for compliance by individuals or small businesses is not applicable.

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

None.

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

1302 Regulations Governing Hazardous Waste

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****1725 POLYSOMNOGRAPHY ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code, Section 1799W(c) (24 **Del.C.** §1799W(c))
24 **DE Admin. Code** 1725

PUBLIC NOTICE**1725 Polysomnography Advisory Council**

The Delaware Polysomnography Council of the Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §1799W(c), proposes to amend its rules and regulations. The proposed regulation changes clarify that the practice of polysomnography is always deemed to occur where the patient is located, regardless of whether the testing is in or out of center. In other words, if a polysomnographer is analyzing and scoring data collected during sleep monitoring which occurs in Delaware, the polysomnographer must have a Delaware license.

The Council will hold a public hearing on the proposed regulation change on March 2, 2015 at 1:00 p.m., Second Floor Conference Room C, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Administrative Specialist of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until March 17, 2015 pursuant to 29 **Del.C.** §10118(a).

PROPOSED REGULATIONS

1725 Polysomnography Advisory Council (Break in Continuity of Sections)

3.0 Standards of Practice for the Polysomnographer

(Break in Continuity Within Section)

- 3.5 The practice of polysomnography may occur in a hospital setting, independent sleep laboratory, and includes out of center sleep testing. ~~In the case of out of center sleep testing, the practice of polysomnography shall be deemed to be occurring where the patient is located.~~
- 3.6 The practice of polysomnography shall be deemed to be occurring where the patient is located.

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

1725 Polysomnography Advisory Council

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))
24 DE Admin. Code 2700

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

The Delaware Board of Professional Land Surveyors, in accordance with 24 Del.C. §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to automatically approve, for continuing education credit, courses sponsored or offered by other states' surveying societies and to clarify the statutory definition of "responsible charge.". The Board will hold a public hearing on the proposed rule changes on March 19, 2015 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

2700 Board of Registration for Professional Land Surveyors (Break in Continuity of Sections)

2.0 Definitions

Definitions under Section 2 will be listed in the current "Definitions of Surveying and Associated Terms," published by the National Society of Professional Surveyors, except as otherwise provided by Delaware law.

(Break in Continuity Within Section)

"Responsible Charge" - shall mean the direct control and personal direction of the investigation, operation and execution of land surveying work requiring initiative, and professional skill and independent judgment as a party chief or survey manager. An individual in responsible charge shall be under the direct supervision of a Delaware licensed professional land surveyor.

(Break in Continuity of Sections)

10.0 Continuing Education

(Break in Continuity Within Section)

- 10.3 Sources of Credit. In reviewing and approving applications for PDHs, the Board shall take into consideration:

10.3.1 Program Content: Courses must cover land surveying topics and must directly contribute to accomplishment of the primary purpose of continuing education, which is to help assure that licensees possess the knowledge, skills and competence necessary to function in a manner that protects and serves the public interest. The knowledge or skills taught must enable licensees to better serve surveying clients and the subject matter must be directly related to the land surveying practice. All educational courses and their instructors, both live and online, must be approved by the Board except for those courses sponsored or offered by surveying societies located in any state or United States territory, including the District of Columbia. Courses that are sponsored or offered by surveying societies located in any state or United States territory, including the District of Columbia, will receive automatic approval and do not require Board review and approval.

(Break in Continuity of Sections)

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

2700 Board of Registration for Professional Land Surveyors

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302 and 303; 29 Delaware Code, Section 8404

(21 Del.C. §§302 & 303; 29 Del.C. §8404)

PUBLIC NOTICE

2288 Special Group or Organization Registration Plates for Persons With Disabilities

Comment Period for Draft Regulations

Background

The Delaware Department of Transportation Division of Motor Vehicles (DMV) is seeking public comment regarding the provision of Special License Plates for Persons with Disabilities.

Under Subchapter 2 of Chapter 21 of Title 21 of the Delaware Code, the DMV is authorized to issue special license plates to organizations and groups. The DMV is also authorized under Section 2134 of the same Title to issue special license plates for persons with disabilities which limit or impair the ability to walk. These plates feature the international person with disability wheelchair symbol. Some of these persons with disabilities may also wish to display their affiliation or support for an organization or group, while retaining their rights to consideration as a person with disabilities.

The draft regulations would authorize the DMV to design and issue special registration plates for groups and organizations that also include the international person with disability wheelchair symbol.

Public Comment Period

The Department will take written comments on the proposed Regulation for this alternative registration plate from February 1, 2015 through March 4, 2015. The proposed Regulation appears below.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Scott Clapper
Chief of Vehicle Services
Division of Motor Vehicles
Delaware Department of Transportation
303 Transportation Circle
Dover, DE 19904

(302) 744-2533 (telephone)

(302) 739-4750 (fax)

Scott.Clapper@state.de.us

2288 Special Group or Organization Registration Plates for Persons with Disabilities

1.0 Design and Issue

The Division of Motor Vehicles may design and issue special registration plates for groups or organizations as defined in Delaware Code Title 21, Chapter 21, Subchapter 2, to include the international person with disability wheelchair symbol.

2.0 Special Plate Qualification

To qualify for a special registration plate under this Regulation, the applicant or a household member shall have 1 or more of the disabilities that are permanent with no prognosis for improvement as defined in 21 Del.C. §2134.

3.0 Specialty Plate Issuance

The person for whom a specialty plate is issued under this Regulation must be the driver of or a passenger in the vehicle bearing the special plate issued under this Regulation, whenever the vehicle parks in a parking space or zone restricted for use only by vehicles with a special license plate or placard for persons with disabilities which limit or impair the ability to walk.

4.0 Parking Access

A vehicle with a special plate issued under this Regulation may park in parking spaces or zones restricted for use by persons with disabilities which limit or impair the ability to walk.

5.0 Display Restrictions

Only passenger cars, station wagons, pickup trucks, motorcycles, panel van trucks and other motor vehicles that are reasonably used by persons with disabilities which limit or impair the ability to walk and that have a gross registered weight which does not exceed 10,000 lbs. may display a special plate issued under this Regulation.

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 MANUFACTURED HOME RELOCATION AUTHORITY

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

1 DE Admin. Code 202

ORDER

202 Rent Increase Dispute Resolution Procedures

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 *Register of Regulations*:

1. Pursuant to its statutory authority, the Authority adopted comprehensive set of rules of practice and procedure (the "Rent Justification Rules") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 Del.C. §7043.

