
Delaware Register of Regulations

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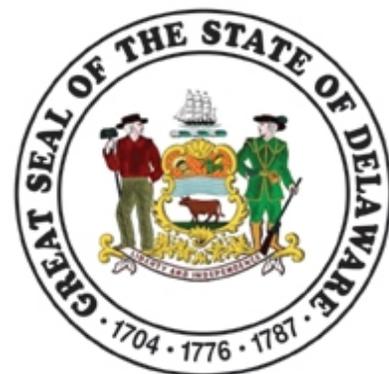
IN THIS ISSUE:

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, 2019.

Cover Photo by Dr. Brian Kutner

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

19 **DE Reg.** 1100 (06/01/16)

Refers to Volume 19, page 1100 of the *Delaware Register* issued on June 1, 2016.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 17	4:30 p.m.

DIVISION OF RESEARCH STAFF

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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

ERRATA

1147 CO₂ Budget Trading Program

***Please Note:** The final regulation for 1147 CO₂ Budget Trading Program as published in the December 1, 2018 issue of the Delaware *Register of Regulations* (22 DE Reg. 511) contained a typographical error for the 2018 adjusted budget value shown in Table 7. The correct value is 2,761,772 and it was inadvertently submitted as 2,761,771. The subsection is reprinted below with the error corrected. The effective date for the final order and regulation appearing in the December *Register* remains the same.

1147 CO₂ Budget Trading Program

(Break in Continuity of Sections)

5.0 CO₂ Allowance Allocations

(Break in Continuity Within Section)

5.3 CO₂ allowance allocations.

(Break in Continuity Within Section)

5.3.9 CO₂ Budget Trading Program adjusted budgets for 2018 through 2020. On April 15, 2014 the Department shall establish the State of Delaware CO₂ Budget Trading Program adjusted budgets for the 2018 through 2020 allocation years in the following table:

2018	2019	2020
2,761,772	2,611,556	2,521,222

***Please Note:** The full text of the final regulation is not being republished. Please see 22 DE Reg. 511 for the final amendments to 1147 CO₂ Budget Trading Program. A copy of the regulation is available at:

1147 CO₂ Budget Trading Program

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

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

SECRETARY'S ORDER NO.: 2018-A-0072
Pursuant to 29 Del.C. §10119

1140 Delaware Low Emission Vehicle Program**AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control adopts the attached emergency amendments to the *Delaware Low Emission Vehicle (LEV) Program*, 7 Delaware Administrative Code §1140.

These regulation amendments are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to "[m]ake and enforce regulations relating to the protection, care and use of the areas it administers," 7 **Del.C.** 4701(a)(4), and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State." 29 **Del.C.** §8003(7).

It should be noted that emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations.

REASON FOR THE EMERGENCY ORDER

The Regulation referenced above relating to the *Delaware LEV Program* was affected by the recent

amendments made by the State of California to its State Code of Regulations, specifically, Regulation Nos. 1961 and 1962. These amendments aimed to clarify that the “deemed to comply” provision embedded in the *California LEV III Program* holds true with the federal standards adopted in 2012 for Greenhouse Gas (GHG) emissions from light-duty vehicles for the model years 2021-2025. In the absence of interim regulations, Delawareans’ health and environment would be negatively affected by the *Safer Affordable Fuel-Efficient* rule jointly proposed by both the Environmental Protection Agency and the National Highway Traffic Safety Administration. The interim regulations are an effort to maintain Delaware’s current GHG standards for light-duty vehicles included in model years 2021 to 2025.

According to Section 209 of the Clean Air Act, a two-year lead-time is required for Original Equipment Manufacturers (OEMs) to implement any new regulation enforced for a given model year. Even though the “deemed to comply” clarification is a continuation of the currently adopted standards, the Department wants to ensure that OEMs are aware of the amendments with the proper lead-time. Pursuant to the Clean Air Act, the Department needs to adopt these amendments as of California’s effective date, December 12, 2018, in order to be able to enforce the GHG emission standards for vehicle model year 2021, which commences on January 1, 2019.

The Delaware Administrative Procedures Act requires the Department to propose the amendments and submit for initial publication in the Monthly *Register of Regulations*, then hold a public hearing no less than 20 days after publication, after which the final regulation *may* be published in the *Register*. Given that California’s effective date for the amendments is December 12, 2018, the time constraints of seeking the adoption (final publication) of this amendment by January 1, 2019 prohibit the Department from following the standard rulemaking process.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval, pursuant to the Administrative Procedures Act, and 29 **Del.C.** §10115.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Office of the Secretary, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, this 27th day of December, 2018, that the above referenced amendments to 7 Delaware Administrative Code §1140, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119, and are supported by the evidence contained herein.

Shawn M. Garvin
Secretary

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

1140 Delaware Low Emission Vehicle Program

EMERGENCY REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 29 Delaware Code, Section 10119 and 7 Delaware Code, Section 903(h)
(29 **Del.C.** §10119 & 7 **Del.C.** §903(h))
7 **DE Admin. Code** 3505

SECRETARY'S ORDER NO.: 2019-F-0003
Pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h)

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

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 7 **DE Admin. Code** 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements without prior notice or public hearing to assure that Delaware's commercial striped bass fishery resource avoids unnecessary hardship, while preventing overfishing. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource or habitat involving finfish.

REASON FOR THE EMERGENCY ORDER

The Department submitted a final regulatory amendment for striped bass, which, among other things, adjusts a registration deadline to participate in the commercial hook and line striped bass fishery. However, the final amendments will not become effective until February 11th, after the February 1 registration deadline. The February 1 registration deadline is necessary to allow Division personnel to calculate individual transferrable quota allocations (pounds of striped bass that may be landed or lawfully transferred by an individual) and distribute the appropriate number of striped bass tags to commercial food fishermen. This action will ensure Delaware's commercial striped bass gill net and hook and line fisheries have fair access to Delaware's annual commercial striped bass quota allocation, while preventing overharvest in compliance with the Interstate Fishery Management Plan for Striped Bass. Failure to implement this measure in a timely manner will create a hardship on the commercial fishing resources by preventing the fair allocation of Delaware's quota and negatively affect the welfare of the fisheries.

The emergency provisions of 29 **Del.C.** §10119, as well as 7 **Del.C.** §903(h), which authorizes the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, allow for the adoption of the Emergency Regulation.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). Formal adoption of this amendment through the Administrative Procedures Act, pursuant to 29 **Del.C.** §10115, has already been initiated and will be effective on February 11, 2019.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, this 8th day of January, 2019 that the above referenced amendment to 7 **DE Admin.**

Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) and supported by the evidence contained herein.

Shawn M. Garvin
Secretary

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

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

(Break in Continuity of Sections)

- 2.0 It 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. Except as otherwise provided, 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~~ February 1.

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

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

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Sections 1102, 1103 and 1106 (3 **Del.C.** §§1102, 1103 & 1106)

PUBLIC NOTICE**804 Rules and Regulations for Spotted Lanternfly****Summary**

The Department of Agriculture proposes to amend its Regulations adopted in accordance with Title 3, Chapter 1 of the Delaware Code to add Rules and Regulations for Spotted Lanternfly at 3 **DE Admin. Code** 804. The purpose of the amended regulations is to establish for the plant pest, spotted lanternfly, appropriate quarantine restrictions, permitting process, and discovery and suppression measures within the State of Delaware. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code, Chapter 11 Sections 1102, 1103 and 1106. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the February 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 4, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after March 4, 2019, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

*Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 650RFA 02-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[804 Rules and Regulations for Spotted Lanternfly](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(e) and 7903 (16 Del.C. §§122(3)(e) and 7903)

16 DE Admin. Code 4455

PUBLIC NOTICE

[4455 Delaware Regulations Governing a Detailed Plumbing Code](#)

Pursuant to 16 Del.C. §122(3)(e) and 16 Del.C. §7903, Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the Plumbing Code. On February 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Plumbing Code. The revisions include the adoption of the 2018 International Plumbing Code with amendments.

Copies of the proposed regulations are available for review in the February 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, March 8, 2019, at:

Alanna Mozeik

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: Alanna.Mozeik@state.de.us

Phone: (302) 744-4951

*Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 651RFA 02-01-19.pdf>

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[4455 Delaware Regulations Governing a Detailed Plumbing Code](#)

PROPOSED REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A (16 Del.C. Ch. 49A)
16 DE Admin. Code 4470

PUBLIC NOTICE

4470 State of Delaware Medical Marijuana Code

Pursuant to 16 Del.C. Ch. 49A, Office of Medical Marijuana (OMM), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Medical Marijuana Code. On February 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the State of Delaware Medical Marijuana Code. The revisions include the establishment of requirements for Safety Compliance facilities, provisions for the production of edible medical marijuana products and limitations therein, compliance and enforcement procedures, random sampling procedures, and the addition of specific definitions and technical corrections.

Copies of the proposed regulations are available for review in the February 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, March 8, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@state.de.us
Phone: (302) 744-4951

*Please Note:

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

[http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 652RFA 02-01-19.pdf](http://regulations.delaware.gov/register/february2019/proposed/22%20DE%20Reg%20652RFA%2002-01-19.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

[4470 State of Delaware Medical Marijuana Code](#)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 2000

PUBLIC NOTICE

DSS Application Process

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Division of Social Services Manual regarding the DSS Application Process, specifically, to update formatting and clarify the application process for DSS benefit programs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2019. Please identify in the subject line: DSS Application Process.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding the DSS Application Process, specifically, to update formatting and clarify the application process for DSS benefit programs.

Statutory Authority

- 7 CFR 273.2
- 45 CFR 206.10

Background

The policies have been amended to explain the application process for DSS benefit programs in a text that is more concise and understandable. Also, language that referred to the prior DSS eligibility system was removed and references to “food stamps” were updated to “food benefits”.

Summary of Proposal

Purpose

The current policies have been amended to update formatting and to clarify the application process for DSS benefit programs.

Summary of Proposed Changes

Effective for services provided on and after April 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend sections 2000, 2000.1, 2000.2, 2000.3, and 2000.4 of the Division of Social Service Manual specifically, to update formatting and clarify the application process for DSS benefit programs.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 4, 2019.

Fiscal Impact

These policies are currently in place and there are no new financial responsibilities.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 652aRFA 02-01-19.pdf](http://regulations.delaware.gov/register/february2019/proposed/22%20DE%20Reg%20652aRFA%2002-01-19.pdf)

AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services
 Division of Social Services
 Policy and Program Development Unit

2000 Applications Applying for Assistance

~~An application is a request for assistance made by an individual, agency, institution, guardian, or other individual acting for the applicant with his knowledge and consent. An application must be formalized in writing and applicants must be interviewed by an application worker before an eligibility decision can be made.~~

~~Any person interested in applying for benefits will receive a DSS application form. These forms are available at all DSS locations. A daily log to record the names of individuals who request application forms will be maintained at each DSS location. Applications for benefits cannot be processed until applicants submit a completed application and complete the filing procedures as specified in DSSM 2001.1.~~

~~The primary responsibility for establishing eligibility resides with the client, however, the Division will take necessary action to assist the applicant to establish his eligibility for assistance.~~

~~Each applicant will be informed of the programs for which he may be eligible, of his right to a decision on eligibility within a reasonable period of time, and will be informed of his right to appeal any Division decision on eligibility.~~

~~Each applicant will have his need for assistance determined in accordance with Division standards. The income of an applicant will be considered in relation to his needs during the calendar month in which the individual applies for assistance. Only such resources as an applicant has currently available will be used in determining eligibility.~~

~~Policies specific to Medical Assistance applications and processing timelines are found in DSSM policy section 44100.~~

7 CFR 273.2, 45 CFR 206.10, 45 CFR 98.1 (b)(1)

An application for assistance allows DSS to determine an applicant's eligibility for benefits.

- 1. Any individual interested in applying for benefits may receive, complete, and submit a DSS application for assistance.**
 - A. Applications are available at all DSS locations and online.
 - B. The applicant or an agency, institution, guardian, or other person acting for the applicant (with the applicant's knowledge and consent) may submit an application in writing or electronically.
 - C. DSS will:
 - i. Maintain a daily log at each location to record the names of individuals who request an application.
 - ii. Inform applicants of their:
 - Potential eligibility for assistance.
 - Right to an eligibility decision within a reasonable period of time, and
 - Right to appeal any DSS eligibility decision.
- 2. The applicant has primary responsibility for providing verification of eligibility; however, DSS will assist the applicant when necessary.**

3. DSS will compare the applicant's income and need for the calendar month in which assistance is requested. DSS will use the applicant's available resources at the time of application in determining eligibility.
4. DSS will process applications in accordance with Division standards when a completed and signed application is submitted to DSS and the applicant completes an interview with a DSS case worker.

