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# Delaware Register of Regulations

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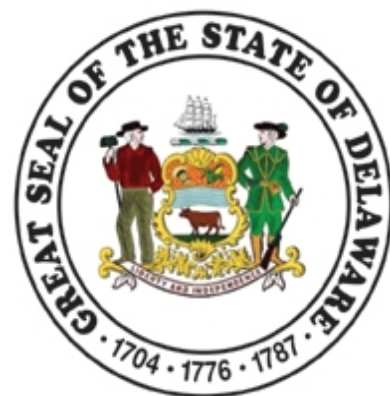
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Emergency  
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Final

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 May 15, 2015.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.

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2104 Minimum Disclosure and Agreement Requirements.....	18 DE Reg. 295 (Prop.)
2201 Operating Regulation.....	18 DE Reg. 472 (Final) 18 DE Reg. 295 (Prop.)
2202 Minimum Records.....	18 DE Reg. 472 (Final) 18 DE Reg. 295 (Prop.)
2207 Exemption of Licensed Lenders.....	18 DE Reg. 472 (Final)
2302 Exemptions.....	18 DE Reg. 159 (Final)
2701 Operating Regulation.....	18 DE Reg. 159 (Final) 18 DE Reg. 295 (Prop.) 18 DE Reg. 472 (Final)
2901 Operating Regulation.....	18 DE Reg. 295 (Prop.) 18 DE Reg. 472 (Final)
2902 Minimum Records.....	18 DE Reg. 295 (Prop.) 18 DE Reg. 472 (Final)
3401 Regulations.....	18 DE Reg. 159 (Final)
3402 Surety Bond or Irrevocable Letter of Credit.....	18 DE Reg. 159 (Final)
<b>Public Service Commission</b>	
1001 Rules of Practice and Procedure of the Delaware Public Service Commission.....	18 DE Reg. 160 (Final)
4001 Rules for the Provision of Telecommunication Services (Docket Nos. 10 and 45) .....	18 DE Reg. 296 (Prop.) 18 DE Reg. 653 (Final) 18 DE Reg. 687 (Prop.)
4002 Regulations Governing Payphone Service Providers in Delaware.....	18 DE Reg. 687 (Prop.)
4003 Regulations Governing the Minimum Service Requirements for the Provision of Telephone Service for Public Use within the State of Delaware (Docket No. 20), Repeal of.....	18 DE Reg. 296 (Prop.) 18 DE Reg. 653 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Maintenance and Operations</b>	
2310 Outdoor Advertising.....	18 DE Reg. 690 (Prop.)
<b>Division of Motor Vehicles</b>	
2224 Defensive Driving Course, Providers, and Instructors.....	18 DE Reg. 540 (Prop.) 18 DE Reg. 708 (Final)
2228 Special Group or Organization Registration Plates for Persons With Disabilities.....	18 DE Reg. 635 (Prop.)
<b>Division of Planning and Policy</b>	
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	18 DE Reg. 240 (Final)

2309 Standards and Regulations for Subdivision Streets and State Highway Access .....	18 DE Reg. 455 (Prop.) 18 DE Reg. 709 (Final) 18 DE Reg. 853 (Prop.)
<b>Division of Transportation Solutions</b>	
2402 Delaware Manual on Uniform Traffic Control Devices.....	18 DE Reg. 779 (Prop.)
2406 Policies and Procedures for Acquisition of Certain Real Property Interests	18 DE Reg. 456 (Prop.) 18 DE Reg. 733 (Final)
2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests.....	18 DE Reg. 545 (Prop.) 18 DE Reg. 734 (Final)
<b>DIVISION OF RESEARCH</b>	
<b>Office of the Registrar of Regulations</b>	
Regulation Governing Administrative Rulemaking Procedures.....	18 DE Reg. 161 (Final)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Office of Management and Budget</b>	
<b>Division of Facilities Management</b>	
Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	18 DE Reg. 550 (Prop.)
4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	18 DE Reg. 547 (Prop.) 18 DE Reg. 736 (Final)
<b>State Employees Benefits Committee</b>	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	18 DE Reg. 79 (Final)
<b>Statewide Benefits Office</b>	
2007 Disability Insurance Program Rules and Regulations.....	18 DE Reg. 79 (Final)
<b>Office of State Planning Coordination</b>	
Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts.....	18 DE Reg. 359 (Prop.)

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**Symbol Key**

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

**Emergency Regulations**

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

**§ 10119. Emergency regulations.**

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

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

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

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

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

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

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

Statutory Authority: 7 Delaware Code, Section 903(h) (7 **Del.C.** §903(h)  
7 **DE Admin. Code** 3507

**SECRETARY'S ORDER No. 2015-F-0020**

*Pursuant to 29 Del.C. §10119*

**3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas****AUTHORITY:**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 3507 without prior notice or public hearing to assure that Delaware's recreational black sea bass season is consistent with the federal recreational black sea bass season and to avoid the actual and imminent danger to this fishing resource and its associated businesses.7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish.