2. House Bill 234, as amended and adopted by the 147th General Assembly of the State of Delaware and recently signed into law made several amendments to the Rent Justification Dispute process. As authorized by 29 Del.C. §10113(b)(5), at its Board meeting held on December 11, 2014, the Authority adopted certain amendments to the Rent Justification Rules to make them consistent with changes in basic law, but which do not otherwise alter the substance of the Rent Justification Rules.

3. For the reasons set forth above, the Authority, by this Order, adopts as final the amendments to the Rent Justification Rules as shown on Exhibit A. Deletions and additions to the Rent Justification Rules are noted on Exhibit A. The changes, among other things, list the new address of the Authority, require community owners to provide the Authority, upon request, with the names and addresses of any home owner affected by a proposed rent increase, and clarify the Authority's role in selecting the time and date of any initial meeting between the community owner and affected tenants.

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

1. That the amendments to the "Delaware Manufactured Home Relocation Trust Fund Rent Increase Dispute

Resolution Procedures" attached hereto as Exhibit A are adopted as final regulations pursuant to 25 **Del.C.** §7011, et. seq. The amendments to the Rent Justification Rules shall become effective ten (10) days after their publication in the Delaware *Register of Regulations*.

2. That the Authority shall transmit a copy of this Order and the Procedures to the Delaware Registrar of Regulations for publication in the next issue of the Delaware *Register of Regulations*.

3. That the Authority reserves the right to hereafter alter, amend, or waive the Procedures adopted herein to the extent that the same may be allowed by law.

4. 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

Dorothy Boucher, Board Member

William Dunn, Board Member

George Meldrum, Board Member

Andy Strine, Board Member

EXHIBIT A
RENT INCREASE DISPUTE RESOLUTION PROCEDURES
AUTHORITY: 25 Del.C. §7011 THRU §7015

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 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.

202 Rent Increase Dispute Resolution Procedures
(Authorization: Section 7011)

(Break in Continuity of Sections)

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.

(Break in Continuity Within Section)

"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 19904~~ 110 North Main Street, Suite G, Camden, DE 19934.

(Break in Continuity of Sections)

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 shall provide the HOA and the Authority with a summary letter ("Summary 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 Summary Letter shall identify all affected home owners by lot number, name, group or phase. If the affected home owners are not identified by name, the community owner shall make the names and addresses available to any affected home owner, or HOA, and the Authority upon request. 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:

(Break in Continuity Within Section)

- 4.1.6 If the proposed rent increase exceeds the CPI-U, a recommendation to the Authority of 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 is not reasonable or should be changed, in which case the Authority, in its sole discretion, shall schedule the meeting at a time and place to be held no later than thirty (30) days after 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 parties by the community owner.

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

202 Rent Increase Dispute Resolution Procedures

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 817

REGULATORY IMPLEMENTING ORDER

817 Medications and Treatments

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is amended to be in compliance with Senate Bill 246 as amended by Senate Amendment #1 of the 147th General Assembly. It clarifies what constitutes an emergency medication, who can administer that medication and whether it can be administered to a diagnosed or undiagnosed individual, and in what school setting.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 5, 2014, in the form hereto attached as Exhibit "A". Comments were received from several members of the public, the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) as follows:

The first comment was relative to self-administration versus administration of a life-saving medication by a lay person for life-threatening symptoms. In response to this comment, the Department added language to clarify the definition of Trained Assistant for Self-Administration, who is able to administer in the event of a life-threatening symptom;

The GACEC and SCPD provided other comments relative to the removal of the explicit requirement that the School Nurse submit a list of educators or the other school employees that have completed the training to the Department and a suggestion that this weakened the record keeping system for trained personnel. The Department modified 6.1.2 of the regulation requiring "documented acknowledgement" of training to align with current technology. This documentation is currently maintained in an electronic format at the Department;

Another comment was related to a possible inconsistency of standards relative to who is compelled to become a Trained Person. The Department amended 8.0 to eliminate the inconsistency by adding "unless training is a

requirement of hire or contract";

Also commented was the potentially limiting definition of "diagnosed medical condition". In response the Department notes that Section 6.0 of the regulation addresses self-administration of medications for diagnosed conditions and administration of medications in an emergency. In addition, SB 246 allows for administration of life-saving medications by a Trained Person only for an allergic reaction to diagnosed or undiagnosed individuals;

Additional comments questioned the definition of Medication as it relates to authorization for a student to use it for an allergic reaction based on an undiagnosed condition. The Department notes that no prior authorization is needed from a healthcare provider for emergency medication to treat a life-saving allergic reaction. Division of Public Health will be providing orders and guidance on the administration of such medications.

Also suggested was that the definition of "paraeducator" and "service paraeducator" was limiting because of the language "in the school", and likewise in 7.1 using the words "in the school building" as limiting in the administration of emergency medication. The Department does not agree that the definition of paraeducator or service paraeducator is limiting, as it is covered under Other School Employees. However, the Department has amended the regulation to clarify the language in 7.1 to "in the school setting";

Another comment seeks to expand the scope of emergency medications beyond those for allergic reactions. The Department notes that assisting students with self-administration is only allowed in K-12 based on 24 **Del.C.** §1921(a)(17), whereas SB 246, 14 **Del.C.** §3001E(3) requires emergency response to pre K-12. The Department notes that the regulation changes are implementing SB 246 and expanding assistance to include administration of medication in response to a life-threatening symptom in a person with a diagnosed condition. Legislation would be necessary to expand the definition of Emergency Medication;

Another comment questions how prescription medications may be stored in multiple locations. DOE notes that based upon guidance from the Division of Public Health, stock (not individual prescription medications) epinephrine will be maintained in a location(s) accessible to the Trained Persons;

Clarifying language was added to 6.1.1.2 to make it consistent with 6.1.1.3.

Lastly, there was a grammatical change made in 7.3.1.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments in order to be in compliance with Senate Bill 246 as amended by Senate Amendment #1 of the 147th General Assembly.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 817 Medications and Treatments attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 817 Medications and Treatments hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 817 Medications and Treatments amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 817 Medications and Treatments in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2015.

DEPARTMENT OF EDUCATION

Mark T. Murphy, Secretary of Education

Approved this 15th day of January 2015

817 Medications and Treatments (Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

“Trained Assistant for Self-Administration” means an Educator or Other School Employee who has completed the training to assist a student with self-administration of medications. This person may render emergency care ~~to any student~~, including injection, **[to any student unable to self-administer medication]** for life-threatening symptoms of a diagnosed condition based on the healthcare provider’s order and parent permission.