Note: Policies specific to Medical Assistance applications and processing timelines are found in DSSM 14100.
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AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

2000.1 Filing Submitting Applications

To receive assistance benefits, applicants must file an application by submitting a completed application form (Form 100) to DSS. Application forms are available and can be filed at all DSS locations each business day from 8:00 a.m. to 4:30 p.m. Applicants have the right to file an application the same day they contact DSS to request assistance and will be referred to the correct DSS location to apply. If an applicant is hospitalized or is ill, provisions for completing the application process at the hospital or in the client's home will be made by the local intake office.

Upon request for assistance, applicants will:

- Complete a Request for Assistance;
- Complete a DSS application form (Form 100). The completed form is date stamped and must be processed as specified in DSSM 2000.5. An applicant, who will not be interviewed on the same day he/she applies, may file an application by completing page one of the Form 100. These applicants will be instructed to complete the remainder of the form and bring it to the application interview. (online or hard copy Form 100)

Applicants are screened through DCIS for prior case activity and MCI numbers will be assigned as needed.

Applicants must submit a completed and signed application or Request for Assistance to DSS to begin the process for determining eligibility for benefits.

1. Applicants applying for benefits:

- A. May obtain and submit an application at a DSS location or online.
- B. May submit an application on the same day as they make initial contact with DSS.
- C. May submit a Request for Assistance by completing and signing page one of the application.
- D. May be assisted by an individual (age 18 or older) of the applicant's choice in the application process.
- E. Will be assisted by DSS in completing the application process if hospitalized or ill.
- F. Will be offered a copy of the DHSS Program Information and Rights and Responsibilities.

2. DSS date stamps, screens, and processes submitted applications according to Division

PROPOSED REGULATIONS

standards.

- A. The screening process includes a search for prior DSS case activity, assignment of a Master Client Index (MCI) number, and an eligibility check for expedited food benefit services.
- B. DSS will interview the applicant (in person or via telephone) the same day the completed application is submitted. If the interview cannot be conducted on the same day, DSS will schedule an interview with the applicant for a later date.
- C. DSS will instruct applicants who submit a Request for Assistance to complete the remainder of the application and bring it to their scheduled intake interviews.

Related policies:

DSSM 2000.5

AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

2000.2 Conducting Interviews

All applicants for assistance benefits must be interviewed by an application worker before eligibility for benefits can be determined. If a person cannot speak English, state on the signature page of the application whether translation services were offered or a family member or other person was present to translate. Interviews will be arranged as promptly as possible to ensure that applications are processed as specified in DSSM 2000.5.

The unit supervisor in each DSS location is responsible for determining the number of applicants that can be interviewed each day. If an applicant will not be interviewed on the same day that he/she files an application, the supervisor or his designee will screen the application for expedited service eligibility. All applicants who appear to qualify for expedited Food Stamp service must be scheduled for an application interview early enough to assure that benefits can be issued within expedited processing deadlines. (See DSSM 9041).

DSS must interview individuals applying for assistance before eligibility for benefits can be determined.

1. **DSS will conduct applicant interviews promptly to ensure that applications are processed according to Division standards.**
 - A. DSS will conduct applicant interviews either in person or by telephone (as indicated by the program).
 - B. DSS will offer translation services to applicants who cannot speak English. The person who serves as the translator:
 - i. Must be age 18 or older.

- ii. Must sign the signature page of the application, and
- iii. Is preferably a translator available through the Division's contracted language service.

- C. DSS will schedule an interview and will give Form 105 "Appointment and Request for Verification" to all applicants who are unable to be interviewed on the same day that they submit an application.

- D. DSS must schedule timely interviews with applicants who qualify for expedited food benefits to ensure that benefits can be issued within the expedited processing deadlines.

- E. DSS offices will maintain a daily log of all applications received, interviews scheduled, and cases processed.

Related policies:

DSSM 2000.5, 9041, 14100.3

AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services

Division of Social Services

Policy and Program Development Unit

2000.3 ~~Record of~~ Recording Applications

~~Local offices are required to record the date that each application for benefits is filed. The application is recorded by data entering application information into the DCIS system. Applications are pending in the DCIS system.~~

Each DSS office must maintain a daily log to record when applications are received.

1. DSS offices will:

- Date stamp each application.
- Record the date and location that each application for assistance is received, and
- Process each application in the DSS eligibility system.

AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services

Division of Social Services

Policy and Program Development Unit

2000.4 ~~Disposition of Applications and Notice Requirements~~ Determining Application Status

~~All applications for benefits filed with DSS must be disposed of, and notice of the disposition must be sent promptly to the applicant.~~

~~Applications are disposed of as follows:~~

- ~~1. Accepted – benefits can begin because the applicant is found eligible for assistance; or~~

PROPOSED REGULATIONS

2. ~~Withdrawn~~—the applicant chooses to terminate the application process; or
 3. ~~Denied~~—benefits will not begin because the applicant does not meet eligibility requirements.

~~Note: For cash assistance, benefits begin from the date all required verification is received. For Food Stamps, benefits begin from the application filing date, after all required verification is received.~~

DSS will process all filed applications for benefits and will promptly send a notice of the determination to the applicant.

1. DSS determines applications as follows:

- Approved – The applicant is found eligible for assistance and benefits can begin.
- Withdrawn – The applicant chose to terminate the application process, or
- Denied – The applicant does not meet eligibility requirements and benefits will not begin.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
 16 DE Admin. Code 11003

PUBLIC NOTICE

Income Reporting Requirements for Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to update the income reporting requirements for the Purchase of Care subsidy program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2019. Please identify in the subject line: Income Reporting Requirements for Child Care.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding Child Care, specifically, to update the income reporting requirements for the Purchase of Care subsidy program.

Statutory Authority

- 45 CFR 98.21 (e)(1)(i,ii)

Background

In 2014, the Child Care Development Block Grant Act was reauthorized with the focus on safety and continuity of care for children receiving child care subsidy funds. Households receiving subsidy funds are now only required to report limited changes in their circumstances. States have the discretion to establish policies requiring households to report changes addressing the limited reporting requirements. Households will be required to report income that exceeds 85% of the state median income (SMI) level for their household size. Households reporting changes resulting in a non-temporary change in their need for care will receive 90 consecutive days of child care

before their child care is closed.

This policy establishes the new requirement that parents and caretakers are to report certain changes that may affect their eligibility. The revised policy addresses the changes to be reported, the timeframe in which parents and caretakers are to report the changes, and the 90 consecutive days of child care they will receive prior to the case closing.

Summary of Proposed Changes

Effective for services provided on and after April 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 11003.10 of the Division of Social Service Manual, specifically, to update the income reporting requirements for the Purchase of Care subsidy program.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 4, 2019.

Fiscal Impact

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program. The policy amendment does not require any additional staff, system changes, agency costs, etc.

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 658RFA 02-01-19.pdf>

AMENDED

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

11003.10 Reporting Changes in Need ~~or~~ and Income for Child Care

~~Parents/caretakers are required to report changes that affect either their need for child care or their income. Parents/caretakers are to report these changes to their Case Manager within 10 days. The types of changes that parents/caretakers are to report are:~~

- ~~A. loss of job;~~
- ~~B. new employment;~~
- ~~C. any increase or decrease in wages or income resulting in a change to income of \$75 or more per month;~~
- ~~D. any change in education/training or other status which would impact the parents/ caretakers need for care.~~

45 CFR 98.21 (e)(1)(i,ii)

Parents and caretakers are required to report a change in household income and need for child care to DSS within 10 days of the change.

PROPOSED REGULATIONS

1. A family must only report a change in monthly income that exceeds 85% of the state median income (SMI) guideline for the household size.
2. A family must report a non-temporary change that occurs in their household circumstance, including:
 - The loss of employment;
 - The completion of an education or training program; and
 - A permanent change in state residency.
3. When a family reports a non-temporary change that ends their need for child care, DSS will authorize 90 consecutive days of child care before the family's child care case is closed.
4. DSS must verify a change reported by a third party agency or person with the family.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60, Section 6001 (7 Del.C. Ch. 60, §6001)
7 DE Admin. Code 1140

REGISTER NOTICE SAN # 2019-01

1140 Delaware Low Emission Vehicle Program

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1140 Delaware Low Emission Vehicle Program

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

The Department proposes to amend 7 DE Admin. Code 1140, following California's December 12, 2018 amendments to the California Code of Regulations 1961 and 1962 pursuant to the Clean Air Act requirements stipulated in section 177 for states to adopt identical regulations.

These amendments clarify the "deemed to comply" provision to continue to hold true for the federal GHG vehicle standards adopted in 2012 for light-duty vehicles for the model years 2021-2025. If the federal GHG standards are weakened by the Environmental Protection Agency and the National Highway Traffic Safety Administration's proposed SAFE vehicles rule, the automobile manufacturers will be required to continue to meet the 2012 federal GHG vehicle standards in order to be deemed in compliance with Delaware's regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Chapter 60 Environmental Control. Section 6001.

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to the 7 DE Admin. Code 1140 Delaware Low Emission

Vehicle Program will open February 1, 2019. 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 amendments will be held on February 21, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, March 8, 2019.

7. PREPARED BY:

Ajo Rabemiarisoa

Email: Ajo.Rabemiarisoa@state.de.us

Phone: (302) 324-2083

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 660RFA 02-01-19.pdf](http://regulations.delaware.gov/register/february2019/proposed/22%20DE%20Reg%20660RFA%2002-01-19.pdf)

1140 Delaware Low Emission Vehicle Program (Break in Continuity of Sections)

3/11/2018

3.0 Definitions

(Break in Continuity of Sections)

3/11/2018

5.0 New Vehicle Emission Requirements

(Break in Continuity of Sections)

3/11/2018

7.0 Warranty

(Break in Continuity Within Section)

7.2 Each manufacturer of a vehicle subject to 2.1 of this regulation shall submit to the Department, upon request, a an Emission Warranty Information report as defined at Title 13, CCR, Section 2144.

(Break in Continuity of Sections)

3/11/2018

10.0 Incorporation by Reference

(Break in Continuity Within Section)

10.5 The following documents and sources of Title 13 of the California Code of Regulations (CCR) are incorporated by reference within this regulation:

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

Title 13, CCR	Title	Section Amended Date
	Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions	
Section 1900	Definitions	As effective July 25, 2016

PROPOSED REGULATIONS

Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	<i>As effective July 25, 2016</i>
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	<i>As effective December 31, 2012</i>
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>As effective December 31, 2012</i>
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	<i>As effective August 7, 2012</i>
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<i>As effective October 8, 2015 <u>December 12, 2018</u></i>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<i>As effective December 31, 2012 <u>December 12, 2018</u></i>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<i>As effective October 8, 2015</i>
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>As effective November 27, 1999</i>
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>As effective July 25, 2016</i>
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	<i>As effective July 25, 2016</i>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<i>As effective October 8, 2015</i>
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<i>As effective October 8, 2015</i>
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	<i>As effective November 9, 2007</i>
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	<i>As effective December 5, 2014</i>
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>As effective December 5, 2014</i>

PROPOSED REGULATIONS

Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>As effective August 7, 2012</i>
Section 2039	Emission Control System Warranty Statement	<i>As effective December 26, 1990</i>
Section 2040	Vehicle Owner Obligations	<i>As effective December 26, 1990</i>
Section 2041	Mediation; Finding of Warrantable Condition	<i>As effective December 26, 1990</i>
Section 2046	Defective Catalyst	<i>As effective February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>As effective August 7, 2012</i>
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	<i>As effective November 27, 1999</i>
Section 2109	New Vehicle Recall Provisions	<i>As effective December 30, 1983</i>
Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year	<i>As effective November 27, 1999</i>
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	<i>As effective December 8, 2010</i>
Section 2112	Definitions	<i>As effective December 5, 2014</i>
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	<i>As effective January 26, 1995</i>
Section 2114	Voluntary and Influenced Recall Plans	<i>As effective November 27, 1999</i>
Section 2115	Eligibility for Repair	<i>As effective January 26, 1995</i>
Section 2127	Notification of Owners	<i>As effective January 26, 1995</i>
Section 2128	Repair Label	<i>As effective January 26, 1995</i>
Section 2129	Proof of Correction Certificate	<i>As effective January 26, 1995</i>
Section 2130	Capture Rates and Alternative Measures	<i>As effective November 27, 1999</i>
Section 2131	Preliminary Tests	<i>As effective January 26, 1995</i>
Section 2132	Communication with Repair Personnel	<i>As effective January 26, 1995</i>
Section 2133	Record keeping and Reporting Requirements	<i>As effective January 26, 1995</i>
Section 2135	Extension of Time	<i>As effective January 26, 1995</i>
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	<i>As effective December 8, 2010</i>
Section 2137	Vehicle and Engine Selection	<i>As effective December 28, 2000</i>
Section 2138	Restorative Maintenance	<i>As effective November 27, 1999</i>
Section 2139	Testing	<i>As effective December 5, 2014</i>

PROPOSED REGULATIONS

Section 2140	Notification of In-Use Results	<i>As effective December 5, 2014</i>
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	<i>As effective December 8, 2010</i>
Section 2142	Alternative Procedures	<i>As effective February 23, 1990</i>
Section 2143	Failure Levels Triggering Recall	<i>As effective November 27, 1999</i>
Section 2144	Emission Warranty Information Report	<i>As effective November 27, 1999</i>
Section 2145	Field Information Report	<i>As effective August 7, 2012</i>
Section 2146	Emissions Information Report	<i>As effective November 27, 1999</i>
Section 2147	Demonstration of Compliance with Emission Standards	<i>As effective December 5, 2014</i>
Section 2148	Evaluation of Need for Recall	<i>As effective November 27, 1999</i>
Section 2149	Notification of Subsequent Action	<i>As effective February 23, 1990</i>
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	<i>As effective December 30, 1983</i>
Section 2151	New Motor Vehicle Dealer Surveillance	<i>As effective December 30, 1983</i>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective August 8, 2012</i>

3/11/2018

11.0 Document Availability

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

1140 Delaware Low Emission Vehicle Program

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

24 DE Admin. Code 2400

PUBLIC NOTICE

2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del.C. Ch. 27 proposes to amend the following adopted rules in 24 DE Admin. Code 2400 Board of Examiners of Constables: Rule 5.0 Firearms, and Rule 1.0 Licensing. If you wish to view the complete Rules, contact Ms. Ashley Hughes at 302-672-5337. Any persons wishing to present views may submit them in writing, by March 4, 2019, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903.

*Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

<http://regulations.delaware.gov/register/february2019/proposed/22 DE Reg 664RFA 02-01-19.pdf>

2400 Board of Examiners of Constables

1.0 Licensing

(Break in Continuity Within Section)

- 1.7 All prior law enforcement applicants must take an approved Constable Orientation Overview session and test, approved and administered by a Board approved facility. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy and test.

(Break in Continuity of Sections)

5.0 Firearms Policy

(Break in Continuity Within Section)

- 5.2 No individual licensed under 10 Del.C. Ch. 27 shall carry a firearm unless that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course shall be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year. Should the initial qualification course occur after September 30th and before December 31st, a waiver of the 2nd day qualifier may be obtained through a petition to the Director.

(Break in Continuity Within Section)

- 5.10 All firearms licenses are valid for a period of one year, subject to proof of compliance of Section 5.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, ~~by January 15th of each year for the previous calendar year~~ within 30 days of the date of the qualification shoot.
- 5.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as a constable, other than the one on file with the Professional Licensing Section, prior to making any change, he/she must ~~have first seek~~ first seek approval from the Director of Professional Licensing ~~after by~~ submitting a request in writing of the make, model, and caliber of the firearm that the individual or organization is seeking to change to. If approved, the individual must submit certification of a day and low light qualification with the new weapon. ~~Upon approval, Once completed,~~ the individual can begin to carry the new weapon and the prior qualification of ~~a different the previous~~ a different the previous weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Should the day and low light qualification with the new weapon occur after September 30th, a waiver of the 2nd day qualifier may be obtained through a petition to the Board. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional License Section. Proof of compliance with Section 5.0 by submission of shoot certification forms to the Professional Licensing Section, must be received within 30 days of the date of the qualification shoot.
- ~~5.11.1 An individual may not change weapons after September 30th, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and submit certification of a day and lowlight qualification to the Professional Licensing Section prior to carrying the weapon.~~

PROPOSED REGULATIONS

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

2400 Board of Examiners of Constables

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE OFFICE OF THE STATE VETERINARIAN

Statutory Authority: 3 Delaware Code, Chapters 63 and 71, Sections 6301 and 7101 (3 **Del.C.**
Chs. 63 & 71; §§6301 & 7101)
3 **DE Admin. Code** 901

ORDER

901 Poultry Disease Prevention Regulations

Date: January 15, 2019

The Department of Agriculture ("Department") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority (3 **Del.C.** §§6301 and 7101), the Department proposed for adoption revisions to the Poultry Disease Prevention Regulations at 3 **DE Admin. Code** 901. The purpose of the amended regulations is to update terminology, definitions, requirements for entry to Delaware and reference to federal rules, and to add a new Section 6.3 to prohibit the slaughter, other than for humane euthanasia or disease control, of any poultry on the premises of any dealer or broker of poultry or on the premises of any poultry sales establishment. Other regulations issued by the Department of Agriculture are not affected by this Order.

2. A copy of the proposed regulations was published in the December 1, 2018 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Department at 2320 South DuPont Highway, Dover, Delaware 19901 during regular office hours.

3. The Department did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on December 1, 2018.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective February 11, 2019, after publication of the final regulation in the February 1, 2019 edition of the Delaware *Register of Regulations*.

Department of Agriculture
Secretary Michael T. Scuse

*Please note that no changes were made to the regulation as originally proposed and published in the December 2018 issue of the *Register* at page 434 (22 DE Reg. 434). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

901 Poultry Disease Prevention Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 16000

ORDER

MAGI Methodology

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to clarify policy related to special income counting rules for children and dependents. 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 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 3, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Delaware Social Services Manual (DSSM) Section 16000 regarding MAGI Methodology.

Background

On September 1, 2016, the Centers for Medicare and Medicaid Services (CMS) provided clarification of the modified adjusted gross income (MAGI) methodologies rules. MAGI Methodology includes special income counting rules for children and dependents. The Delaware Division of Medicaid and Medical Assistance (DMMA) is adding further policy clarification to ensure the correct application of MAGI rules to MAGI Medicaid and Delaware Healthy Children's Program (DHCP) cases.

Statutory Authority

- 42 CFR 435.603 Application of Modified Adjusted Gross Income

Purpose

Purpose

The purpose of this proposed regulation is to clarify policy related to special income counting rules for children and dependents.

Summary of Proposed Changes

Effective for services provided on and after February 11, 2019 Delaware Health and Social Services/Division of

Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Section 16000 of the Delaware Social Services Manual (DSSM) regarding MAGI Methodology.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 3, 2018.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

No fiscal impact is projected as a result of this policy clarification.

Summary of Comments Received with Agency Response and Explanation of Changes

Two commenters offered the following summarized observations:

Comment: Both commenters noted that the terms “qualifying child” and “qualifying relative,” have very specific definitions under federal regulations and should be defined.

Agency Response: DMMA added definitions for “qualifying child” and “qualifying relative” utilizing IRS Pub 501 definitions for reference. As a result of adding these two definitions, DMMA also made some changes to the language used in the definition for “tax dependent” to be consistent with the additional definitions.

Comment: Both commenters indicated that language should be included to clarify when dependent’s income is excluded and specify when MAGI-based income is counted. In addition, each stated that Section 16500.5 fails to note that any exceptions exist to the general rule.

Agency Response: DMMA has included language to note exceptions to the rules of MAGI methodology.

Comment: Both commenters noted that Section 16500.5 should include language clarifying that the exclusion applies whether or not the tax dependent actually files a tax return.

Agency Response: DMMA added language clarifying Section 16500.5 with regard to filing tax returns.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to clarify policy related to special income counting rules for children and dependents is adopted and shall be final effective February 11, 2019.

1/8/2019

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary
DHSS

16000 Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI) Methodology

This section implements section 1902(e)(14) of the Social Security Act and describes the modified adjusted gross income (MAGI) methodology used to determine household composition and family size and how income is counted for the financial eligibility determination of modified adjusted gross income (MAGI)-related eligibility groups

in accordance with the Affordable Care Act of 2010.

16100 Definitions

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

“Child” means a natural or biological, adopted, or step-child.

“Family size” means the number of persons counted as members of an individual's household. When determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. When determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

“Federal Poverty Level” means the Federal poverty level updated periodically in the Federal Register by the Secretary of the United States Department of Health and Human Services that is in effect for the budget period used to determine an individual's eligibility in accordance with this section.

“Household income” means the sum of the MAGI-based income of every individual included in the individual's household unless an exception applies.

Exceptions:

The MAGI-based income of an individual who is included in the household of his or her parent and who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income whether or not the individual files a tax return.

The MAGI-based income of a tax dependent, ~~other than a spouse or biological, adopted, or step-child claimed by someone other than a parent~~, who is not expected to be required to file a tax return for the taxable year in which eligibility is being determined, is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

“Modified adjusted gross income (MAGI)” means the adjusted gross income reported on the Internal Revenue Service (IRS) Form 1040 with the addition of:

- (1) Foreign earned income excluded from taxes
- (2) Tax-exempt interest
- (3) Tax-exempt Social Security income

“MAGI-based income” means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Internal Revenue Service Code, with the following exceptions:

- (1) An amount received as a lump sum is counted as income only in the month received.
- (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) American Indian/Alaska Native income as defined in 42 CFR 435.603(e)(3) is excluded.

“Parent” means a natural or biological, adopted, or step-parent.

[“Qualifying child” To be a dependent, a person must be either a qualifying child or a qualifying relative. Generally, a person is a qualifying child if that person:

- Is a child, stepchild, foster child, brother, sister, stepbrother, step-sister, or a descendant of any of them,
- Lived with claiming tax filer for more than half of the year,
- Didn't provide more than half of his or her own support for the year,
- Was under age 19 at the end of the year and younger than the claiming tax filer (or spouse if filing jointly), or was under age 24 at the end of the year, a student, and younger than the tax filer (or spouse if filing jointly), or was any age and permanently and totally disabled, and didn't file a joint return with his or her spouse.

For more information, see *Exemptions for Dependents* in IRS Pub 501.

“Qualifying relative” To be a dependent, a person must be either a qualifying child or a qualifying relative. Generally, a person is a qualifying relative if that person:

- Lives with or is related to the taxpayer claiming him or her,
- Doesn't have \$4,050 or more of gross total income (based on 2017 IRS Pub 501 limit),
- Is supported (generally more than 50%) by the taxpayer claiming him or her, and

- **Is neither a qualifying child nor a qualifying child of anyone else**

For more information, see *Exemptions for Dependents* in IRS Pub. 501]

“**Sibling**” means a natural or biological, adopted, half, or step-sibling.

“**Spouse**” means a person who is legally married to another person regardless of their genders.

“**Tax dependent**” means ~~an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Service Code for a taxable year. a person, other than the [taxpayer tax filer] or the [taxpayer's tax filer's] spouse, for whom an exemption can be claimed. To be [your a] dependent, a person must be [your a] qualifying child or qualifying relative [of the tax filer].~~ **[For more information, see *Exemptions for Dependents* in IRS Pub 501.]**

16200 Application of MAGI income and household size

Eligibility for an applicant shall be based on MAGI methodology effective January 1, 2014.

Ongoing eligibility for a beneficiary determined eligible for Medicaid coverage to begin on or before December 31, 2013, shall not have eligibility based on MAGI methodology until March 31, 2014, or at the next regularly scheduled renewal of eligibility, whichever is later.

If the household income of an individual determined in accordance with this section results in financial ineligibility for Medicaid and the household income of the individual determined in accordance with 26 CFR 1.36B-1(e) is below 100% of the Federal Poverty Level (FPL), Medicaid financial eligibility will be determined in accordance with 26 CFR 1.36B-1(e) as promulgated the IRS. This is the income-counting methodology used by the Federally Facilitated Marketplace (FFM) to determine eligibility for Advance Premium Tax Credits and Cost Sharing Reductions.

16300 MAGI-based Determination of Eligibility

Each applicant or beneficiary who meets the non-financial eligibility requirements will have a determination of eligibility based on MAGI methodology.

For an applicant or beneficiary found not eligible based on MAGI methodology and who has been identified on the application or renewal form as potentially eligible on a MAGI-excepted basis, an eligibility determination will be made on such basis.

An individual may request a determination of eligibility on a basis other than MAGI.

16400 Household Composition

Household composition is based on tax households, with certain exceptions.

16400.1 Basic rule for taxpayer not claimed as a tax dependent

For an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of:

- the taxpayer;
- a spouse living with the taxpayer; and
- all persons whom the taxpayer expects to claim as a tax dependent.

If a taxpayer cannot reasonably establish that another individual is a tax dependent for the tax year in which Medicaid is sought, the inclusion of the dependent in the taxpayer's household shall be determined according to the rules described at Section 16400.3, Rule for individuals who neither file a tax return nor are claimed as a tax dependent.

16400.2 Basic rule for tax dependents

For an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the same as the taxpayer's household unless the individual meets any of the following exceptions:

- the individual expects to be claimed as a tax dependent of someone other than a spouse or parent;
- the individual is a child under age 19 living with both parents, but the parents do not expect to file a joint tax return; or
- the individual is a child under age 19 who expects to be claimed by a non-custodial parent. A non-custodial

parent is based on a court order or binding separation, divorce, or custody agreement. If there is no such order or agreement or if there is a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

If the individual meets any of the exceptions, the household shall be determined according to the rules described at Section 16400.3, Rule for individuals who neither file a tax return nor are claimed as a tax dependent.