**REASON FOR THE EMERGENCY ORDER**

Delaware's recreational black sea bass fishery is presently closed by regulation from January 1 through May 18 and September 19 through October 17. A federal regulation was published on March 25, 2015 that will open the black sea bass season on May 15, 2015. Therefore, if Delaware does not use an emergency order to open its recreational black sea bass season on May 15, 2015, the date the federal recreational black sea bass season will open, Delaware's recreational black sea bass season will open on May 19, 2015 as previously established through the normal regulatory process. This will prevent Delaware anglers from fishing

the crucial first four days, including the critical first weekend, of the federal black sea bass season, causing an economic danger to our fishing resource businesses, such as charter boats, bait shops and tackle dealers that depend on this fishery.

A black sea bass management region extending from Delaware through North Carolina is formally recognized by Addendum XXI of the Atlantic States Marine Fisheries Commission's summer flounder, scup, and black sea bass Interstate Fisheries Management Plan, approved in 2011, and was delineated based on shared biological and fishery characteristics among the states in this region. Delaware's black sea bass regulations, as per the management plan, are kept consistent with federal regulations. Consequently, Delaware's rule-making process typically begins when the federal regulations are published. The federal rule opening the recreational black sea bass season in federal waters was published, March 25, 2015 and will open federal waters on May 15, 2015. Delaware's normal regulatory process takes four months, so Delaware will not be able to maintain consistency with federal regulations unless an emergency order is issued to open our black sea bass recreational fishery on May 15, 2015. All other states in our management region have already stated their intent to open their seasons on May 15, 2015, thus Delaware anglers and associated businesses will be denied this angling and economic opportunity if Delaware does not also open its season on May 15 2015.

Therefore, this Emergency Order changes the date in the relevant regulation, **7 DE Admin. Code 3507**, from a closure period of January 1 through midnight May 18 to a closure period from January 1 through midnight May 14, allowing the season to open on May 15 consistent with the federal regulation.

#### **EFFECTIVE DATE OF ORDER**

This Emergency Order shall take effect at 12:01 a.m. on May 5, 2015 and shall remain in effect for 90 days.

#### **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 and Wildlife, 89 Kings Highway, Dover, Delaware, 19901.

#### **ORDER**

It is hereby ordered, the 5<sup>th</sup> day of May 2015 that the above referenced amendment to Tidal Finfish Regulation 3507 (12.0), a copy of which is hereby attached, are adopted pursuant to **7 Del.C. §903(h)** and supported by the evidence contained herein.

David S. Small, Secretary  
Department of Natural Resources and Environmental Control  
May 5, 2015

#### **3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

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

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in **7 Del.C. §2903**, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

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- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.  
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each day's landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. January 1, and ending midnight May ~~4~~14, and beginning at 12:01 a.m. September 19 and ending mid-night October 17.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May ~~4~~15 through September 18 and during the period October 18 through December 31.
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**Symbol Key**

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

**Proposed Regulations**

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

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**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE****Proposed Amendments to the Rules of Practice and Procedure to Allow Each Signatory Party and the DRBC to Administer a Single Process for the Review and Adjudication of Projects**

The Delaware River Basin Commission (“DRBC” or “Commission”) is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its commissioners are the governors of the four basin states – Delaware, New Jersey, New York, and Pennsylvania – and a federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedures Act. This notice is published by the Commission for information purposes.

**Summary:** The Commission will hold a **public hearing** to receive comments on proposed amendments to its *Administrative Manual Part III – Rules of Practice and Procedure* (18 C.F.R. Part 401) to provide for DRBC and each of the parties to the *Delaware River Basin Compact* (United States Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large 688; and 53 Delaware Laws, Chapter 71, Approved May 1, 1961, (“the Compact”) – Delaware, New Jersey, New York, Pennsylvania and the federal government (“Signatory Parties”) – to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The program, called “One Process/One Permit,” (also herein, “the Program”) will allow DRBC and administrative agencies of the Signatory Parties participating in the Program to incorporate the requirements and determinations of both DRBC and the Signatory Party agency into a single permit or other approval instrument.

**Dates:** The **public hearing** will start on or around 2:00 P.M. on Tuesday, June 9, 2015, during the Commission’s regularly scheduled public hearing. The hearing will continue until all those wishing to testify have had an opportunity to do so. Depending upon the number of people wishing to speak, the hearing officer may impose time limits on speakers. Written comments will be accepted by any of the means described below and must be received by 5:00 P.M. on Wednesday, July 1, 2015. More information regarding the procedures for the hearing and comments is set forth in the section “Oral Testimony and Written Comments.”

**Addresses:** The **public hearing** will be held at the Washington Crossing Historic Park Visitor's Center at 1112 River Road in Washington Crossing, Pennsylvania. Please check [washingtoncrossingpark.org/contact/](http://washingtoncrossingpark.org/contact/) for directions, as Internet mapping services provide unreliable directions to this location.