(Break in Continuity of Sections)

56.0 Assistance With Self-Administration of Medications at Approved School Activities

56.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 **Del.C.** §1921(a)(17) to assist a student with self-administration of ~~medications on a field trip or approved school activity outside of the traditional school day or off campus~~ at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:

56.1.1 Assistance with Self-Administration of medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student’s name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a ~~field trip~~ or an Approved School Activity outside of the traditional School day or off-campus.

56.1.1.1 Medications shall be prescribed by a licensed health care provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.

56.1.1.1.1 Doses may be provided for up to one week, unless covering a **[Field Trip Approved School Activity]** lasting longer than this time period, and shall be maintained in a secure location.

56.1.1.2 Prescription medications shall be provided to the School Nurse **[by the parent]** and shall be properly labeled with the student’s name; the licensed health care provider’s name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

(Break in Continuity Within Section)

56.1.2 In order to be qualified to ~~assist with~~ provide Assistance with Self-Administration of medication, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921(a)(17). Training shall be renewed minimally every five years. No person shall ~~assist a student with~~ provide Assistance with Self-Administration of medication without **[written documented]** acknowledgment **[to the**

FINAL REGULATIONS

Department of Education] that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A School Nurse employed by the public or private district or charter in which the student is enrolled shall:

(Break in Continuity of Sections)

7.0 Emergency Medication Administration for Life-threatening Allergic Reaction in School

7.1 School Nurses and Trained Persons are authorized by 16 Del.C. Ch. 30E to administer Emergency Medication Without an Order at School to a student in pre-K through grade 12, who is symptomatic of a life-threatening allergic reaction in the school [building setting].

(Break in Continuity Within Section)

7.2 The School, in consultation from the School Nurse, shall annually identify and train a sufficient number of Educators and Other School Employees to become Trained Persons.

7.2.1 An identified person cannot be compelled to become a Trained Person, unless training is a requirement of their position, hire, or contract.

7.2.2 The training shall be a program approved by the Department of Education and the Division of Public Health.

[7.2.3 The Trained Person shall annually re-train or demonstrate competency as a Trained Person.

7.2.4 The School shall maintain documentation of annual training and Trained Persons and make available upon request to the Department of Education or Division of Public Health.]

7.3 The School shall maintain current, stock Emergency Medication.

7.3.1 Emergency Medication shall be stored in a minimum of two secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other ~~for~~ for the Trained Person.

(Break in Continuity Within Section)

8.0 Other School Employees Obligation

Except for a School Nurse, no Educator or Other School Employee shall be compelled to assist a student with medication or to administer emergency medication [unless training is a requirement of hire or contract]. If a facility is otherwise required to have a School Nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

***Please note that no additional changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 419 (18 DE Reg. 419). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

817 Medications and Treatments

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Title XIX Medicaid State Plan regarding Methods and Standards for

Establishing Payment Rates, specifically, *Primary Care Service Payment*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the December 1, 2014 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Delaware Health and Social Services/Division of Medicaid and Medical Assistance proposes to amend the Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Primary Care Service Payment*. This amendment will extend the primary care physician services rate increase required by the Health Care and Education Reconciliation Act of 2010 (HCERA), Section 1202 (Pub. L. No. 111-152) (42 U.S.C. §1396a(a)(13), that sunsets on December 31, 2014.

Statutory Authority

- §1905 of the Social Security Act (a)(5)(A), *Definitions, Physicians' Services*
- 42 CFR §440.50, *Physicians' Services and Medical and Surgical Services of a Dentist*
- 42 CFR §447.400, *Primary care services furnished by physicians with a specified specialty or subspecialty*
- 42 CFR §447.405, *Amount of required minimum payments*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Section 1202 of the Affordable Care Act required that Medicaid reimburse designated primary care providers who provide primary care services and vaccine administration services at rates that are not less than the Medicare fee schedule in effect for 2013 and 2014, or, if greater, at the payment rates that would result from applying the 2009 Medicare physician fee schedule conversion factor to the 2013 or 2014 Medicare payment rates. These reimbursement requirements apply to payments made on or after January 1, 2013 through December 31, 2014.

In accordance with 42 CFR §447.410, Delaware submitted a *State Plan Amendment (SPA)* to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(A) of the Social Security Act. The purpose of this requirement is to assure that when States make the increased reimbursement to providers, they have State Plan authority to do so and they have notified providers of the change in reimbursement as required by Federal regulations.

The Centers for Medicare and Medicaid Services approved Delaware's Increased Primary Care Service Payment state plan amendment on June 24, 2013 with an effective date of January 1, 2013.

Summary of Proposal

Purpose

The purpose of this state plan amendment (SPA) is to extend an existing temporary reimbursement rate increase for specified Delaware Medical Assistance Program (DMAP) primary care providers beginning January 1, 2015. The 100% federal funding ends on December 31, 2014. With this SPA, DMAP will continue the increase at the regular federal matching rate.

Statutory Authority and Payment Methodology for Changes to the Medicaid State Plan

Beginning January 1, 2015, this State Plan Amendment continues the fees for services provided by certain primary care physicians to match 100% of Medicare rates. These rates will apply to the primary care procedure codes identified pursuant to 42 USC §1396a(jj) and 42 CFR §447.400(c). Primary care physicians identified pursuant to 42 USC §1396a(13)(C) and 42 CFR §447.400(a) will be eligible to continue to receive 100% of the Medicare rates for those primary care services.

Primary Care Services Rendered On or After January 1, 2015

Primary care services furnished on and after January 1, 2015, by a qualified primary care physician or under

the supervision of a qualified primary care physician shall be paid at the Medicare Part B fee schedule rate up to 100% of the Medicare physician fee schedule.

If there is no applicable rate under Medicare Part B, the rate specified in a fee schedule established and as published annually by the federal Centers for Medicare and Medicaid Services, pursuant to 42 CFR 447.405(a)(1).

Vaccines Administration Services Rendered On or After January 1, 2015

Payment for the administration of vaccines provided under the Vaccines for Children Program and rendered on or after January 1, 2015, shall be the lesser of the state regional maximum administration fee set by the Vaccines for Children Program.

Public Notice

This notice is published pursuant to 42 CFR §447.205, 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the Delaware Code, which requires Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) to give public notice of any significant proposed change in its method and standards for setting payment rates for Medicaid services.