16400.3 Rule for individuals who neither file a tax return nor are claimed as a tax dependent

For an individual who does not expect to file a tax return and does not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, the household consists of the individual, and if living with the individual:

- the individual's spouse;
- the individual's children under age 19; and
- for individuals under age 19, the individual's parents and any siblings who are also under age 19.

16400.4 Rule for married couples

For married couples, each spouse will be included in the household of the other spouse if they are living together or if they expect to file a joint tax return.

16500 MAGI-based Income

MAGI-based income is based on federal tax rules for determining adjusted gross income with some modifications.

16500.1 Counted Income

- Wages, salaries, tips, etc.;
- Interest – both taxable and tax-exempt amounts;
- Ordinary dividends;
- Qualified dividends;
- Taxable refunds, credits, or offsets of state and local income taxes;
- Alimony received;
- Business income or (loss);
- Capital gain or (loss);
- Other gains or (losses);
- IRA distributions – taxable amount;
- Pensions and annuities – taxable amount;
- Rental real estate, royalties, partnerships, S corporations, trusts, etc.;
- Farm income or (loss);
- Unemployment compensation;
- Social Security benefits – both taxable and tax-exempt amounts;
- Lump sum payment - a non-recurring lump sum payment (such as back pay, a retroactive benefit payment, State tax refund, or an insurance settlement) is counted as taxable income only in the month received;
- Other taxable income.

16500.2 Excluded Income

- Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;
- American Indian/Alaska Native income as defined in 42 CFR 435.603(e);
- Child Support Received;
- Gifts and loans;
- Inheritance;
- Supplemental Security Income (SSI);
- Temporary Assistance to Needy Families (TANF) and other government cash assistance;
- Veteran's benefits;
- Worker's Compensation payments;
- Other Non-Taxable Income.

16500.3 Deductions

- Educator expenses;
- Certain business expenses of reservists, performing artists, and fee-basis government officials;
- Health savings account deduction;
- Moving expenses;
- Deductible part of self-employment tax;
- Self-employed SEP, SIMPLE, and qualified plans;
- Self-employed health insurance deduction;
- Penalty on early withdrawal of savings;
- Alimony paid;
- IRA deduction;
- Student loan interest deduction;
- Tuition and fees;
- Domestic production activities deduction.

16500.4 Special income counting rules for children claimed by a parent

A child's MAGI based income is excluded from total household income if:

- The child is either under age 19 or is an adult child claimed by a parent as a tax dependent; and
- The child and parent are both included in the MAGI-based household; and
- The child's income is below the tax filing threshold (i.e., the child is not expected to be required to file a tax return for the current tax year).

This rule applies to a child or children living with a parent whether household composition is based on the rules for tax filers or the non-filer rules.

It does not matter whether the child actually files a tax return.

16500.5 Special income counting rules for children or dependents claimed by someone other than a parent

The special income counting rule for tax dependents applies in the case of tax dependents who are claimed by someone other than a parent.

[A When a dependent is claimed by someone other than a parent, the] tax dependent's income is excluded from total household income if:

- The tax dependent and the tax filer who expects to claim the individual are both included in the household; and
- The tax dependent's income is below the tax filing threshold (i.e., the tax dependent is not expected to be required to file a tax return for the current tax year)[; **it does not matter whether the dependent actually files a tax return.]**

When determining the total household income of a ~~[child or]~~ dependent who is ~~[not living with]~~ **claimed by someone other than] a parent, the MAGI-based income is always counted in determining the child or dependent's eligibility, even if the income is below the tax filing threshold.**

[Such a tax dependent's household would not include the claiming tax filer due to the exception at 42 CFR 435.603(f)(2)(i). This means that the tax dependent's MAGI based income would not be excluded from his or her own household income.

Exception:

If a tax dependent's household is established using the non-filer rules described at 435.603(f)(3) and includes the tax dependent's parent, the tax dependent's income should be excluded from his or her own household income.]

16500.6 Applying the tax filing threshold for tax dependents

Whether a dependent has to file a return generally depends on the amount of the dependent's earned or unearned income.

Single dependents (under age 65) are required to file a tax return if the dependent has earned or unearned

income that is more than the limits, or tax thresholds, announced by the IRS annually. IRS Publication 929 Tax Rules for Children and Dependents describes how to determine if a dependent is required to file a return and the applicable tax thresholds.

To determine the tax thresholds that apply, we use all of the dependent's MAGI based counted income with the exception of the dependent's Social Security Benefits (SSB).

Only the taxable portion of the dependent's SSB may be applied toward the tax filing threshold. If no portion of the SSB is taxable, none of those benefits will be applied toward the tax filing threshold.

Except in rare cases, such as receipt of a lump sum payment, a child or tax dependent's SSB will not be taxable unless the tax dependent has other income which itself exceeds the tax filing threshold.

If a child or tax dependent's MAGI based income counts toward the total household income, then all of the dependent's SSB counts.

16600 Income Disregard

An amount equivalent to 5% of the Federal Poverty Level (FPL) for the applicable family size is deducted from household income. The income disregard only applies when determining eligibility for an individual under the MAGI-based group with the highest income standard available for the individual.

16700 Budget Period

The budget period for applicants and beneficiaries is based on current monthly household income and family size.

16800 Eligibility Determination

Household income must not exceed the income standard for the eligibility group applicable to the individual.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b), (e), (f) and (i) (7 **Del.C.** §§901 & 903(a), (b), (e), (f) and (i))
7 **DE Admin. Code** 3505

Secretary's Order No.: 2019-F-0002

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

Date of Issuance: January 3, 2019

Effective Date of the Amendment: February 11, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 **Del.C.** §901 and §903(a), (b), (e), (f), and (i), and any other relevant statutory authority, the following findings of fact based on the record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History, and Findings of Fact

This Order relates to proposed Amendments ("Amendments") to 7 **DE Admin. Code** 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*. This action is being taken by the Department to adjust the allocation of the commercial striped bass quota to Delaware's fisheries, due to a recent statutory change.

Delaware's commercial striped bass fishery is allocated through an annual quota in accordance with the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Atlantic Striped

Bass. Delaware's annual commercial striped bass quota allocation is apportioned by regulation to two gear types: (1) commercial gill net ("GN"); and (2) commercial hook and line ("HL"). These are managed as separate fisheries, with different size limits, seasons, and allocations in an effort to maximize fishing opportunities for each fishery, minimize dead discards, and prevent growth overfishing.

During the period of 1990-1996, Delaware allocated 90% of the quota to the GN fishery and 10% to the HL fishery. In 1997, in an effort to ensure full use of the quota, the allocation was changed to 95% for the GN fishery while the less efficient commercial HL fishery was kept at 10% to maintain individual hook and line quotas. This over-allocation improved overall quota attainment, as the GN fishery routinely landed its 95%, while the HL fishery historically did not land more than 3% of the quota. Thus, despite this over-allocation, Delaware did not have any quota overages during this period from 1997 to 2017 because the quota could not be transferred between the GN and HL fisheries.

The recent adoption of 7 **Del.C.** §903A provides for the transfer of striped bass quota between GN and HL fisheries. This action resulted in improved landing efficiency and, ultimately, a commercial striped bass quota overage in 2018. To prevent subsequent overages, the Department is ending the over-allocation of the quota and proposing two alternative allocation strategies. Option 1 would allocate 90% of Delaware's striped bass commercial quota to the GN fishery and 10% to the HL fishery; this would match the proportions used prior to 1997. Option 2 would allocate 95% of Delaware's striped bass commercial quota to the GN fishery and 5% to the HL fishery. Option 2 is the allocation strategy recommended by the Advisory Council on Tidal Fin Fisheries as a way to better ensure full use of Delaware's striped bass commercial quota.

In addition to the proposal of the above two options, the Department also proposes to adjust the required registration date to participate in the commercial HL fishery from March 15 to February 1 to align with the commercial GN fishery and better accommodate tag transfers.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*, pursuant to 7 **Del.C.** §901 and §903(a), (b), (e), (f), and (i). The Department published its initial proposed Amendments in the October 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 31, 2018.

No members of the public attended the aforementioned public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on November 15, 2018, with one comment having been received by the Department during the post-hearing phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

After the close of the comment period, the Department performed a thorough review of the hearing record, including comments received. At the request of this Hearing Officer, a Technical Response Memorandum (TRM) was prepared by Department staff to the Department's final recommendations. In its TRM, the Department has recommended adjusting the allocation of the commercial striped bass quota to Delaware's fisheries by modifying the allocation to be 95% of the quota to the commercial GN fishery and 5% of the quota to commercial HL fishery. As noted previously, Option 2 is also the recommended method by the Advisory Council on Tidal Fin Fisheries. The Department also recommended adjusting the required registration date to participate in the commercial HL fishery from March 15 to February 1 to align with the commercial GN fishery.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated December 20, 2018. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the report as Appendix A.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the *revised* proposed Amendments to 7 **DE Admin. Code** 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed Amendments to 7 **DE Admin. Code** 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*, pursuant to 7 **Del.C.** §901 and §903(a), (b), (e), (f), and (i);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 31, 2018, and during the 15 days subsequent to the hearing (through November 15, 2018), before making any final decision. No further re-noticing or re-publication of the Department's *revised* proposed Amendments is necessary in this matter, due to the fact that (1) all possible substantive changes were properly noticed via publication in the October 1, 2018 issue of the Delaware *Register of Regulations*; and (2) no further changes were made subsequent to that time that had not been previously noticed;
4. Promulgation of the *revised* proposed Amendments to 7 **DE Admin. Code** 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* will better ensure full use of Delaware's striped bass commercial quota and will adjust the required registration date to participate in the commercial HL fishery from March 15 to February 1 to align with the commercial GN fishery and better accommodate tag transfers;
5. The Department has reviewed the *revised* proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the proposed Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed Amendments, as published in the October 1, 2018 Delaware *Register of Regulations*, and then as *revised*, as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, these *revised* Amendments are approved as final, and shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 **DE Admin. Code** 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

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

- 1.0 It 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 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.

- 2.0 It 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. Except as otherwise provided, 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~~ February 1.
- 3.0 ~~It 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 land 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.~~
- 4.03.0 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 the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department as follows: 95 ~~[[TBD from Table] 95]~~% for the February 15 - May 31 gill net fishery, 40 ~~[[TBD from Table] 5]~~% 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.

~~**Table. Annual quota allocation options for the commercial striped bass fishery pertaining to proposed amendments to 7 DE Admin. Code 3505 (3.0).**~~

Option	Commercial Gill Net Allocation	Commercial Hook & Line Allocation
<u>1</u>	<u>90%</u>	<u>10%</u>
<u>2</u>	<u>95%</u>	<u>5%</u>

- 5.04.0 It 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.
- 6.05.0 It is unlawful for any commercial food fisherman to possess any landed 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.
- 7.06.0 The Department 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 participant's 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.
- 8.07.0 It 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 fisherman,]~~ authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

- ~~9-08.0~~ It 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.
- ~~10-09.0~~ It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- ~~11-010.0~~ It 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 at an official weigh station.
- ~~12-011.0~~ The Department 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, if requested, 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.
- ~~13-012.0~~ Each commercial food fisherman participating in a striped bass fishery shall file 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 a complete and accurate report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6305(a); (7 Del.C. §§6010(a) and 6305(a))
7 DE Admin. Code 1302

Secretary's Order No.: 2019-WH-0001

1302 Regulations Governing Hazardous Waste

Date of Issuance: January 3, 2019

Effective Date: February 21, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 Del.C. §§6010(a) and 6305(a), and any other relevant statutory authority, the following findings of fact based on the record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History, and Findings of Fact

This Order relates to proposed Amendments ("Amendments") to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste*. This action is being taken by the Department to provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program.

The Department is required to adopt these federal regulatory amendments to maintain its Resource Conservation and Recovery Act ("RCRA") program delegation through the Environmental Protection Agency ("EPA"), and to remain current with the federal hazardous waste program. The Department's proposed Amendments are equivalent to the current federal regulations, and include revisions to the following: (1) Hazardous Air Pollutant Standards for Combustors; (2) Methods Innovation Rule; (3) Burden Reduction Initiative; (4) Organization of Economic Cooperation and Development Rule; (5) Technical Corrections; (6) Delisting of

Saccharin; (7) Export Revisions for Cathode Ray Tubes; (8) Definition of Solid Waste; and (9) Comparable Fuels Vacatur.

In addition to the proposal of the above items, the Department also proposes to correct minor technical errors and to add clarification regarding container storage.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 **Del.C.** §§6010(a) and 6305(a). The Department published its proposed Amendments in the October 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 29, 2018.