**Oral Testimony and Written Comments:** Persons wishing to testify at the hearing are asked to register in advance by contacting Paula Schmitt at 609-883-9500, ext. 224 or [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us). Written comments may be submitted as follows: If by email (preferred), to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); by fax, to Commission Secretary at 609-883-9522; by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during DRBC's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "One Process/One Permit" or "OPOP" in the subject line.

**For Further Information:** The rule text is available on the DRBC website, DRBC.net. Also posted to the website are an extensive FAQ document; DRBC Resolution No. 2015-4, authorizing the Executive Director to initiate rulemaking and enter into an administrative agreement with the New Jersey Department of Environmental Protection (NJDEP) for demonstration of the Program; and the administrative agreement between DRBC and the NJDEP to provide for the demonstration program, which includes provisions for fully implementing One Process/One Permit once a final rule has been adopted. Detailed procedures of the DRBC for public hearings, public meetings and "Public Dialogue" are available on the web at: <http://www.state.nj.us/drbc/library/documents/procedures120414.pdf>. For further information, please contact Commission Secretary Pamela M. Bush, 609-477-7203.

## Supplementary Information

*Background.* Because DRBC and its Signatory Parties share common water resource management objectives, sponsors of many water resource-related projects in the Delaware River Basin are currently required to apply to both the DRBC and a state agency, among others, for approvals. The proposed rule provides for DRBC and the administrative agencies of the Signatory Parties to identify regulatory programs that by mutual agreement will be managed through a single process resulting in one decision or approval. Agreements between DRBC and federal agencies are possible under the rule, but none are currently contemplated.

One Process/One Permit is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public. The regulatory standards and authorities of the DRBC and each of its Signatory Parties are expressly preserved by the Program, including in the proposed rule. The more protective of the applicable DRBC or Signatory Party agency's requirements will be included in each permit or approval issued under the Program.

The proposed rule provides for DRBC and each Signatory Party agency choosing to implement One Process/One Permit to enter into an administrative agreement that identifies the types of projects and approvals to be covered. Initially, the Program is expected to be implemented for (a) withdrawals of basin waters subject to both DRBC review and state allocation programs; and (b) wastewater discharges subject to DRBC review and the state-administered National Pollutant Discharge Elimination System (NPDES) program. For water withdrawals, the lead agency under One Process/One Permit may be the state or the DRBC, depending upon current state programs. The delegated state environmental agencies will be lead agencies for the review of wastewater discharges. Other regulatory programs, such as programs relating to floodplain management, could be included in the future. All administrative agreements between DRBC and agencies of the Signatory Parties for implementing One Process/One Permit will be subject to Commission approval following a public hearing.

*Authority.* Sections 1.5 and 3.9 of the Compact and existing DRBC rules allow and encourage the Commission to use the agencies of the Signatory Parties wherever feasible and advantageous consistent with the Compact. Accordingly, under the proposed rule, permits issued by Signatory Party agencies may include a finding required by Section 3.8 of the Compact. Specifically, after the rule and amended agreements are in place, based on the appropriate level of review and a recommendation by the DRBC staff, approvals issued under the Program may

include the finding that when operated in accordance with the terms and conditions of the approval, the activities regulated by the approval will not substantially impair or conflict with DRBC's comprehensive plan.

*Operation of the Program.* Under the proposed rule, an application for initial approval, renewal or revision of project activities subject to the One Process/One Permit program will be filed only with the lead agency. This does not mean that the DRBC or others will not be involved in the review of applications for new and renewal water withdrawal and discharge projects. Rather, DRBC and the Signatory Party agency will follow a single process, and reviews will be performed more efficiently and more collaboratively.

Consistent with the proposed rule, the agreements between DRBC and Signatory Party agencies will provide for a level of DRBC review appropriate to the circumstances. Some reviews, such as those for simple and standard renewals of existing permits, may be significantly streamlined or subject to inter-agency notifications only. Others, including to implement standards for which the DRBC staff have special expertise, will involve substantial DRBC staff effort. For example, under the wastewater discharge program, DRBC staff will continue to perform modeling to determine "No Measurable Change" requirements for the Commission's Special Protection Waters program and to calculate an alternative mixing zone for a discharge of treated industrial wastewater to the Delaware Estuary. For certain projects, DRBC staff also will continue to identify conditions of approval to ensure that projects subject to review under the Compact and implementing regulations do not impair or conflict with the Commission's comprehensive plan. The purpose of One Process/One Permit is to eliminate unnecessary effort, not to eliminate effort needed to fully review a project under all applicable standards and rules. Under the Program, each party continues to recognize the authority of the other to promulgate rules, regulations and standards. The rule does not change that authority.

Notably, a separate DRBC review and decision for water withdrawal and discharge activities will still be required in certain cases, such as when a new project must be incorporated into the Commission's comprehensive plan. Both parties also will retain the right to act separately, such as in the instances, anticipated to be rare, where the parties cannot agree on the terms and conditions of approval. Certain categories of projects that are subject to DRBC review will not be covered by the Program, and the Executive Director and Commissioners will have the ability to remove a project from the Program. However, the objective of One Process/One Permit is to encompass most, if not all, elements of the review and approval for covered projects.