The provisions of this state plan amendment relating to methodology and payment rates of Primary Care Services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

The total computed cost of extending the increased reimbursement for specified primary care services rendered on or after January 1, 2015 is estimated, as follows:

	Federal Fiscal Year 2015 (Nine Months)	Federal Fiscal Year 2016 (Twelve Months)
General (State) Funds	\$147,691.00	\$196,922.00
Federal Funds	\$ 95,699.00	\$131,988.00

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

GACEC and SCPD

As background, the Affordable Care Act required that Medicaid reimbursement for primary care providers and vaccine administration in 2013 and 2014 be no less than a Medicare fee schedule. DMMA adopted that methodology for Delaware's Medicaid program and apparently benefited from enhanced (100%) federal funding. DMMA now proposes to continue the existing reimbursement rates into 2015 albeit with a lower federal subsidy, i.e., "the regular federal matching rate". The total fiscal cost in FFY15 will be \$147,691 in General (State) Funds and \$95,699 in Federal match.

GACEC and SCPD endorse the proposed regulation subject to one concern. The Plan Amendment recites that vaccine administration "shall be paid at the lesser of the state regional maximum administration fee set by the Vaccines for Children (VFC) program." At p. 428. This is "odd" wording. It is common to recite that a standard will be the lesser of "A" or "B". It is peculiar to recite that a standard will be the lesser of "A".

Agency Response: The proposed wording reflects previously approved state plan language. This SPA was submitted to CMS on December 12, 2014 and is currently under review. Should CMS require any changes to the

proposed language, the agency will comply.

No changes were made to the regulation as a result of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Methods and Standards for Establishing Payment Rates, specifically, *Extension of Increased Medicaid Payment for Primary Care Service Payment Effective January 1, 2015*, is adopted and shall be final effective February 10, 2015.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 424 (18 DE Reg. 424). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Title XIX Medicaid State Plan - Primary Care Service Payment

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(w) (16 **Del.C.** §122(3)(w))
16 **DE Admin. Code** 4451

ORDER

4451 Body Art Establishments

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Body Art Establishments. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, §§122(3)(w).

On November 1, 2014 (Volume 18, Issue 5), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 10, 2014, or be presented at a public hearing on November 25, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No oral comments were made at the public hearing and no written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence".

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Body Art Establishments were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from November 1, 2014 through December 10, 2014. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

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

FINDINGS OF FACT:

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Body Art Establishments is adopted and shall become effective February 11, 2015, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 352 (18 DE Reg. 352). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4451 Body Art Establishments

DIVISION OF SOCIAL SERVICES

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

ORDER**Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to renew Delaware's Temporary Assistance for Needy Families (TANF) State Plan as provided for in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193). The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the November 2014 *Delaware Register of Regulations* and 42 United States Code 602(a)(4)(B) requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 15, 2014 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations. Additionally, Delaware's TANF State Plan may be viewed on the Division of Social Services' website at: <http://www.dhss.delaware.gov/dhss/dss/>

NOTICE OF FORTY-FIVE-DAY COMMENT PERIOD FOR DRAFT TANF STATE PLAN

This notice is given to provide information of public interest with respect to Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) Program, specifically, *the TANF State Plan*. The TANF State Plan describes the manner in which the State administers Delaware's TANF Program, and sets forth the eligibility requirements for TANF-funded programs and services.

Statutory Authority

- Title IV-A of the Social Security Act, Section 402, *Eligible States; State Plan*
- 42 United States Code, Section 602(a), *Eligible States; State Plan*

Title of Notice

Delaware Temporary Assistance for Needy Families (TANF) State Plan

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. Section

402 of the Social Security Act requires that States periodically submit to the Secretary of the United States Department Health and Human Services a TANF state plan to maintain or renew their status as an "eligible State". In general, the State plan describes the eligibility rules, the populations served, the programs offered, and the State maintenance of effort spending. States also provide certifications that they will maintain other services such as child support enforcement and foster care services. Delaware's TANF State plan is due on December 31, 2014.

Delaware Health and Social Services/Division of Social Services administers the Temporary Assistance for Needy Families block grant program. The TANF program is delivered through a collaborative partnership among Delaware's Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO). The Delaware Transit Corporation (DTC) is also a planning partner.

Summary of Notice of Comment Period for Draft TANF State Plan

In order to continue to receive Federal funding, Delaware must file for renewal of the Temporary Assistance for Needy Families (TANF) block grant with the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) by December 31, 2014. The State Plan outlines the provisions under which the State will administer the TANF program. The period of this renewal is from October 1, 2014 through December 31, 2016.

Prior to the submission of the plan, 42 United States Code Section 602(a) requires states to provide at least forty-five (45) days for the public to review and comment on the proposed plan and the design of services. The forty-five (45) day comment period begins on the date this notice is published in the *Delaware Register of Regulations*. Written comments received within the comment period will be reviewed and considered for any subsequent revision of the TANF State Plan.

Developed in accordance with the requirements of PRWORA, the updated State Plan incorporates changes identified through a collaborative process that included development of proposed regulation, distribution of the draft regulation to Delaware stakeholders and the public, review and incorporation of appropriate comments in the plan, and the ongoing review of the TANF program.

A link to the draft TANF State Plan may be accessed at the following Division of Social Services website:

<http://www.dhss.delaware.gov/dhss/dss/>

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to renew Delaware's eligibility status for the TANF program covering the period from October 1, 2014 through December 31, 2016. The proposed regulation was published as 18 DE Reg. 354 in the November 1, 2014 issue of the *Register of Regulations*.

GACEC and SCPD endorse the proposed regulation.

Agency Response: DSS thanks the Councils for the endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2014 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to renew Delaware's Temporary Assistance for Needy Families (TANF) State Plan for the period October 1, 2014 through December 31, 2016 is adopted and shall be final effective February 10, 2015.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the November 2014 issue of the *Register* at page 354 (18 DE Reg. 354). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal

FINAL REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304 (24 **Del.C.** §1304)
24 **DE Admin. Code** 1300

ORDER

1300 Board of Examiners of Private Investigators and Private Security Agencies

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rule 13.0 – Agency Licensing Fees/Structure, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to eliminate the Delaware Manager Bond and make all remaining bonds a minimum of one year.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will eliminate the Delaware Manager Bond and make all remaining bonds a minimum of one year.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to eliminate the Delaware Manager Bond and make all remaining bonds a minimum of one year.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. Section 1304 et seq. and, in particular, 24 Del.C. Section 1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del.C. Section 1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 Del.C. Section 1304(b)(3) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be February 11, 2015.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 30th day of January 2015.