No members of the public attended the aforementioned public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on November 13, 2018, with no comments having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the initial proposed publication in the Delaware *Register of Regulations* on October 1, 2018, and prior the public hearing of October 29, 2018, responsible Department staff identified two citation errors in the proposed regulations. Department staff corrected this in their *revised* proposed Amendments. Since these revisions are not substantive in nature, no re-notice and re-publication by the Department of these *revised* Amendments is necessary.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated December 11, 2018. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the report as Appendix A.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these *revised* proposed Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 **Del.C.** §§6010(a) and 6305(a);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 29, 2018, and during the 15 days subsequent to the hearing (through November 13, 2018), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste* will provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program;
5. The Department has reviewed the *revised* proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption B5, as this regulation is required by federal law;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed Amendments, as published in the October 1, 2018 Delaware *Register of Regulations*, and then as *revised*, as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the *revised* Amendments are approved as final, and shall go into effect 20 days after publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1302 Regulations Governing Hazardous Waste

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

1302 Regulations Governing Hazardous Waste

Within the final regulation, selected tables are available in PDF format at the following locations:

Appendix IX to Part 264 - Groundwater Monitoring List

[http://regulations.delaware.gov/register/february2019/final/Groundwater Monitoring List.pdf](http://regulations.delaware.gov/register/february2019/final/Groundwater%20Monitoring%20List.pdf)

DRGHW 268.40 - Treatment Standards For Hazardous Wastes Table

[http://regulations.delaware.gov/register/february2019/final/Treatment Standards For Hazardous Wastes.pdf](http://regulations.delaware.gov/register/february2019/final/Treatment%20Standards%20For%20Hazardous%20Wastes.pdf)

DRGHW 268.42 - Table 1 - Technology Codes and Description of Technology Based Standards

[http://regulations.delaware.gov/register/february2019/final/Technology Codes and Description.pdf](http://regulations.delaware.gov/register/february2019/final/Technology%20Codes%20and%20Description.pdf)

DRGHW 268.45 - Table 1 - Alternative Treatment Standards for Hazardous Debris

[http://regulations.delaware.gov/register/february2019/final/Alternative Treatment Standards.pdf](http://regulations.delaware.gov/register/february2019/final/Alternative%20Treatment%20Standards.pdf)

DRGHW 268.48 - Table - Universal Treatment Standards

[http://regulations.delaware.gov/register/february2019/final/Universal Treatment Standards.pdf](http://regulations.delaware.gov/register/february2019/final/Universal%20Treatment%20Standards.pdf)

Appendix VII to Part 268 - Table 1 - LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes

[http://regulations.delaware.gov/register/february2019/final/LDR Effective Dates Surface Disposed.pdf](http://regulations.delaware.gov/register/february2019/final/LDR%20Effective%20Dates%20Surface%20Disposed.pdf)

Appendix VIII to Part 268 - LDR Effective Dates of Injected Prohibited Hazardous Wastes

[http://regulations.delaware.gov/register/february2019/final/LDR Effective Dates Injected.pdf](http://regulations.delaware.gov/register/february2019/final/LDR%20Effective%20Dates%20Injected.pdf)

Appendix XI to Part 268 - Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit

[http://regulations.delaware.gov/register/february2019/final/Metal Bearing Wastes.pdf](http://regulations.delaware.gov/register/february2019/final/Metal%20Bearing%20Wastes.pdf)

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(c) (7 **Del.C.** §4006(c))
7 **DE Admin. Code** 5101

Secretary's Order No.: 2019:WS-0007

5101 Sediment and Stormwater Regulations

Date of Issuance: January 16, 2019

Effective Date of the Amendment: February 11, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 **Del.C.** §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in

the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments (“Amendments”) to 7 DE Admin. Code 5101: *Delaware Sediment and Stormwater* (“*Stormwater Regulations*”). This action is being taken by the Department to correct previous procedural flaws, as determined by both the Delaware Superior Court and the Delaware Supreme Court, and as set forth in greater detail below. Additionally, numerous other revisions are being proposed at this time to provide additional clarity to the regulated community, and to correct various clerical and consistency errors presently contained therein.

The Department’s *Stormwater Regulations* were first promulgated in 1991. Under those provisions, all land disturbing activity in an area greater than 5,000 square feet was required to operate under a plan that encompasses both temporary erosion and sediment control during construction, as well as permanent stormwater management controls for both water quantity and water quality. Stormwater management design, at that time, was based upon peak rates of runoff, typically expressed as a quantity per unit of time, such as cubic feet per second.

Following a series of damaging storm events, Governor Ruth Ann Minner signed Executive Order No. 62 on December 17, 2004, which established a Task Force on Surface Water Management. The goal was to develop a statewide surface water management strategy to integrate drainage, flood control and stormwater management. The Task Force submitted its final report to the Governor on April 1, 2005. Among the Task Force’s major recommendations was to strengthen Delaware’s existing *Stormwater Regulations* to address volume management, conveyance adequacy, pollutant loadings, floodplain management, and implement strict standards for operation and maintenance of structures and management areas.

The Department subsequently amended its *Stormwater Regulations* in April, 2005 to incorporate the recommendations of the Governor’s Task Force, as noted above, and also to encourage the use of green technology Best Management Practices (“BMPs”), or, those practices that would achieve stormwater management objectives by applying the principles of filtration, infiltration and storage, while minimizing reliance on structural components. These regulations were further amended in October, 2006, by legislative action, to include volume control in stormwater management, as well as the utilization of various methods such as infiltration and recharge, which were feasible for certain watersheds in New Castle County, so as not to increase flood elevations downstream. Volume control was required in these watersheds, to the maximum extent practicable (“MEP”), for all storm events up to the 100-year storm. Additional provisions to these regulations were made, at that time, to ensure that there was not an increase in flood elevations if volume reduction was not feasible.

The Department’s Sediment and Stormwater Program promulgated additional regulatory amendments to its *Stormwater Regulations* in 2013, which were published in the January 1, 2014 edition of the State of Delaware *Register of Regulations*. These amendments were largely based upon the previous 2006 revisions, which at that time were expanded by the Department on a state-wide basis. A companion Technical Document (consisting of both the Department’s *Erosion and Sediment Control Handbook* and BMPs, as referenced above) was also created by the Department. The Department’s 2014 *Stormwater Regulations* were immediately challenged by the regulated community with an appeal to the Delaware Superior Court, due to the fact that the accompanying Technical Document referenced by those regulations was not published in the State of Delaware *Register of Regulations* in accordance with the requirements set forth in Delaware’s *Administrative Procedures Act* (29 Del.C. Ch. 101, *Administrative Procedures*). A Delaware Superior Court decision of October 7, 2015, which was subsequently upheld by the Supreme Court on April 15, 2016, invalidated the Department’s 2014 *Stormwater Regulations* on those procedural grounds. The Department immediately enacted Emergency Regulations, by the issuance of Secretary’s Order No. 2016-WS-0019 (April 16, 2015), which incorporated both the 2014 version of the Department’s *Stormwater Regulations* and the latest version of the aforementioned Technical Document (April 2016) to correct the previous procedural error, and to ensure that Delaware was not without regulations to govern construction activities until such time as the Department was able to formally adopt such finalized regulations.

Subsequent to enacting the Emergency Regulations, the Department convened its Stormwater Regulatory Advisory Committee (“RAC”) and began the process of formally drafting proposed Amendments. The RAC, and its subcommittees, met regularly from November 2015 through May 2016. At its June 1, 2016 meeting, the RAC recommended proposed amendments to the *Stormwater Regulations*.

While the Department was going through the extensive regulatory drafting process via the RAC efforts noted

above, several pieces of legislation were also introduced by Delaware's 148th General Assembly. Due to the fact that Emergency Regulations expire after 180 days, Delaware's legislature passed legislation to codify certain requirements of the Amendments (which, at that time, were still in the process of being drafted by the Department), and to allow the RAC to continue its work without the constraint of the standard Emergency Regulation time limit.

Of those legislative actions, three were ultimately codified: Senate Bill 253 and House Bill 194 (which both became effective in 2016), and most recently, Senate Bill 204 (which was introduced by Delaware's 149th General Assembly and became effective in July, 2018). The most significant of these was Senate Bill 253, signed into law by Governor Markell on June 24, 2016. Senate Bill 253 included several stormwater provisions, the most notable of which allowed additional time for the RAC to thoroughly discuss all of the necessary revisions and amendments to the *Stormwater Regulations* by eliminating the 180 day expiration of the Emergency Regulations. Senate Bill 253 included the following provisions:

- Exempted residential land disturbing activity of less than 1 acre from the stormwater management requirements of the regulations;
- Directed the Department to develop standard plans for agriculture structures that disturb 10 acres or less, and precludes them from having to complete a detailed plan;
- Established that stormwater discharges into tidal areas/waters that are non-erosive are not subject to the quantity management provisions of these regulations, including volume reduction (they continue to be subject to the water quality provisions);
- Allowed alternative methods to calculate the Resource Protection Volume based on 1" of runoff;
- Allowed applicants to use the modified language or continue under the 2016 Emergency Regulations, at the discretion of the applicant;
- Allowed applicants to use additional BMPs that are deemed to be functionally equivalent to the Post-Construction Stormwater BMP Standards & Specifications that were published with the 2016 Emergency Regulations;
- Extended the approval period for Sediment and Stormwater Plans from 3 years to 5 years; and
- Extended the re-delegation period from 3 years to 5 years.

A second legislative action was taken under House Bill 194 (signed into law by Governor Markell on August 10, 2016), which exempted linear utility projects with a maximum disturbed width of 30 feet and maximum disturbed area of 1 acre from post-construction stormwater management requirements. Immediately following the passage of Senate Bill 253 and House Bill 194, the RAC met to make recommendations for regulatory components to address the specific items of those bills.

Most recently, Senate Bill 204 (signed into law by Governor Carney in July, 2018) incorporated interim standards for redevelopment criteria, which the RAC was in the process of revising, but had not yet formally incorporated into Delaware's *Stormwater Regulations*. Of note is the fact that the redevelopment portion of Senate Bill 204 was drafted so as to "sunset" upon the Department's formal adoption of these proposed Amendments. Additionally, Senate Bill 204 established the criteria for offsets, and formally clarified the procedural status of supporting materials, known as regulatory guidance documents, published by the Department to facilitate compliance with the *Stormwater Regulations*. Regulatory guidance documents, including the BMP standards and specifications and the Delaware *Erosion and Sediment Control Handbook*, do not need to go through the Department's formal regulatory adoption process. The Department is, however, required to provide public notice with regard to any changes to those supporting materials.

The Department has thoroughly engaged the regulated community during the course and scope of this proposed regulatory promulgation. Over the past three years, the Department has held nineteen (19) full RAC meetings, along with an additional sixty (60) subcommittee meetings, the bulk of which were technical in nature. The RAC has spent over 235 hours in public meeting time alone since November, 2015 reviewing and drafting this proposed regulatory language, and reviewing the aforementioned Technical Document for inclusion of required elements into these Amendments.

The regulatory amendments being proposed at this time by the Department are meant to correct the previous procedural flaw, as determined by both the Delaware Superior Court and the Delaware Supreme Court, by incorporating portions of the Technical Document as part of the actual *Stormwater Regulations*. Specifically, the Standard Plan section of the Technical Document has now been incorporated into Section 3.7 of the proposed Amendments. Additionally, the regulatory elements of the BMP standards and specifications from the aforementioned Technical Document have now been incorporated into (new) Sections 11 and 12 of the proposed

Amendments. Numerous other revisions have been proposed at this time to provide addition clarity to the regulated community and to correct various clerical and consistency errors presently contained therein.

With regard to the proposed Amendments, in addition to the legislative actions referenced above, the following issues have been addressed by the Department's Division of Watershed Stewardship:

- All standard plan applicability criteria and conditions have been reviewed and included in subsection 3.7;
- Each of the 17 standards and specifications for post construction stormwater management BMPs have been reviewed by the Committee's technical subcommittee, and required elements have been brought into the proposed Amendments as (new) Section 11.0, *Post Construction BMP Standards and Specifications*;
- (New) Section 12.0, *Supplemental Requirements for Best Management Practices*, was added to provide clear requirements for soil investigation procedures and setbacks for stormwater management BMPs;
- (New) Section 13.0, *Stormwater Management Offsets*, was added to take the place of subsection 1.7, and to provide more explanation and clarification with regard to stormwater management offsets, including fees-in-lieu, banking, and stormwater management offset districts; and
- Section 5.0, *Performance Criteria for Post Construction Stormwater Management*, has been updated to address compliance methods updated by Senate Bills 253 and 204.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 **DE Admin. Code** 5101: *Delaware Sediment and Stormwater Regulations*, pursuant to 7 **Del.C.** Ch. 40, *Erosion and Sedimentation Control*, specifically, Section 4006(c). The Department published its initial proposed regulation Amendments in the September 1, 2018 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 10, 2018.