The proposed rule does not modify the existing project review fee schedule of the DRBC or that of any Signatory Party agency. Although One Process/One Permit is expected to improve process efficiency, in many instances as described above, the DRBC will devote significant resources and work effort to review projects and support its regulatory programs. Accordingly, the DRBC regulatory program will continue for the present to be supported by its existing regulatory program fees. The Commission's fee schedule set forth in Resolution No. 2009-2 will remain in effect unless and until the Commission amends it through rulemaking or a comparable public process. Under One Process/One Permit, all DRBC fees applicable under current practices will continue to be paid directly to the Commission.

The proposed rule provides that persons aggrieved by the final action of a state agency on behalf of the Commission under One Process/One Permit must exhaust their administrative remedies under the law of the Signatory Party agency that issued the decision.

*New Jersey Demonstration Program.* By Resolution No. 2015-4 approved by the Commission on March 11, 2015, DRBC and NJDEP have agreed to "practice" using new collaborative processes between the two agencies for the review of wastewater discharge applications, pending the adoption of a new rule such as the one proposed today. The agreement between DRBC and NJDEP provides for the demonstration program and sets forth provisions needed to fully implement One Process/One Permit once a final rule has been adopted. In the event that a project reviewed under the New Jersey Demonstration Program reaches the stage where it is ready for final approval before DRBC has adopted a final rule, the application will be acted upon by DRBC and the NJDEP independently. As explained above, additional information about the New Jersey Demonstration Program is available on the Commission's website.

*Preservation of the 1954 Supreme Court Decree.* In accordance with Sections 3.3(a) and 3.5 of the Compact, the proposed rule expressly provides that it does not grant authority to any Signatory Party agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree"). The rule further reiterates that any such action may be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members

of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

*No Effect on Section 401 State Water Quality Certification Programs.* The proposed rule also does not affect the authority of Signatory Party states to issue water quality certifications under Section 401 of the Clean Water Act.

Dated: May 14, 2015

PAMELA M. BUSH, ESQ.  
Commission Secretary

## **Text of proposed amendments:**

It is proposed to amend Article 3 of the *Administrative Manual – Rules of Practice and Procedure* with the addition of the following section:

### **2.3.11 One Permit Program**

A. Purpose. The purpose of the One Permit Program set forth in this Section is to provide for the environmental agency and/or other administrative agency of a Signatory Party (“Signatory Party Agency”) and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program will incorporate, where appropriate, the Signatory Party Agency and Commission requirements and determinations in a single permit or other approval instrument.

B. Scope. This Section applies to all projects that: are reviewable under the Compact; meet the thresholds for review set forth in Section 2.3.5 of these Rules of Practice and Procedure; are subject to review by a Signatory Party Agency under its own statutory authorities; and are within categories of projects that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this Section 2.3.11 of the Rules.

C. Regulatory Programs. A Signatory Party Agency or the Commission may at any time propose to the other that a regulatory program be administered within the Basin under the One Permit Program. Regulatory programs eligible for administration under the One Permit Program include but are not limited to those concerning: basin discharges, basin water withdrawals, and basin flood plain requirements.

D. Procedure. The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by the Commission following a duly noticed public hearing and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

1. Except as provided in subsection 2.3.11.E of these Rules or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this Section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.
2. Notice that the project sponsor has filed an application with the Signatory Party Agency shall be provided to the Commission in the manner specified in the applicable Administrative Agreement.
3. The Signatory Party Agency receiving the application shall for those categories of projects identified in the Administrative Agreement as requiring Commission input, solicit the recommendation of the Commission staff as to any conditions of approval that may be necessary or appropriate to include in the project review determination under § 3.8 of the Compact. The process for solicitation of the recommendation by Commission staff shall be as defined within the applicable Administrative Agreement.
4. Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under § 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under § 3.8 of the Compact as to the regulatory program covered by the Signatory Party Agency’s approval and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor.

5. The Commission will maintain a list of all projects being administered pursuant to the Program.

E. Comprehensive Plan Projects. Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission before initiating project design. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this Section may be issued through the One Permit Program. An application for renewal of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

F. Retention of Commission Review and Enforcement Authorities. Notwithstanding any other provision of this Section 2.3.11, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this Section 2.3.11 shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this Section may include collaborative and cooperative compliance and enforcement procedures, nothing in this Section 2.3.11 shall limit the authority of the Commission to exercise its enforcement authority under the Compact and applicable regulations.

G. Exhaustion of Signatory Party Administrative Remedies Prerequisite to Appeal. Before commencing an action in a court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency on behalf of the Commission, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

H. Fees. The Commission shall establish and maintain a schedule of fees for any or all of the services it renders pursuant to this Section 2.3.11. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with such schedule and applicable rules.

I. Termination of existing Commission docket. At such time as the Signatory Party Agency makes the Project Review Determination and issues a permit or other approval instrument to a project sponsor in accordance with this Section 2.3.11, the Executive Director is authorized to terminate in whole or in part any Commission docket then in effect with respect to such project, provided that such termination shall not serve to remove a project from or otherwise modify the Comprehensive Plan.