Lt. Colonel Monroe B. Hudson, Jr., Chairman
William G. Bush, IV, Esquire
Mr. Michael D. Connelly

Timothy P. Mullaney, Sr., Esquire
Mrs. Heather M. Shupe
Mrs. Sandra C. Taylor

Ms. Kelly R. Jansen
Mr. Wayne A. Keller

Mr. Harvey A. Woods, III

January 30, 2015

***Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 436 (18 DE Reg. 436). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1300 Board of Examiners of Private Investigators and Private Security Agencies

OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1448A(l) (11 **Del.C.** §1448A(l))
16 **DE Admin. Code** 101

ORDER

101 Regulations Governing the Relief from Disabilities Board

Pursuant to 29 **Del.C.** §10118 and 11 **Del.C.** §1448A(l), the Department of Safety and Homeland Security issues this Order adopting the below amendments to the Regulations Governing the Relief from Disabilities Board. Specifically, pursuant to 29 **Del.C.** §10113(b)(5), the following regulations of the Board must be changed without prior publication because they are inconsistent with the Board's enabling statute at 11 **Del.C.** §1448A(k).

Summary of the Evidence

The Secretary finds that it is appropriate to amend the Board's regulations because the regulations make repeated reference to 11 **Del.C.** §1448A(j) which, subsequent to a renumbering of that chapter, is no longer the Board's enabling statute. The Board's enabling language is now found in 11 **Del.C.** §1448A(l). In addition, Regulations 1.2 and 1.3 reference "1 **Del.C.** §1448(a)(2)." This is a typographical error. The correct title is 11. Regulations 5.1.5 and 5.2.4 contain cross-reference errors and have been corrected.

Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 16 **DE Admin. Code** 101 Regulations Governing the Relief from Disabilities Board. Therefore, pursuant to 11 **Del.C.** §1448A(l), 16 **DE Admin. Code** 101 Regulations Governing the Relief from Disabilities Board attached hereto as Exhibit A is hereby amended.

Text and Citation

The text of 16 **DE Admin. Code** 101 Regulations Governing the Relief from Disabilities Board amended hereby shall be in the form attached hereto as Exhibit A, and said regulation shall be cited as 16 **DE Admin. Code** 101 Regulations Governing the Relief from Disabilities Board in the *Administrative Code of Regulations* for the Department of Safety and Homeland Security.

Effective Date of Order

IT IS SO ORDERED. The actions hereinabove referred to were taken by the Secretary pursuant to 11 **Del.C.** §1448A(l) on January 5, 2015. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2015.

Lewis D. Schilliro, Secretary
Department of Safety and Homeland Security

101 Regulations Governing the Relief from Disabilities Board

1.0 Purpose.

- 1.1 To establish rules and regulations for the Relief from Disabilities Board, a forum for persons subject to the disabilities of 18 U.S.C. §§922(d)(4) and (g)(4) and/or of 11 **Del.C.** §1448(a)(2) because of an adjudication or commitment to seek relief from a firearms prohibition.
- 1.2 To provide proper and adequate due process to those persons seeking relief from a firearms prohibition arising strictly from a disability under 18 U.S.C. §§ 922(d)(4) and (g)(4) and/or 1[1] **Del.C.** §1448(a)(2).
- 1.3 To allow for the expeditious modification or correction of a person's record who is no longer subject to a firearms prohibition under 18 U.S.C. §§ 922(d)(4) and (g)(4) and/or 1[1] **Del.C.** §1448(a)(2).
- 1.4 To ensure the confidentiality and security of records and data provided pursuant to 11 **Del.C.** §1448A.

2.0 Scope and Applicability

- 2.1 Authority. These regulations are promulgated pursuant to 11 **Del.C.** §1448A([kl]). These regulations shall be known as "Regulations Governing the Relief from Disabilities Program and Use of Data Pursuant to 11 **Del.C.** §1448A".

(Break in Continuity Within Section)

3.0 Definitions.

The following words, phrases, and terms as used in these regulations shall have the meanings stated below:

(Break in Continuity Within Section)

"Board" means the Relief from Disabilities Board hereby created by 11 **Del.C.** §1448A([jk]) and these regulations.

(Break in Continuity of Sections)

5.0 Relief from Disabilities Board

- 5.1 Creation.
 - 5.1.1 The Relief from Disabilities Board is hereby created to carry out the functions and duties pursuant to 11 **Del.C.** §1448A([jk]) and these regulations.
 - 5.1.2 The Board is authorized to consider petitions for relief pursuant to 11 **Del.C.** §1448A([jk]) and these regulations arising from mental health adjudications or commitments which occur in the State of Delaware.

(Break in Continuity Within Section)

- 5.1.5 Service shall be considered complete upon receipt by the Chairperson, or by a person authorized by the Chairperson to accept service, of a Notice of De Novo Judicial Review and all documents as required by section ~~[4.2.2]~~ 5.2.2] of these regulations.

(Break in Continuity Within Section)

- 5.1.9 Pursuant to 11 **Del.C.** §1448A([jk]), the Board shall be comprised of three (3) members, with the Chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security and the remaining two (2) members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, one of whom shall be a Delaware licensed psychiatrist.

- 5.2 Procedure.

(Break in Continuity Within Section)

- 5.2.4 Pursuant to Section[s] ~~[4.1.5]~~ 1.4 and 4.0] of these regulations, a petition for relief shall be heard by the Board in a closed and confidential hearing on the record.

5.2.4.1 The record of the hearing shall be maintained by the Chairperson at DSHS for a period of one year from the date of the hearing for purposes of de novo judicial review.

5.2.5 The Board shall consider evidence as specified in 11 **Del.C.** §§1448A(~~jk~~)(2) and (3). In accordance with 11 **Del.C.** §1448A(~~jk~~)(3), the Board may request that the petitioner undergo a clinical evaluation and risk assessment at the recommendation of the Board psychiatrist and if a majority of the Board agrees. The petitioner shall bear the costs of his or her clinical evaluation and/or risk assessment.