It should be noted that, subsequent to the initial proposed regulatory Amendments having been published in the *Delaware Register of Regulations* on September 1, 2018, but prior to the public hearing held on October 10, 2018, several revisions were made by the Department in the initial proposed Amendments. The Division of Watershed Stewardship provided handouts for those in attendance at the aforementioned hearing, which charted all of the revisions made to the initial proposed Amendments. Thus, all pre-hearing revisions to the Department's initial proposed Amendments were fully vetted to the public at the time of the hearing, and no additional re-noticing or re-publication of the same is necessary in this matter.

Members of the public attended the aforementioned public hearing, with comment being received by the Department at that time. Pursuant to Delaware law, the hearing record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed for comment in this matter at the close of business on October 25, 2018, with comment having been received by the Department during all phases of this formal regulatory promulgation. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

After the comment period formally closed on October 25, 2018, the Department performed a thorough review of the record, including all of the comments received on the proposed Amendments. At the request of the presiding Hearing Officer, a Technical Response Memorandum ("TRM") was prepared by the Department's Division of Watershed Stewardship staff to serve as a comprehensive summary of the comment received in this matter.

The Department's TRM provides two documents: (1) a chart illustrating all revisions made to the initial proposed Amendments, which were fully vetted at the public hearing on October 10, 2018; and (2) a chart summarizing all comments received through October 25, 2018, along with the Department's responses and recommendations concerning the same. Where changes to the proposed Amendments resulted from the comment offered, the response detailing each specific revision has been provided in bold font.

Hearing Officer Vest subsequently prepared a Hearing Officer's Report dated January 7, 2019 ("Report"), which expressly incorporated both the Department's proposed *revised* Amendments and the aforementioned TRM into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory amendments to 7 **DE Admin. Code** 5101: *Delaware Sediment and Stormwater Regulations*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* Amendments be promulgated as final. I further find that the Department's experts in the Division of Watershed Stewardship fully developed the record to support adoption of these *revised* Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* Amendments to 7 **DE Admin. Code** 5101: *Delaware Sediment and Stormwater Regulations*, pursuant to 7 **Del.C.** Ch. 40, *Erosion and Sedimentation Control*, specifically, Section 4006(c);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed *revised* Amendments as final;

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at the time of the public hearing held on October 10, 2018, and during the 15 days subsequent to the hearing (through October 25, 2018), before making any final decision;

4. Promulgation of the proposed *revised* Amendments to 7 **DE Admin. Code** 5101: *Delaware Sediment and Stormwater Regulation*, will enable the Department to (1) update Delaware's *Stormwater Regulations* to be consistent with recent changes in Delaware law; (2) correct the previous procedural flaw as determined by the Delaware Superior Court and the Delaware Supreme Court, as referenced above, by incorporating the aforementioned portions of the Technical Document as part of the Department's finalized *Stormwater Regulations*; and (3) provide additional clarity to the regulated community while correcting various clerical and consistency errors presently contained therein;

5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the September 1, 2018 *Delaware Register of Regulations*, and then as *revised*, as set forth in Appendix "A" of the Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit the proposed *revised* Amendments as final regulatory amendments to 7 **DE Admin. Code** 5101: *Delaware Sediment and Stormwater Regulations*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

Preamble to the Amended Stormwater Regulations

These regulations are the product of a comprehensive review of existing Regulations and the supporting Technical Document and plan review procedures, utilized by the Sediment and Stormwater program within the Watershed Stewardship Division of the Department of Natural Resources and Environmental Control ("DNREC"). This effort was undertaken by a Regulatory Advisory Committee ("RAC") made up of stakeholders and other interested parties, supported by program staff. This revision was a direct result of the decision of the Superior Court in *Baker v. DNREC*, 2015 WL 5971784 (Oct. 7, 2015), which was affirmed by the Delaware Supreme Court on April 15, 2016. *DNREC v. Baker*, 137 A.3d 122 (Del. 2016) (TABLE). The Court found that DNREC could not rely on technical and advisory supporting materials, which had not been formally adopted as regulations pursuant to the Administrative Procedures Act, in reviewing plans and issuing permits.

In a legislative response to the *Baker* holdings, the General Assembly enacted Senate Bill 253 on June 24,

2016, 80 **Del. Laws** Ch. 274, and House Bill 194 on August 10, 2016, 80 **Del. Laws** Ch. 392. These Bills adopted interim standards governing development, while extending the duration of the emergency regulations, to allow the RAC to complete its work.

Meanwhile, in *Trivits v. State*, C.A. No. S16C-05-048, Judge Graves of Superior Court, on July 1, 2016, rejected a challenge to the validity of emergency regulations enacted by DNREC in response to the vacuum left by the Baker holding, and recognized the validity of the regulatory adoption process undertaken by the RAC.

The members of the RAC, working through various technical subcommittees, reviewed the 2014 Regulations, as well as those portions of the Technical Document and other materials that could be read to create mandatory obligations or processes or plan components. Revisions were undertaken and adopted by consensus of the RAC. The goal of this effort was to include all mandates within the body of the revised Regulations, as distinguished from advisory, exemplary, or supporting documents and information, which were not intended to be adopted as Regulations. The latter category of materials cannot be used for purposes of enforcement or to deny approval of a Sediment and Stormwater Plan. However, it is the hope and expectation of the RAC that these materials will continue to prove useful in the preparation of plans and for purposes of facilitating compliance with the Regulations as adopted. The Division and its staff expect to supplement and revise these supporting materials as needed, with the ongoing goal of enabling regulated entities to comply with the mandates found in the Regulations.

On June 26, 2018, Senate Bill 204 passed by a roll call vote in the House of Representatives and became effective upon signature by the Governor. Section 6 of S.B. 204 adds new subsections (h) and (i) to §4006 of Title 7 of the Delaware Code. These new provisions exempt stormwater regulatory guidance documents, interpretive rules, and general statements of policy from the formal regulatory adoption process of the Administrative Procedures Act (APA), and from the Regulatory Flexibility Act (RFA). A "regulatory guidance document" is defined to include any technical manual, checklist, form, BMP standards and specifications, the Delaware Sediment and Erosion Control Handbook, and other materials used by DNREC to facilitate compliance. Such guidance documents may not be used to impose requirements beyond those set forth in Chapter 40 of Title 7 and the Regulations, nor may they be used for enforcement purposes. Any changes to regulatory guidance materials must be posted for public notice and published in the Delaware *Register of Regulations*.

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

5101 Sediment and Stormwater Regulations

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)
24 **DE Admin. Code** 2400

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 **Del.C.** §10118(b)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on November 1, 2018 (Vol. 22, Issue 5). Following notice and a public hearing on the proposed adoption of amendments to rule 1.0 Licensing, 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 clarify the process by which a constable can work for more than one entity.

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 the 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 clarify the process by which a constable can work for more than one entity.

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 clarify the process by which a constable can work for more than one entity.

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 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 this amendment pursuant to 10 **Del.C.** §2702(b) 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 February 11, 2019.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 19th day of December 2018.

Lt. Colonel Monroe B. Hudson, Jr.

Chief William E. Bryson (absent)

Ralph K. Durstein, III, Esquire

Mr. John F. Tharan

Captain Diane Smith (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the November 2018 issue of the *Register* at page 378 (22 DE Reg. 378). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2400 Board of Examiners of Constables

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 **Del.C.** §1906(a)(1))
24 **DE Admin. Code** 1900

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1906(a)(1), proposed to revise its regulations. The proposed amendments seek to bring the Board's regulations into conformity with the current enhanced Nurse Licensure Compact law, 24 **Del.C.** §1900A, et. seq.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on October 1, 2018 a public hearing was held on November 14, 2018. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 – Affidavit of publication of the public hearing notice in the *News Journal*;

Board Exhibit 2 – Affidavit of publication of the public hearing notice in the *Delaware State News*;

Board Exhibit 3—November 28, 2018 letter from A.I. DuPont de Nemours Children's Hospital expressing support for the proposed regulation change.

There was no verbal testimony given at the public hearing on November 14, 2018. No written comments were received by the Board during the initial thirty day public comment period; a supportive written comment was received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

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

2. There were no public comments provided to the Board during the initial 30 day written public comment period, or the public hearing.

3. On November 28, 2018, A.I. DuPont de Nemours Children's Hospital submitted a letter expressing support for the proposed regulation change.

4. Pursuant to 24 **Del.C.** §1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

5. The proposed amendments seek to bring the Board's regulations into conformity with the current enhanced Nurse Licensure Compact law, 24 **Del.C.** §1900A, et. seq. The proposed changes strike the outdated regulations and incorporate by reference the current enhanced Nurse Licensure Compact regulations.

6. 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 changes to the Board's rules and regulations.

7. Having received only one supportive public comment, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

IT IS SO ORDERED this 9th day of January, 2019 by the Delaware Board of Nursing.

Megan Williams, DNP, FNP-C, RN, President

Nancy Bastholm, RN

Krystal Little, RN (absent)

Linda Darling, RN (absent)

Sherry Lambertson, Public Member (absent)

George Brown, Public Member (absent)

Pramala Kaza, Public Member (absent)

Ron Castaldo, RN, APRN

Precious Benson, Public Member

Carol Abdill, RN

William Hare, Public Member

David Salati, RN

Victoria Udealer, RN Member

Kenyette Walters, LPN (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the October 2018 issue of the *Register* at page 272 (22 DE Reg. 272). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1900 Board of Nursing

FINAL REGULATIONS

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))
5 **DE Admin. Code** 102

ORDER**102 Procedures Governing the Creation and Existence of an Interim Bank**

IT IS HEREBY ORDERED, this 14th day of January, 2019, that amended Regulation 102 is adopted as a Regulation of the State Bank Commissioner. The effective date of this Regulation is February 11, 2019. This Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulation and its text was published in the December 1, 2018 issue of the Delaware *Register of Regulations*. The Notice included, among other things, a summary of the proposed amended Regulation and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before January 3, 2019. The Notice further stated that the proposed amended Regulation was available for inspection during regular business hours at the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Dover, Delaware 19901, and that copies were available upon request.
2. No written comments concerning the proposed amended Regulation was received on or before January 3, 2019.
3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulation 102 as proposed. This amended Regulation was published as a proposed amended Regulation in the December 1, 2018 issue of the Delaware *Register of Regulations* and is incorporated herein by reference.

Robert A. Glen
State Bank Commissioner

102 Procedures Governing the Creation and Existence of an Interim Bank

Formerly Regulation No.: 5.121.0002

Effective Date: ~~December 11, 1998~~ ~~XX/XX/XXXX~~ **February 11, 2019**

This regulation establishes procedures governing the creation and existence of an Interim Bank, which shall have no authority to conduct a banking business until merged with an Insured Bank.

1.0 Definitions

“Articles of Association” means the articles of association described in Section 723 of Title 5 of the **Delaware Code**.

“Articles of Organization” means the articles of organization described in Section 728 of Title 5 of the **Delaware Code**.

“Bank” means a Delaware State Bank, Out-of-State State Bank, Delaware National Bank or Out-of-State National Bank.

“Bank Holding Company” has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

“Certificate Authorizing the Transaction of Business” means the certificate described in Section 733 of Title 5 of the **Delaware Code**.

“Delaware Bank” means a Delaware National Bank or a Delaware State Bank.

“Delaware National Bank” means a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is located in this State.

“Delaware State Bank” means a bank (as defined in § 101 of Title 5 of the **Delaware Code**) chartered under the laws of this State.

“**Insured Bank**” means a bank that is an insured depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c).

“**Interim Bank**” means a bank established ~~exclusively~~ for the ~~temporary~~ purposes set forth in this regulation.

“**Interim Bank Agreement**” means an agreement that expressly provides, among other things, for the creation of an Interim Bank and its merger with an Insured Delaware Bank.

“**Located in this State**” means, with respect to a state-chartered bank, a bank created under the laws of this State and, with respect to a national banking association, a bank whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

“**Notice of Intent**” means a notice of the intention of the incorporators to form an Interim Bank, as provided in Section 5 of this regulation.

“**Out-of-State Bank**” means an Out-of-State State Bank or an Out-of-State National Bank.

“**Out-of-State Bank Holding Company**” has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

“**Out-of-State National Bank**” means a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is not located in this State.

“**Out-of-State State Bank**” means a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under the laws of this State.

“**Public Notice**” means a public notice, as provided in Section 5 of this regulation.

2.0 Scope

2.1 An Interim Bank may only be formed to facilitate:

2.1.1 The establishment of a Bank Holding Company by an Insured Delaware Bank’s stockholders. The proposed Bank Holding Company, once incorporated, applies in the manner set forth at Section 5 of this regulation for an Interim Bank charter for a subsidiary to be newly formed. An agreement is executed between the proposed Bank Holding Company and the Insured Delaware Bank that provides, among other things, that the Insured Delaware Bank will be merged or consolidated with the Interim Bank and become a subsidiary of the Bank Holding Company upon the receipt of all necessary federal and state approvals for the proposed Bank Holding Company so to act; or

2.1.2 The acquisition of an Insured Delaware Bank by another Insured Delaware Bank or Bank Holding Company (e.g., pursuant to Subchapter VI of Chapter 7 or Subchapters IV or V of Chapter 8 of Title 5 of the **Delaware Code**). In such instances, the Interim Bank is used to assure that the to-be-acquired Insured Delaware Bank will become wholly-owned through a merger or consolidation pursuant to an agreement between the Insured Delaware Banks or between an Insured Delaware Bank and a Bank Holding Company that provides, among other things, for an Insured Delaware Bank to merge or consolidate with the Interim Bank.