J. Modification of Rules of Practice and Procedure to Conform to this Section. Any project subject to the One Permit Program shall be governed by this Section 2.3.11 and not Sections 2.1.4, 2.1.5, 2.1.6, 2.1.8, 2.3.4 A, C and E, 2.3.6, 2.3.7 and Article 6 where they are inconsistent with the procedures provided in this Section.

K. No Interference with Supreme Court Decree. In accordance with Sections 3.3(a) and 3.5 of the Compact, nothing in this Section 2.3.11 shall grant the authority to any Signatory Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree"). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

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## DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 DE Admin. Code 1001

### PUBLIC NOTICE

#### 1001 Thoroughbred Racing Rules and Regulations

##### Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt the ARCI rule relating to cobalt. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. 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 June 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 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](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 Thoroughbred Racing Commission 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 July 1, 2015. Written materials submitted will be available for inspection at the above address.

##### Adoption of Proposed Regulation

On or after July 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed new rule 15.21 relating to adoption of the ARCI cobalt rule or make additional changes because of the public comments received.

#### 1001 Thoroughbred Racing Rules and Regulations (*Break in Continuity of Sections*)

##### 15.0 Medication; Testing Procedures

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

###### 15.21 ARCI Cobalt Rule.

15.21.1 The Commission hereby adopts by reference the Association of Racing Commissioners International Cobalt rule (ARCI-011-020, Part E.(1)(C)), approved April 24, 2015.

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

**1001 Thoroughbred Racing Rules and Regulations**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH OFFICE OF ANIMAL WELFARE

Statutory Authority: 16 Delaware Code, Sections 122(3)bb and 139  
(16 Del.C. §§122(3)bb & 139)

### PUBLIC NOTICE

#### **4502 Regulations for Certification of Animal Control Officers and Animal Cruelty Agents**

On June 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare, plans to publish proposed regulations for Certification of Animal Control Officers and Animal Cruelty Agents and hold them out for public comment per Delaware law.

The purpose of the regulations is to establish minimum training requirements for the certification of animal control officers and animal cruelty agents working in the State of Delaware. They also establish procedures for documenting all complaints filed against officers/agents, and conducting investigation of complaints concerning violations of this chapter.

The regulation has been established to include:

- training and certification requirements for animal control officers and animal cruelty agents in Delaware;
- procedures for obtaining a certification from the Office of Animal Welfare;
- the training course approval process;
- continued education and recertification obligations;
- disciplinary sanctions; and
- complaint documentation and investigation procedures.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Tuesday, June 30, 2015 to:

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

#### **4502 Regulations for Certification of Animal Control Officers and Animal Cruelty Agents**

### **1.0 Authority and Purpose**

- 1.1 These regulations are promulgated by the Delaware Department of Health and Social Services pursuant to 16 Del.C. §§122(3)bb and 139 pertaining to training and certification requirements for animal control constables, animal control officers, animal cruelty agents, dog control agents, and dog wardens.
- 1.2 The overall purpose of these regulations is to establish minimum training requirements for the certification of animal control officers and animal cruelty agents working in the State of Delaware. They also establish procedures for documenting all complaints filed against officers/agents, and conducting investigation of complaints concerning violations of this chapter.

- 1.3 These regulations define: (1) training and certification requirements for animal control officers and animal cruelty agents; (2) procedures for obtaining a certification from the Office of Animal Welfare; (3) training course approval process; (4) continuing education and recertification obligations; (5) disciplinary sanctions, and (6) complaint documentation and investigation procedures.

## **2.0** **Definitions**

The following words or terms, when used in these regulations, shall have the meaning indicated, unless the context otherwise requires:

**"Animal Control Officer"** means animal control constable, animal control officer, dog control agents, and dog wardens as defined in 3 Del.C., 9 Del.C., and 10 Del.C.

**"Animal Cruelty Agent"** means any person qualified to act pursuant to 11 Del.C. §1325.

**"Certified Animal Control Officer"** means an individual who has been certified by the Office to perform animal control pursuant to Section 3.0.

**"Certified Animal Cruelty Agent"** means an individual who has been certified by the Office to enforce animal cruelty laws pursuant to Section 5.0.