(Break in Continuity Within Section)

6.0 Modification of Petitioner's Record.

6.1 Upon notice that a petition for relief has been granted, the Department of Health and Social Services and the Department of Children, Youth and Their Families shall notify the Attorney General of the United States and shall update, correct, modify or remove from the database it maintains and makes available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition as it relates to 11 **Del.C.** §1448(a)(2) and 18 U.S.C. §§ 922(d)(4) and (g)(4). Pursuant to 11 **Del.C.** §1448A(~~jk~~)(7), DSHS shall be responsible for ensuring compliance with this regulation.

(Break in Continuity Within Section)

7.0 De Novo Judicial Review of the Decision of the Board.

(Break in Continuity Within Section)

7.5 Pursuant to 11 **Del.C.** §1448A(~~jk~~), the Superior Court shall consider the record of the Board hearing on the petition for relief, the decision of the Board, and, at the Court's discretion, any additional evidence it deems necessary to conduct its review.

(Break in Continuity Within Section)

7.7 If the Superior Court grants Petitioner's Notice of De Novo Judicial Review, the Board shall, as soon as practicable, notify DELJIS, DSCYF and DHSS, which shall update, correct, modify or remove any references to the person's disability from any database maintained and made available to NICS to reflect that the petitioner is no longer a person prohibited from owning, possessing and/or transferring firearms as it relates to 11 **Del.C.** §1448(a)(2) and 18 U.S.C. §§ 922(d)(4) and (g)(4). In addition, DHSS shall notify the Attorney General of the United States that the Petitioner is no longer subject to a firearms prohibition pursuant to 11 **Del.C.** §1448(a)(2), 18 U.S.C. §§ 922(d)(4) and (g)(4). Pursuant to 11 **Del.C.** §1448A(~~jk~~)(7), DSHS shall be responsible for ensuring compliance with this regulation.

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

101 Regulations Governing the Relief from Disabilities Board

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 **Del.C.** §2706(a)(1))
24 **DE Admin. Code** 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

On August 1, 2014 and October 1, 2014, the Delaware Board of Professional Land Surveyors published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issues 2 and 4. The proposed rules would allow professional development hours to be obtained by deployed active duty military. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and

written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 20, 2014 at a regularly scheduled meeting of the Board of Professional Land Surveyors to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents as well as the verbal testimony from the public hearing:

- Board Exhibit 1**-Affidavit of publication of the public hearing notice in the *News Journal*; and
- Board Exhibit 2**-Affidavit of publication of the public hearing notice in the *Delaware State News*.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board at the public hearing. The Board received no written comments.
3. Pursuant to 24 **Del.C.** §2706(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §2706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations are adopted and promulgated as set forth in the Delaware *Register of Regulations* on August 1, 2014 and October 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The proposed regulations are attached hereto as Exhibit A.

SO ORDERED this 15th day of January, 2015

DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS

Charles Adams, Jr.
Franco R. Bellafante
James Bielicki, Jr.

Thomas Plummer
Rhonda West

*Please note that no changes were made to the regulation as originally proposed and published in the August 2014 issue of the *Register* at page 126 (18 DE Reg. 126). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2700 Board of Registration for Professional Land Surveyors

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 4001 & 4003

IN THE MATTER OF THE SALE, RESALE, AND
OTHER PROVISIONS OF INTRASTATE
TELECOMMUNICATIONS SERVICES (OPENED
MAY 1, 1984; REOPENED NOVEMBER 17, 1998;
REOPENED JULY 24, 2001; REOPENED
AUGUST 9, 2005; REOPENED AUGUST 19,
2014)

PSC REGULATION DOCKET NO. 10

IN THE MATTER OF THE DEVELOPMENT OF
REGULATIONS FOR THE FACILITATION OF
COMPETITIVE ENTRY INTO THE
TELECOMMUNICATIONS LOCAL EXCHANGE
SERVICE MARKET (OPENED NOVEMBER 21,
1995; REOPENED NOVEMBER 17, 1998;
REOPENED JULY 24, 2001 REOPENED
AUGUST 9, 2005; REOPENED AUGUST 19,
2014)

PSC REGULATION DOCKET NO. 45

IN THE MATTER OF THE PROPOSED
ADOPTION OF REGULATIONS GOVERNING
THE MINIMUM SERVICE REQUIREMENTS FOR
THE PROVISION OF TELEPHONE SERVICE
FOR PUBLIC USE WITHIN THE STATE OF
DELAWARE (OPENED DECEMBER 13, 1988;
REOPENED AUGUST 19, 2014)

PSC REGULATION DOCKET NO. 20

ORDER NO. 8695

AND NOW, this 6th day of January, 2015:

WHEREAS, on August 19, 2014, the Commission reopened PSC Regulation Docket Nos. 10, 45 and 20 to update the telecommunications rules in light of the passage of Delaware House Bill No. 96 which took effect on July 15, 2013;

AND WHEREAS, the proposed revisions to the Regulation Docket Nos. 10 & 45, "Rules For the Provision of Telecommunications Services", include deleting obsolete definitions and delete rules the Commission no longer has authority to enforce, and limits the certification requirements of new carriers, who want to provide telecommunications services in Delaware;

AND WHEREAS, the rules for Regulation Docket No. 20, "Regulation Governing the Minimum Service Requirements For the Provision of Telephone Service for Public Use Within the State of Delaware", are being withdrawn;

AND WHEREAS, notice of these revisions have been published in the *Delaware Register* on October 1, 2014, the *News Journal* on August 26, 2014 and the *Delaware State News* on August 27, 2014;

AND WHEREAS, Verizon Delaware LLC. submitted written comments supporting Staff's proposed revisions and The Surety & Fidelity Association of America filed written comments recommending that the bonding requirement should remain in the rules pertaining to telecommunications service providers seeking Certificates of Public Convenience and Necessity to provide telecommunications services within the State of Delaware for the collection of customer deposits and advances;

AND WHEREAS, Hearing Examiner R. Campbell Hay held a public comment session on November 19, 2014

in the Carvel State Office Building located in Wilmington, Delaware and Verizon Delaware LLC was the only interested party besides Staff that attended and stated on the record that it supported the proposed rules;

AND WHEREAS, Staff filed a report with the Hearing Examiner on December 1, 2014 recommending that the Commission adopt the proposed rules attached as Exhibit A in PSC Order No. 8618 dated August 19, 2014 and that the Commission consider this matter directly and hold an evidentiary hearing on January 6, 2015 to consider this matter;

AND WHEREAS, on December 4, 2014, Hearing Examiner Hay sent a letter to Robert Howatt, Executive Director, recommending that this matter should be considered by the Commission on January 6, 2015. A public notice of the evidentiary hearing was published in the *Delaware State News* and the *News Journal* on December 9, 2014;