2.1.3 The merger of one or more Out-of-State Banks with or into one or more Delaware Banks to result in a Delaware State Bank, in accordance with Section 795D or Section 795G of Title 5 of the **Delaware Code**.

2.1.4 The merger or reorganization of one or more Insured Banks to result in a Delaware State Bank.

3.0 Interim Bank Agreement Required

3.1 An Interim Bank may not be chartered unless there is an Interim Bank Agreement.

4.0 Who May Incorporate

4.1 An Interim Bank may be incorporated, in accordance with Section 722 of Title 5 of the **Delaware Code**, by three or more individual persons, at least two of whom must be citizens and residents of Delaware.

5.0 Application Procedures

- 5.1 An application to form an Interim Bank shall be submitted as follows, except as otherwise provided in connection with a contemporaneous application in accordance with another regulation (e.g., Regulation 804 (formerly 5.844.0009), "Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company"):
- 5.1.1 The Notice of Intent shall be filed in duplicate in the Office of the Commissioner and shall state:
- 5.1.1.1 ~~the~~ The purpose for forming an Interim Bank;
 - 5.1.1.2 ~~the~~ The proposed name of the Interim Bank;
 - 5.1.1.3 ~~the~~ The name and address of the incorporators; and
 - 5.1.1.4 ~~the~~ The amount of the capital stock of the Interim Bank.
- 5.1.2 The Notice of Intent shall attach as exhibits:
- 5.1.2.1 ~~the~~ The Interim Bank Agreement;
 - 5.1.2.2 a A copy of the proposed Articles of Association of the Interim Bank;
 - 5.1.2.3 a A copy either of the certificate of public convenience and advantage or the legislative and/or corporate instruments of banking authority for the Insured Bank which is to be merged with the Interim Bank pursuant to the Interim Bank Agreement.
- 5.1.3 Upon notification by the Commissioner that the Notice of Intent to form an Interim Bank is complete, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a Public Notice of its intention to form an Interim Bank. The Public Notice shall include the proposed name of the Interim Bank, the names of the incorporators, the amount of the capital stock of the Interim Bank, and a brief summary of the purpose of the Interim Bank, shall identify this regulation under which the Interim Bank is to be formed, and shall inform interested persons of their right to comment on the application before the Commissioner decides whether to approve the Interim Bank.

6.0 Decision of Commissioner; Incorporation

- 6.1 Within two weeks of the last publication of the Public Notice, the Commissioner shall issue a decision as to whether to charter the Interim Bank. This two week period may be extended by two additional weeks if the Commissioner requires more time or information.
- 6.2 Upon the Commissioner's approval, the Incorporator shall take the necessary steps to form the Articles of Organization and the Commissioner shall endorse the Articles. The Incorporator shall then incorporate the Interim Bank and file the necessary documents with the Secretary of State.
- 6.3 A Certificate Authorizing the Transaction of Business shall not be issued until the Interim Bank has been merged with the Insured Bank.

7.0 Powers of Interim Bank Before Merger

- 7.1 An Interim Bank may not engage in any banking activity or operate as a bank until it has merged with an Insured Bank. An Interim Bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation shall not preclude the Commissioner from granting a certificate of public convenience and advantage, and to otherwise facilitate and authorize the formation and incorporation of the Interim Bank, provided that no Certificate Authorizing the Transaction of Business pursuant to §733 of Title 5 of the **Delaware Code** shall be issued prior to the consummation of the merger of the Interim Bank with an Insured Bank.
- 7.2 The receipt by the Commissioner of an Interim Bank Agreement and a copy of either the certificate of public convenience and advantage or the legislative and/or corporate instruments pursuant to which the Insured Bank with which the Interim Bank will merge derives its banking powers shall constitute sufficient authority for the Commissioner to issue a certificate of public convenience and advantage to the Interim Bank.

8.0 Proof of Merger: Revocation of Certificate

- 8.1 From the date an Interim Bank is authorized pursuant to this regulation, the parties to the Interim Bank Agreement shall have six (6) months in which to effect the merger with the Insured Bank. Proof of the merger must be timely supplied to the Commissioner.
- 8.2 Upon proof of the consummation of the merger of the Interim Bank with the Insured Bank, a Certificate Authorizing the Transaction of Business, as required by § 733 of Title 5 of the **Delaware Code** shall be issued immediately by the Commissioner to the surviving entity if the Interim Bank is the survivor.
- 8.3 Extensions may be granted by the Commissioner if the parties to the Interim Bank Agreement can show good cause as to why an extension is needed to complete the merger.
- 8.4 The Commissioner may revoke the certificate of public convenience and advantage of the Interim Bank (and may take such other steps he deems appropriate at any time) if proof of the merger between the Interim Bank and the Insured Bank has not been provided to the Commissioner at the end of the authorized time, if the Interim Bank actually conducts any banking business prior to its proposed merger, or if any related merger or acquisition application is denied or withdrawn.

9.0 Fees

- 9.1 A non-refundable investigation fee of \$1,150 to offset the administrative expense of the Commissioner's office shall be included with the Notice of Intent; provided, however, that such fee shall be considered as part of and not in addition to any fee being paid at the same time to the Commissioner's office in connection with a contemporaneous application for a merger or acquisition. In addition, depending on the structure of the transaction, other fees may be required in accordance with applicable statutes or regulations (e.g., Section 735 of Title 5 of the **Delaware Code**).

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 29 Delaware Code, Section 6962 (29 **Del.C.** §6962)

ORDER

2408 Performance-Based Contractor Evaluation Procedures

Pursuant to the authority provided by 29 **Del.C.** §6962, the Delaware Department of Transportation ("DelDOT") proposed to promulgate a new regulation entitled Performance-Based Contractor Evaluation Procedures. Notice of the proposed regulation was published in the Delaware *Register of Regulations* Volume 22, Issue 6, dated December 1, 2018.

The public was given notice and the opportunity to provide DelDOT with comments on the proposed regulation.

There were no questions or comments received during the public comment period. Several minor grammatical corrections have been made to the regulation as originally proposed and published that do not affect its original intent or meaning. Accordingly, the final regulation is not being republished.

Summary of the Evidence and Information Submitted

The proposed regulation was written in response to new requirements imposed by Senate Bill 208 of the 149th General Assembly, which made changes to 29 **Del.C.** §6962 relating to public works contracting requiring the Delaware Department of Transportation to adopt regulations to implement a performance-based contractor evaluation rating system.

Findings of Fact

Based on the record in this docket, I make the following findings of fact:

1. The proposed regulation was prepared in full collaboration with the technical advisory panel as described in Senate Bill 208 of the 149th General Assembly.
2. The proposed regulation fulfills the Department's obligation to promulgate regulations to implement a performance-based contractor rating system.
3. The public comment period was appropriately held open for 30 days and no public comment was received.
4. The adoption of these proposed regulations is in the best interest of the State of Delaware. Having received no public comment, there is no basis upon which to revise the proposed regulation and it is adopted, with minor grammatical changes made, as written.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Performance-Based Contractor Evaluation Procedures, as set forth in the version attached hereto, to be effective February 11, 2019.

It is so ordered on this 7th day of January 2019.

Jennifer Cohan, Secretary
Delaware Department of Transportation

2408 Performance-Based Contractor Evaluation Procedures

1.0 Purpose

In accordance with 29 Del.C. §6962, the purpose of this regulation is to set forth the procedures the Delaware Department of Transportation (the "Department") will follow in preparing performance-based contractor evaluations and calculating contractor performance-based ratings.

2.0 Applicability

- 2.1 The Department will complete performance-based evaluations (the "Performance Evaluations") on large public works contracts as defined in Title 29, Ch. 69 of the Delaware Code. The Performance Evaluations will be made on the construction company contracted by the Department to build the project (the "Contractor").
- 2.2 The Department shall provide notice to prospective bidders as part of contract advertisement regarding the prequalification requirements related to the performance based rating system under 29 Del.C. §6962.
- 2.3 For procurements made based on best value, performance must be at least 10%, but no more than 20% of the weighted selection criteria as described in 29 Del.C. §6962(d)(13)a.4.A.
- 2.4 Design Build contracts procured in accordance with Title 29 of the Delaware Code are not subject to these performance-based rating system requirements unless the Department's Request for Proposals (RFP) for a design build contract includes specific language requiring it.

3.0 Performance Evaluation Form, Criteria and Scoring

- 3.1 Performance Evaluations will be made on the Department issued form as shown in Appendix 'A'.
- 3.2 The criteria to be used for Performance Evaluations is as shown on the form in Appendix 'A'.
- 3.3 Scoring will be as shown on the form in Appendix 'A'.
- 3.4 Appendix 'A' is a part of this regulation.

4.0 Performance Evaluation Procedures

- 4.1 Timing of Performance Evaluations
 - 4.1.1 For projects that have an original contract time of 240 calendar days or less, a Performance Evaluation will be made no later than 60 calendar days after substantial completion or completion

of the final punchlist work, whichever occurs first. Performance Evaluations will continue to occur every six months until the final estimate is paid.

4.1.2 For projects with an original contract time greater than 240 calendar days and less than 365 calendar days, a Performance Evaluation will be made at approximately 50% completion. An additional Performance Evaluation will be made no later than 60 days after substantial completion or completion of the final punchlist work, whichever occurs first. Performance Evaluations will continue to occur every six months until the final estimate is paid.

4.1.3 For projects with an original contract time longer than 365 calendar days, Performance Evaluations will be made every six months. An additional Performance Evaluation will be made no later than 60 days after substantial completion or completion of the final punchlist work, whichever occurs first. Performance Evaluations will continue to occur every six months until the final estimate is paid.

4.2 Performance Evaluations will be completed in accordance with the following steps:

4.2.1 Each Performance Evaluation will be initiated and completed by the Department employee in charge of administering the contract (the "Evaluator") specified by the Department at the preconstruction meeting.

4.2.2 The Performance Evaluation will be reviewed for approval by the Department employee (the "Reviewer") specified by the Department at the preconstruction meeting.

4.2.3 Upon approval, the completed Performance Evaluation will be submitted to the primary point of contact for the Contractor, as specified by the Contractor at the time of the preconstruction meeting, for review.

4.2.4 The Contractor will have ten (10) business days to exercise the following options:

4.2.4.1 Accept the Performance Evaluation;

4.2.4.2 Request a meeting in writing to propose changes to the Performance Evaluation to the Secretary's designee in charge of Construction as specified by the Department at the preconstruction meeting (the "Review Meeting").

4.2.5 Within two (2) business days of receipt of a request for a Review Meeting, the Secretary's designee in charge of Construction shall schedule the Review Meeting with the requesting Contractor. The review meeting shall be held no more than ten (10) business days after the date of the request, unless the Contractor and the Secretary's designee in charge of Construction mutually agree in writing to a later date.

4.2.6 The purpose of the Review Meeting will be to discuss the Performance Evaluation and the Contractor must bring any and all supporting documentation or witnesses required to support any changes the Contractor is requesting to the Performance Evaluation.

4.2.7 Within ten (10) business days after the Review Meeting, the Secretary's designee in charge of Construction shall make a determination in writing (the "Determination") to accept any of the Contractor's changes and revise the Performance Evaluation, or to leave the Performance Evaluation as written.

4.2.8 Upon receipt of the Determination, the Contractor may:

4.2.8.1 Accept the Performance Evaluation;

4.2.8.2 Appeal in accordance with subsection 8.3 of this regulation.

4.2.9 If no action is taken by the Contractor within ten (10) business days after the receipt of the Determination then the Performance Evaluation will be considered final.

4.3 For contracts with multiple locations, such as open-end contracts and indefinite delivery-indefinite quantity (IDIQ) contracts, Performance Evaluations will be made at the frequency described in subsection 4.1 of these regulations. The Department will aggregate multiple locations under such contracts in one Performance Evaluation as reasonably practicable.

5.0 Calculation of Performance Rating: Prequalification of Bidders[; Notification of Performance Rating]**5.1 Calculation of Performance Rating**

5.1.1 The performance-based rating (the "Performance Rating") for a Contractor shall be calculated as a rolling average of the score of all Performance Evaluations on file for that Contractor for the most recent three year period as measured from the date of advertisement.

5.1.2 Should no Performance Evaluations exist as set forth in subsection 5.1.1, the Department will utilize the average score of all available Performance Evaluations on file for the previous five year period measured from the date of advertisement.