**"Department"** means the Department of Health and Social Services or its duly authorized representatives.

**"Office"** means the Division of Public Health Office of Animal Welfare or its duly authorized representatives.

## **3.0** **Animal Control Officer Certification**

- 3.1 No person shall serve as a Delaware animal control officer unless such person is trained and certified by the Office as set forth in this section.
- 3.2 A person who acts as a certified animal control officer without certification from the Office is subject to penalties pursuant to 16 Del.C. §107(a).
- 3.3 Individuals seeking certification as an animal control officer shall submit a written application documenting their qualifications to the Office of Animal Welfare, Carvel Building, 1901 N. DuPont Highway, New Castle, DE 19720.
- 3.4 In order to qualify for certification as an animal control officer, an applicant shall submit proof of the following requirements:
- 3.4.1 Is eighteen (18) years of age or older;
- 3.4.2 Is employed as an animal control officer in Delaware. A letter of intent from an organization hiring the individual as an animal control officer may be accepted;
- 3.4.3 A criminal background check performed within 6 months of application showing the individual has not been convicted of any of the following:
- 3.4.3.1 a felony offense.
- 3.4.3.2 a crime or infraction involving animal abuse or neglect.
- 3.4.3.3 a crime against person or property.
- 3.4.4 Has a valid Delaware driver license;
- 3.4.5 Has successfully completed an animal control training course that has been approved by the Office of Animal Welfare ("Office");
- 3.4.6 Has passed an examination given by or approved by the Office; and
- 3.4.7 Has completed a minimum of 20 hours of infield training under the direction of one or more senior Certified Animal Control Officers currently working in that capacity. The infield training shall commence upon successful completion of the animal control training course and exam.
- 3.5 The Office will receive and review all applications for animal control certification and determine eligibility within 14 business days.
- 3.6 The Office may, by endorsement, without written examination, certify an animal control officer who has completed a training program that meets the educational requirements for certification defined in 4.0



and who, in the opinion of the Office, meets the qualifications specified by these regulations for an animal control officer.

#### **4.0 Training of Certified Animal Control Officers**

- 4.1 An animal control officer training course shall provide at least forty (40) hours of instruction.
- 4.2 The course must be administered by or approved by the Office and minimum curriculum requirements shall include:
- 4.2.1 Role and authority of an animal control officer;
  - 4.2.2 Delaware laws governing rabies control, animal control and protection, dangerous dogs, animal cruelty, and enforcement powers;
  - 4.2.3 Animal health and disease recognition, control, and prevention;
  - 4.2.4 First aid for injured animals;
  - 4.2.5 Principles and procedures for capturing and handling stray domestic animals, wildlife and livestock;
  - 4.2.6 Criminal justice system, investigative techniques, rules of evidence, and report writing;
  - 4.2.7 Principles of courtroom testimony and prosecution;
  - 4.2.8 Communications, conflict resolution, and officer safety; and
  - 4.2.9 Emergency management.
- 4.3 Following the training detailed in 4.2 of these regulations, the applicant shall take an examination provided by or approved by the Office. Applicants who fail to obtain a passing score after testing two times must repeat the training course before additional testing is permitted.
- 4.4 Upon completion of an examination outlined in 4.3 of these regulations, the applicant shall complete a minimum of 20 hours of infield training under the direction of one or more senior Certified Animal Control Officers currently working in that capacity.
- 4.5 The Office may waive the completion of all or part of the curriculum required upon presentation of documentary evidence that the individual has satisfactorily completed equivalent training or experience.
- 4.6 An animal control officer, if serving as such on the effective date of this Rule shall, within 6 months after the effective date of this Rule, complete the certification requirements outlined in 3.0 of these regulations. Persons who fail to complete the certification requirement within 6 months after the effective date of this Rule will not be authorized to act as an animal control officer in the State of Delaware and shall be subject to penalties pursuant to 16 **Del.C.** §107(a).
- 4.7 An animal control officer hired on or after the effective date of this Rule shall, within 60 days after the date of hire, complete the certification requirements outlined in 3.0 of these regulations. Officers that have not completed the certification requirement within 60 days after the date of hire will not be authorized to act as an animal control officer in the State of Delaware.

#### **5.0 Animal Cruelty Agent Certification**

- 5.1 No person shall serve as a Delaware animal cruelty agent unless such person is trained and certified as set forth in this Section.
- 5.2 A person who acts as a certified animal cruelty agent without certification from the Office is subject to penalties pursuant to 16 **Del.C.** §107(a).
- 5.3 Individuals seeking certification as an animal cruelty agent shall submit a written application documenting their qualifications to the Office of Animal Welfare, Carvel Building, 1901 N. DuPont Highway, New Castle, DE 19720.
- 5.4 In order to qualify for certification as an animal cruelty agent, an applicant shall submit proof of the following requirements:
- 5.4.1 Is eighteen (18) years of age or older;

- 5.4.2 Is employed as an animal cruelty agent in Delaware or authorized to enforce animal cruelty laws in Delaware. A letter of intent from an organization hiring the individual as an animal cruelty agent may be accepted;
- 5.4.3 A criminal background check within 6 months of application showing the individual has not been convicted of any of the following:
  - 5.4.3.1 a felony offense.
  - 5.4.3.2 a crime or infraction involving animal abuse or neglect.
  - 5.4.3.3 a crime against person or property.
- 5.4.4 Has a valid Delaware driver license;
- 5.4.5 Has successfully completed an animal cruelty agent course that has been approved by the Office of Animal Welfare ("Office"); and
- 5.4.6 Has passed an examination given by or approved by the Office.
- 5.5 The Office will receive and review all applications for animal cruelty agent certification and determine eligibility within 14 business days.
- 5.6 The Office may, by endorsement, without written examination, certify an animal cruelty agent who has completed a training program that meets the educational requirements for certification defined in 6.0 and who, in the opinion of the Office, meets the qualifications specified by these regulations for an animal cruelty agent.