AND WHEREAS, an evidentiary hearing on this matter was held on January 6, 2015 before members of the Commission at the Commission's regularly scheduled meeting;

NOW, THEREFORE, THE COMMISSION HAS CONSIDERED THE RECORD OF EVIDENCE AND IT IS ORDERED:

1. That the Commission hereby adopts and approves in its entirety the Rules attached as Exhibit "A".
2. That the Acting Secretary shall transmit this Order, together with the attached Exhibit "A" to the Registrar of Regulations for publication in the February 2015 *Register*.
3. That the effective date of this Order shall be the later of February 11, 2015 or ten days after the publication in the *Register of Regulations*.
4. The Commission reserves the jurisdiction and authority to enter such Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Joann T. Conaway, Vice Chair

Jaymes B. Lester, Commissioner

Jeffrey J. Clark, Commissioner

Harold B. Gray, Commissioner

ATTEST:

Donna Nickerson, Acting Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 296 (18 DE Reg. 296). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

PSC Docket Nos. 10, 20 and 45

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1800 BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION
EXAMINERS

Statutory Authority: 24 Delaware Code, Section 1806(a)(2) (24 **Del.C.** §1806(a)(2))
24 **DE Admin. Code** 1800

ORDER

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

On June 1, 2014, the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 12. The proposed rules would have added a continuing education requirement for licensees. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on July 8, 2014 and continued on September 9, 2014 at regularly scheduled meetings of the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents as well as the verbal testimony from the two public hearings:

- Board Exhibit 1**-Affidavit of publication of the public hearing notice in the *News Journal*; and
- Board Exhibit 2**-Affidavit of publication of the public hearing notice in the *Delaware State News*.
- Board Exhibit 3**-Written public comments on the proposed Regulation.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were many public comments provided to the Board at the two public hearings. There were comments both in favor and opposed to the proposal. Many of the comments in opposition to the proposal were based on cost, inconvenience, and the lack of articulated subject matter. Comments in favor of the proposal highlighted the value of being updated on code developments and the increased professionalism associated with a continuing education requirement.
3. The Board received written comments which were consistent with those received verbally.
4. Pursuant to 24 **Del.C.** §1806(a)(2) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
5. Having received and weighed the numerous public comments, the Board finds no reason to amend the regulations as proposed. The Board is convinced that the best approach is to continue to study and carefully examine the need for any eventual continuing education requirements.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1806(a)(2) and for the reasons set forth above, the Board does hereby ORDER that the regulations are not adopted and promulgated as set forth in the Delaware *Register of Regulations* on June 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The proposed regulations are attached hereto as Exhibit A.

SO ORDERED this 13th day of January, 2015.

DELAWARE BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION

James Anderson
Frank Beebe
John Brady (absent)
Harold Caswell
Carol Guilbert (absent)

John M. Mills
Matthew Reilly
Charles Robbins
Craig Tenaro

***Please Note: As the proposed amendments, published in the June 2014 issue of the *Register* at page 1161 (17 DE Reg. 1161) are not being adopted, they are not being published. A copy of the text from the proposed amendment is available at:**

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, February 19, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MANAGEMENT SERVICES****PUBLIC NOTICE****Birth To Three Early Intervention System**

The Birth to Three Early Intervention System, Division of Management Services, Department of Health and Social Services, is seeking public comment on five sets of policies. The purpose of the policies is to ensure compliance under Part C of the Individuals with Disabilities Education Improvement Act of 2004. On January 1, 2015, the Birth to Three Early Intervention System plans to publish the proposed policies specified below, and hold them out for public comment per Delaware law.

The Birth to Three Early Intervention System will hold public hearings to discuss the following policies:

Title
General Education Provisions Act (GEPA)
Public Participation
Eligibility Policy and Definition of Eligible Infants and Toddlers
Statewide System of Early Intervention Services
Early Childhood Transition

Public hearings will be held:
February 26, 2015 at 6:00 pm

Room 198, Main Administration Building on the Herman Holloway
Campus, 1901 N. Dupont Highway Street,
New Castle, Delaware 19720

March 2, 2015 at 10:00 am

Conference Room, Second Floor, 18 North Walnut Street,
Milford, Delaware 19963

Copies of the proposed policies are available for review in the January 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling Inita Joyner at (302) 255-9134.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Susan Campbell by Wednesday, March 25, 2015 at:

Susan Campbell
Birth to Three Early Intervention System
1901 N Dupont Hwy
New Castle, DE 19720
Email: susan.campbell@state.de.us
Fax: 302-255-4407

Please Note: Links to the five proposed policies are provided below:

DE Part C Public Participation Policies:

<http://regulations.delaware.gov/register/february2015/calendar/policy1.pdf>

DE Statewide System of Early Intervention Services:

<http://regulations.delaware.gov/register/february2015/calendar/policy2.pdf>

DE Transition Operations Agreement:

<http://regulations.delaware.gov/register/february2015/calendar/policy3.pdf>

Eligibility Policy 2014:

<http://regulations.delaware.gov/register/february2015/calendar/policy4.pdf>

General Education Provisions Act for FFY2014:

<http://regulations.delaware.gov/register/february2015/calendar/policy5.pdf>

**DIVISION OF PUBLIC HEALTH
OFFICE OF ANIMAL WELFARE
PUBLIC NOTICE**

Regulations For Animals Held in Shelter

On February 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare, plans to publish proposed regulations for Animals Held in Shelter and hold them out for public comment per Delaware law.

The regulation has been established to promote and ensure the protection and care of companion animals in animal shelters and to increase opportunities for their placement and adoption. They also establish requirements for humane euthanasia of animals held in animal shelters.

These regulations apply to animal shelters only, and define:

- minimum standards of care and treatment;
- requirements for adoption and recovery;
- acceptable standards, methods and procedures of euthanasia;
- training and certification requirements for certified euthanasia technicians;
- record keeping obligations; and
- procedures for inspections and complaints.

The Office of Animal Welfare Section, under the Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss proposed regulations for animals held in shelter.

The public hearing will be held on February 23, 2015 at 10:00 a.m. in the Farmington/Felton Room, DeIDOT, 800 Bay Road, Dover, DE 19903.