5.2 Prequalification of Bidders

5.2.1 The Performance Rating, as calculated in subsection 5.1, for a Contractor shall be utilized as a prequalification to bid at the time of bid.

5.2.2 Bidders with scores of equal to or greater than 85% shall be permitted to bid.

5.2.3 Bidders with scores of less than 85% who comply with the retainage requirements of 29 Del.C. §6962 shall be permitted to bid provided the Agreement to Accept Retainage in Appendix 'B' is executed and submitted with the bid. Lack of an executed Agreement to Accept Retainage will result in the rejection of the bid by the Department.

5.3 Notification of Performance Rating. The Department shall post publicly the Performance Rating for all Contractors on the Department's website on a weekly basis.

6.0 Provisional Performance Rating

6.1 Successful bidders awarded Department contracts who have no performance history within the last five (5) years will be assigned a provisional Performance Rating of 85% at the date of advertisement, which shall be applied until a true average can be determined based on actual Performance Evaluations on Department contracts.

6.2 Contractors assigned a provisional Performance Rating may request an interim Performance Evaluation in accordance with subsection 7.1.2 of these regulations.

7.0 Variable Retainage

7.1 The rate of retainage will be as follows:

7.1.1 A 5% retainage shall be withheld by the Department from each monthly progress payment due the Contractor if the Contractor's Performance Rating as calculated in subsection 5.1 of these regulations is less than 85% at the time of advertisement.

7.1.2 A Contractor who is subject to retainage pursuant to subsection 5.2.3 may request an interim Performance Evaluation when a contract reaches 50% completion. If final score of that interim performance evaluation is greater than 85%, the retainage withheld by the Department on future progress payments shall be reduced to 2% for the remaining life of that contract. Interim Performance Evaluations shall be placed on file by the Department and utilized in the calculation of a Contractor's Performance Rating. Interim Performance Evaluations shall follow the procedures set forth in Section 4.0 of this regulation.

7.2 For the avoidance of doubt, a Contractor is not permitted to hold retainage from its subcontractors and all must be paid in accordance with applicable law.

7.3 The Department shall release 60% of the retainage at Substantial Completion as that term is defined in the Contract. The remaining 40% of the retainage will be released upon approval of the final pay estimate in order to satisfy the statutory requirements under 29 Del.C. §6962(d)(5) regarding documentation of payment to subcontractors.

8.0 Appeals

8.1 Submission. Appeals, and acknowledgement of receipt of appeals, shall be made in writing. Appeals may be submitted by email to the addresses set forth below.

8.2 Appeal of Performance Rating

- 8.2.1 A Contractor may appeal their assigned Performance Rating at any time after publication, provided, however, that if a Contractor intends to bid on an upcoming project, the Contractor must appeal the Performance Rating no later than ten (10) calendar days after advertisement for that project. Should a Contractor file an appeal of their Performance Rating more than ten (10) calendar days after advertisement the published Performance Rating on the date of advertisement shall be used for that bid and the result of the appeal will only affect calculation as applied to future bids.
- 8.2.2 All appeals shall be made in writing to the Department's Contract Administration Office and submitted to the Contract Services Administrator electronically at DOT-ask@state.de.us.
- 8.2.3 The Contract Administration Office shall render a decision in writing within **[5 five (5)]** business days from the date of receipt of an appeal stating the basis for the decision and providing any and all supporting documentation. The decision shall be transmitted to the Contractor via email.
- 8.2.4 The determination of the Contract Services Administrator shall be the final determination by the Department on this matter and there is no right of further administrative appeal.
- 8.2.5 The scope of appeals pursuant to this section is limited to the mathematical computation of the Performance Rating. Any Contractor wishing to appeal the results of a Performance Evaluation must do so pursuant to subsection 8.3 of this regulation.

8.3 Appeal of Performance Evaluation

- 8.3.1 A Contractor may appeal the results of a Performance Evaluation only after first completing the steps outlined in subsection 4.2 of these regulations.
- 8.3.2 Any notice of appeal must be filed within ten (10) business days of receipt of a Determination pursuant to subsection 4.2.7. Failure to provide notice of an appeal within this timeframe constitutes a waiver of the right to appeal.
- 8.3.3 All appeals shall be made in writing to the Secretary of Transportation electronically at DOT-ask@state.de.us.
- 8.3.4 After receiving the notice of appeal, the Secretary or the Secretary's designee will review the record and will contact the Contractor within **[15 fifteen (15) business]** days to schedule a meeting to discuss the appeal.
- 8.3.5 The scope of appeals pursuant to this section is limited to the issues, facts, and documents raised to the Secretary's designee in charge of Construction. No facts, issues, or documents not presented to the Secretary's designee in charge of Construction will be considered at the appeal meeting.
- 8.3.6 Within **[30 thirty (30)]** business days of the meeting, the Secretary or the Secretary's designee shall issue a written decision that will serve as the final decision of the Department concerning the appeal.
- 8.3.7 Should the Performance Evaluation that is the subject of a Contractor's appeal, when factored into the computation of the Contractor's Performance Rating, result in the imposition of retainage under Title 29, Ch. 69 of the Delaware Code, the implementation of retainage provisions as outlined in Section 7.0 will not take place until after a final decision of the Department.

Appendix 'A'

Contractor's Performance Evaluation Form

Contractor's Performance Evaluation Form

[http://regulations.delaware.gov/register/february2019/final/Contractors Performance Evaluation Form.pdf](http://regulations.delaware.gov/register/february2019/final/Contractors%20Performance%20Evaluation%20Form.pdf)

FINAL REGULATIONS

Appendix 'B'
Contractor's Agreement to Accept Retainage

The following statement shall be placed in the bid documents on the Proposal Certification page just above the signatures, which shall indicate the Bidder's acknowledgement, consent and agreement to the withholding of retainage by the Department:

"Bidder acknowledges that [if] its Performance-Based Rating as defined in 29 Del.C. §6962 and section 2408 of Title 2 of Delaware's Administrative Code is below the required minimum ~~threshold. As threshold, as~~ a condition to bid, Bidder acknowledges, consents and agrees to the Department withholding retainage of up to 5% from the monies due at the time of each progress payment under the contract."

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Proposed Renewal for the DDDS Lifespan Waiver

HOME AND COMMUNITY-BASED SERVICES WAIVER

In accordance with the public notice requirements of 42 CFR 441.304(e) and (f) and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to the renewal of the DDDS HCBS Medicaid Waiver authorized under section 1915(c) of the Social Security Act.

Purpose

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's proposed amendment to its current HCBS Waiver that serves individuals with intellectual and developmental disabilities (IDD) to create the Lifespan Waiver.

Overview and Summary of the Lifespan Waiver Renewal

Delaware proposes to renew the DDDS waiver that has been in continuous operation since 1987. The waiver must be renewed every five years. The DDDS waiver is targeted to individuals with intellectual disabilities (IDD) (including brain injury), autism spectrum disorder, and Prader-Willi Syndrome. It provides services and supports as an alternative to institutional placement and is designed to enable the individual to live safely in the community and to respect and support their desire to work or engage in other productive activities.

New service(s) to be added to current waiver are:

- Medical Residential habilitation

DDDS proposes adding this new service to the current waiver in order to allow individuals that have increased medical support needs to live in a community residential setting that may not otherwise be possible without this service.

Current change(s) to the current waiver are:

- Revised the language in Section 1 (Request Information 3 of 3) to indicate that all Individuals enrolled in the DDDS Lifespan Waiver can be concurrently enrolled in the 1115 Waiver in order to receive their acute care benefits under the Diamond State Health Plan. The previous language had indicated that only Individuals enrolled in the DDDS Lifespan Waiver who were living with their family could be concurrently enrolled in the 1115 Waiver.
- New provider types have been added to Respite, Personal Care, and Supported Living

Background

Delaware has operated a Home and Community Based Services (HCBS) Waiver for individuals with intellectual and developmental disabilities continuously since 1987. The authority under the Social Security Act that allows HCBS waivers to be created requires that each waiver be renewed every five years.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118(a), 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*. The public is invited to review and comment on the proposed Lifespan Waiver Amendment. Comments must be received by 4:30 p.m. on March 4, 2019. Comments may be submitted in the following ways:

This public notice, the Renewal, and a summary of the Renewal are posted online at:

<https://dhss.delaware.gov/dhss/dmma/homeandc.html>

GENERAL NOTICES

The DMMA and DDDS website will indicate the locations at which the hardcopy can be viewed.

Individuals may submit written comments using one or all of the following methods:

By email: DMMA_PublicHearing@state.de.us

(Please identify in the subject line: *DDDS Lifespan Waiver Amendment*)

By fax: 302-255-4481 to the attention of Glyne Williams

By written comments sent to:

DDDS Lifespan Waiver Renewal

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

The hardcopy waiver amendment will be available at the following locations from February 14, 2019 through March 4, 2019.

- DDDS Fox Run Office at: 2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
- Thomas Collins Building at: 540 South Dupont Hwy, 1st Floor, Dover, DE 19901
- At the Woodbrook Office at: 1056 S. Governors Ave, Dover, DE 19904
- On the Stockley Center campus at: 26351 Patriots Way, Georgetown, DE 19947 - 101 Lloyd Lane and 101 Boyd Blvd.

1/14/2019

Date

Steve Groff

Director

Division of Medicaid and Medical Assistance

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, February 13, 2019 beginning at 1:30 p.m. A business meeting will be held the following month on Wednesday, March 13, 2019 beginning at 10:30 a.m. The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania 18977. For more information, visit the DRBC web site at www.drbc.gov or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION
PUBLIC NOTICE**804 Rules and Regulations for Spotted Lanternfly**

The Department of Agriculture proposes to amend its Regulations adopted in accordance with Title 3, Chapter 1 of the Delaware Code to add Rules and Regulations for Spotted Lanternfly at 3 **DE Admin. Code** 804. The purpose of the amended regulations is to establish for the plant pest, spotted lanternfly, appropriate quarantine restrictions, permitting process, and discovery and suppression measures within the State of Delaware. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code, Chapter 11 Sections 1102, 1103 and 1106. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the February 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 4, 2019. Written materials submitted will be available for inspection at the above address.

On or after March 4, 2019, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, February 21, 2019 at 5:00pm at George Read Middle School (314 E. Basin Road, New Castle, Delaware).

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE**4455 Delaware Regulations Governing a Detailed Plumbing Code**

Pursuant to 16 **Del.C.** §122(3)(e) and 16 **Del.C.** §7903, Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the

Plumbing Code. On February 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Plumbing Code. The revisions include the adoption of the 2018 International Plumbing Code with amendments.

Copies of the proposed regulations are available for review in the February 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, March 8, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@state.de.us
Phone: (302) 744-4951

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4470 State of Delaware Medical Marijuana Code

Pursuant to 16 **Del.C.** Ch. 49A, Office of Medical Marijuana (OMM), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the State of Delaware Medical Marijuana Code. On February 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the State of Delaware Medical Marijuana Code. The revisions include the establishment of requirements for Safety Compliance facilities, provisions for the production of edible medical marijuana products and limitations therein, compliance and enforcement procedures, random sampling procedures, and the addition of specific definitions and technical corrections.

Copies of the proposed regulations are available for review in the February 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, March 8, 2019, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@state.de.us
Phone: (302) 744-4951

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

DSS Application Process

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Division of Social Services Manual regarding the DSS Application Process, specifically, to update formatting and clarify the application process for DSS benefit programs.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2019. Please identify in the subject line: DSS Application Process.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

Income Reporting Requirements for Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to update the income reporting requirements for the Purchase of Care subsidy program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2019. Please identify in the subject line: Income Reporting Requirements for Child Care.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR QUALITY
PUBLIC NOTICE

1140 Delaware Low Emission Vehicle Program

The Department proposes to amend **7 DE Admin. Code** 1140, following California's December 12, 2018 amendments to the California Code of Regulations 1961 and 1962 pursuant to the Clean Air Act requirements stipulated in section 177 for states to adopt identical regulations.

These amendments clarify the "deemed to comply" provision to continue to hold true for the federal GHG vehicle standards adopted in 2012 for light-duty vehicles for the model years 2021-2025. If the federal GHG standards are weakened by the Environmental Protection Agency and the National Highway Traffic Safety Administration's proposed SAFE vehicles rule, the automobile manufacturers will be required to continue to meet the 2012 federal GHG vehicle standards in order to be deemed in compliance with Delaware's regulations.

The hearing record on the proposed amendments to the **7 DE Admin. Code** 1140 Delaware Low Emission Vehicle program will open February 1, 2019. 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 amendments will be held on February 21, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, March 8, 2019.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****2400 BOARD OF EXAMINERS OF CONSTABLES****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 5.0 Firearms, and Rule 1.0 Licensing. If you wish to view the complete Rules, contact Ms. Ashley Hughes at 302-672-5337. Any persons wishing to present views may submit them in writing, by March 4, 2019, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903.