## **6.0 Training of Certified Animal Cruelty Agent**

- 6.1 An animal cruelty agent training course shall include training outlined in section 4.2 of these regulations and supplemental training of at least fourteen (14) additional hours of instruction specific to animal cruelty agents.
- 6.2 The supplemental training for animal cruelty agents must be administered by or approved by the Office and minimum curriculum requirements shall include:
  - 6.2.1 Advanced investigative techniques;
  - 6.2.2 Delaware animal cruelty statutes and animal cruelty agent authority;
  - 6.2.3 Arrest, search and seizure, use of force;
  - 6.2.4 Blood sports, animal hoarding, and other crimes against animals;
  - 6.2.5 Interview and interrogation techniques; and
  - 6.2.6 Crime scene processing;
- 6.3 Following the training detailed in 6.2 of these regulations, the applicant shall take an examination provided by or approved by the Office of Animal Welfare. Applicants who fail to obtain a passing score after testing two times must repeat the training course before additional testing is permitted.
- 6.4 The Office may waive the completion of all or part of the curriculum required upon presentation of documentary evidence that the individual has satisfactorily completed equivalent training or experience.
- 6.5 An animal cruelty agent, if serving as such on the effective date of this Rule shall, within 6 months after the effective date of this Rule, complete the certification requirement outlined in 5.0 of these regulations. A person who fails to complete the certification requirement within 6 months after the effective date of this Rule will not be authorized to act as an animal cruelty agent in the State of Delaware and shall be subject to penalties pursuant to 16 Del.C. §107(a).
- 6.6 An animal cruelty agent hired on or after the effective date of this Rule shall, within 60 days after the date of hire, complete the certification requirement outlined 5.0 of these regulations. Agents that do not complete the certification requirement within 60 days after the date of hire will not be authorized to act as an animal cruelty agent in the State of Delaware.

**7.0 Approval of Training Course**

- 7.1 Any organization or institution desiring to conduct an animal control officer or animal cruelty agent education program shall apply to the Office and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying animal control officers and animal cruelty agents, and that it is prepared to meet other standards which may be established by the Office.
- 7.2 If the Office determines that any approved educational program is not maintaining the standards required by these regulations and by the Office, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be issued to the program. The Office shall withdraw such program's approval if it fails to correct the deficiency within the time prescribed. The organization or institution may reapply for approval to the Office once the program meets standards established by the Office.

**8.0 Issuance of Certification**

- 8.1 The Office shall issue a certificate to each qualified applicant who has successfully met the requirements under subsections 3.4 and 5.4.
- 8.2 A copy of the certificate shall be kept on file at the animal control officer's or animal cruelty agent's place of employment.
- 8.3 The employer shall notify the Office in writing, no later than 10 days from the date of termination or resignation, of an animal control officer's or animal cruelty agent's employment. The employer shall state the reason for termination in the notification.
- 8.4 The Office shall maintain a current registry of all persons certified as animal control officers and animal cruelty agents in the state. The Office will post the registry on their Web site.
- 8.5 If a certified animal control officer or certified animal cruelty agent resigns or leaves the employment of an animal control/cruelty agency in good standing and is no longer working in the role of animal control officer or animal cruelty agent, the officer's/agent's certification shall become inactive. If the officer/agent is rehired as an animal control officer or animal cruelty agent within 6 months, the certification will be reinstated to active. If the officer/agent is not rehired within 6 months, the certification shall be revoked. The officer/agent can apply for recertification once they become employed as an animal control officer or animal cruelty agent.

**9.0 Continuing Education and Recertification**

- 9.1 A certified animal control officer or certified animal cruelty agent shall complete 8 hours of continued education and training every 12 months in order to maintain certification unless the Office, for good cause, grants an officer/agent additional time, not to exceed one year, to complete the training.
- 9.2 The Office may mandate additional training to ensure compliance with new laws, address emerging critical issues and trends, or to correct demonstrated performance deficiencies.
- 9.3 The officer or their employer shall submit the course description for training outlined in 9.1 and 9.2 to the Office for approval prior to taking a course. Evidence of completion of the training shall be submitted to the Office to satisfy the continuing education requirement in 9.1.
- 9.4 The certification of an animal control officer or animal cruelty agent shall be revoked if the officer/agent fails to satisfactorily complete the training in accordance with 9.1 through 9.3 of this regulation.