Copies of the proposed regulation are available for review in the February 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Animal Welfare Section at 302-255-4626.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation as a supplement to or in lieu of oral testimony should submit such comments by Wednesday, March 10, 2015 to:

Christina Motoyoshi, Deputy Director

Office of Animal Welfare

Delaware Division of Public Health

Carvel Building

1901 N. Dupont Hwy

New Castle, DE 19720

Email: christina.motoyoshi@state.de.us

Fax: (302) 255-4621

**DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE**

4408 Facilities that Perform Invasive Medical Procedures

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4408 Facilities That Perform Invasive Medical Procedures.

Proposed amendments change the definition of "Anesthesia" in the 4408 Facilities That Perform Invasive Medical Procedures.

On February 1, 2015, the Department plans to publish proposed amendments to the 4408 Facilities that Perform Invasive Medical Procedures and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the February 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Nathan MacCormack by 4:30 p.m. on Tuesday, March 3, 2015 at:

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

PUBLIC NOTICE

3502 Striped Bass Spawning Season and Area Restrictions

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit

3504 Striped Bass Possession Size Limit; Exceptions

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements

3506 Striped Bass; Total Length Measurement

The purpose of this action is to adopt provisions consistent with Addendum IV to Amendment 6 to the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for Atlantic Striped Bass. Addendum IV adopted new biological reference points based on the results of the 2013 benchmark stock assessment. The assessment indicated that the 2012 spawning stock biomass (SSB) was well below the target SSB and was approaching the overfished threshold. Projections show that SSB is likely to fall below the threshold in coming years. In response, Addendum IV requires states to reduce their coastal striped bass harvest by 25%.

Delaware will accomplish the specified 25% commercial fishery reduction through a direct administrative adjustment to the annual commercial quota. The 25% recreational fishery reduction will be achieved through a specific combination of lengths, seasons and possession limits approved by the Commission.

This action also seeks to clarify the commercial tagging and reporting requirements and proposes minor editorial changes, not intended to change meaning.

The hearing record on the proposed changes to 7 **DE Admin. Code** §§3502, 3503, 3504, 3505, 3506 pertaining to striped bass will be open February 1, 2015. 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 February 23, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

PUBLIC NOTICE

1301 Regulations Governing Solid Waste

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the solid waste transporter exemptions and to remove the

obsolete dry waste transporter section as dry waste transporters are no longer treated any differently than solid waste transporters. SHWMS also proposes to replace "approval" with "permit" in the composting and recycling section to increase enforceability and oversight available to the Department and to provide greater consistency and fairness. SHWMS also proposes to delete the provision allowing facilities solely accepting source separated materials to not be considered a transfer station as there is no legitimate reason to treat facilities accepting source separated vs. non-source separated materials differently. SHWMS also proposes to modify the provision addressing approval or denial of a permit to add additional guidance as to when a permit can be modified, denied, terminated, or revoked for greater transparency and fair application. To ease the regulatory burden for small businesses generating only a small amount of infectious waste, SHWMS proposes a modification to the infectious waste regulations allowing sharps to be transported without a transporter permit if certain conditions are met. Finally, SHWMS also proposes to add a definition for "non-commercial capacity" and to correct a mistake in the name of the Section.

The public hearing on the proposed amendments to DRGSW will be held on Thursday, February 26, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**PUBLIC NOTICE****1301 Regulations Governing Solid Waste**

The DNREC public hearing concerning proposed regulation amendments to DRGSW ("Scrap tires") previously scheduled to be held on January 26, 2015, was postponed due to inclement weather. Said hearing will now be held on Monday, February 9, 2015 at 6:00 p.m. at the DNREC Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**PUBLIC NOTICE****1302 Regulations Governing Hazardous Waste**

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to clarify the requirement of Small Quantity Generators of hazardous waste to document employee hazardous waste training. SHWMS also proposes to clarify the requirement of documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities.

To facilitate the electronic transmission of the uniform manifest form and make the use of the uniform manifest much more cost-effective and convenient for users, SHWMS proposes to adopt the federal e-manifest rule.

The public hearing on the proposed amendments to DRGHW will be held on Thursday, February 26, 2015 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****PUBLIC NOTICE****1725 Polysomnography Advisory Council**

The Delaware Polysomnography Council of the Board of Medical Licensure and Discipline, pursuant to 24 Del.C. §1799W(c), proposes to amend its rules and regulations. The proposed regulation changes clarify that the practice of polysomnography is always deemed to occur where the patient is located, regardless of whether the testing is in or out of center. In other words, if a polysomnographer is analyzing and scoring data collected during sleep monitoring which occurs in Delaware, the polysomnographer must have a Delaware license.

The Council will hold a public hearing on the proposed regulation change on March 2, 2015 at 1:00 p.m., Second Floor Conference Room C, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Administrative Specialist of the Delaware Board of Medical Licensure and

Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until March 17, 2015 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****2700 Board of Registration for Professional Land Surveyors**

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to automatically approve, for continuing education credit, courses sponsored or offered by other states' surveying societies and to clarify the statutory definition of "responsible charge.". The Board will hold a public hearing on the proposed rule changes on March 19, 2015 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904.

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****5200 Board of Examiners of Nursing Home Administrators**

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board has rescheduled a public hearing on the proposed rule change to March 10, 2015 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

DEPARTMENT OF TRANSPORTATION**DIVISION OF MOTOR VEHICLES****PUBLIC NOTICE****2288 Special Group or Organization Registration Plates for Persons With Disabilities**

The Delaware Department of Transportation Division of Motor Vehicles (DMV) is seeking public comment regarding the provision of Special License Plates for Persons with Disabilities.

Under Subchapter 2 of Chapter 21 of Title 21 of the Delaware Code, the DMV is authorized to issue special license plates to organizations and groups. The DMV is also authorized under Section 2134 of the same Title to issue special license plates for persons with disabilities which limit or impair the ability to walk. These plates feature the international person with disability wheelchair symbol. Some of these persons with disabilities may also wish to display their affiliation or support for an organization or group, while retaining their rights to consideration as a person with disabilities.

The draft regulations would authorize the DMV to design and issue special registration plates for groups and organizations that also include the international person with disability wheelchair symbol.

The Department will take written comments on the proposed Regulation for this alternative registration plate from February 1, 2015 through March 4, 2015. The proposed Regulation appears below.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Scott Clapper

Chief of Vehicle Services

Division of Motor Vehicles
Delaware Department of Transportation
303 Transportation Circle
Dover, DE 19904
(302) 744-2533 (telephone)
(302)739-4750 (fax)
Scott.Clapper@state.de.us