**10.0 Denial, Revocation and Disciplinary Sanctions**

- 10.1 The Office shall impose sanctions, including denying or revoking a certificate, on a certificate holder based upon any of the following:
- 10.1.1 Certificate was obtained through misrepresentation or fraud;
- 10.1.2 Found guilty of a crime against person or property;
- 10.1.3 Found by an employer or contracting entity to be unfit or incompetent;

- 10.1.4 Has had a certification or license to serve as an animal control officer or animal cruelty agent suspended or revoked in another jurisdiction;
  - 10.1.5 Willfully or negligently violated this chapter;
  - 10.1.6 No longer has a valid Delaware driver license; or
  - 10.1.7 Has been terminated from employment as an animal control officer or animal cruelty agent.
  - 10.2 The Office shall impose any of the following disciplinary sanctions singly or in combination when it finds a certified or former certified animal control officer or animal cruelty agent has violated any of the provisions of subsection 10.1:
    - 10.2.1 Permanently revoke a certification.
    - 10.2.2 Refuse a certification or certification renewal.
    - 10.2.3 Suspend a certification.
    - 10.2.4 Issue a letter of reprimand.
    - 10.2.5 Require additional training.
    - 10.2.6 Place a certification on probationary status and require the individual to to:
      - 10.2.6.1 Report regularly to the Office upon the matters which are the basis of probation;
      - 10.2.6.2 Limit practice to those areas prescribed by the Office; or
      - 10.2.6.3 Continue or renew professional education until satisfactory degree of skill has been attained in those areas which are the basis of the probation.
  - 10.3 An animal control officer or cruelty agent may request an administrative hearing if they wish to contest the disciplinary sanctions.
    - 10.3.1 The request shall be made in writing to the Secretary of the Department within 20 calendar days after issuance of the final written report and associated sanctions.
    - 10.3.2 As soon as possible, but not later than 30 calendar days of receipt of the request for an administrative hearing, the Department shall set a time and place to conduct a hearing.
    - 10.3.3 Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, and the Freedom of Information Act, Chapter 100 of Title 29.
    - 10.3.4 The Department shall make a determination based upon the evidence presented.
    - 10.3.5 A written copy of the determination and the reasons upon which it is based shall be sent to the officer within 30 calendar days.
  - 10.4 During an administrative hearing:
    - 10.4.1 The animal control officer/animal cruelty agent has the right to be represented by counsel.
    - 10.4.2 All statements made shall be under oath.
    - 10.4.3 The animal control officer/animal cruelty agent has the right to examine and cross-examine witnesses.
    - 10.4.4 A stenographer recording will be made by a qualified court reporter. At the request and expense of any party, such record shall be transcribed with a copy to the other party.
  - 10.5 The decision of the Department shall be based upon sufficient legal evidence. The Department may continue, modify or revoke the disciplinary sanctions.
  - 10.6 All decisions of the Department shall be final and conclusive. Where the officer is in disagreement with the action of the Department, the officer may appeal the Department's decision to the Superior Court within 30 days of service or of the postmarked date of the copy of the decision mailed to the officer. The appeal shall be on the record to the Superior Court and shall be as provided in §§10142-10145 of Title 29.
- 11.0 Documenting and Investigating Complaints**
- 11.1 The Office shall document all complaints filed directly with the Office, the employer, or with a contracting government entity against certified animal control officers and certified animal cruelty agents of alleged violations of 16 Del.C. §139.

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# PROPOSED REGULATIONS

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- 11.2 All complaints must be received in writing and shall be reviewed and complaints concerning violations of this chapter will be investigated by the Office.
- 11.3 The Office shall notify the animal control officer or animal cruelty agent and the officer's/agent's employer and contracting entity of the complaint investigation within 30 days of receipt of said complaint.
- 11.4 The Office may refer the complaint to another agency or entity as appropriate.
- 11.5 The Office shall issue a final written report of the complaint investigation findings and any associated disciplinary sanctions outlined in 10.2 to the animal control officer or animal cruelty agent, the officer's/agent's employer, and the contracting entity sent by Certified Mail or hand delivered.
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## DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, §§2205(10), 2207(a) and 2208(b)  
(16 Del.C. §§2205(10), 2207(a) & 2208(b))

### PUBLIC NOTICE

#### 6001 Substance Abuse Facility Licensing Standards

In accordance and compliance with the procedures set forth at 29 Del.C. §1131, *et seq.* and 29 Del.C. §10101, *et seq.*, the Delaware Department Health and Social Services (DHSS) / Division of Substance Abuse and Mental Health (DSAMH) is proposing to repeal the current Substance Use Treatment Program Licensure Standards, located at 16 DE Admin. Code 6001, and replace them in their entirety with the following proposed regulation. Copies of the proposed regulations are available in the June *Register of Regulations* or by contacting DSAMH as provided below.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new standards must submit same to Bryan Gordon, Provider Relations Unit, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, New Castle, Delaware 19720 or by fax to 302-255-4427 no later than 4:30 p.m. on June 30, 2015.

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 DHSS/DSAMH is proposing to adopt revised Substance Use Treatment Standards under its authority as defined in Delaware Code, Title 16, Chapter 22.

#### I. Statutory Authority.

16 Del.C. §2205(10); 16 Del.C. §2207(a); 16 Del.C. §2208(b)

#### II. Brief Synopsis of the Subject, Substances, and Issues.

The current Substance Use Treatment Standards were adopted in 2010. Since that time there have been some pertinent changes in the treatment of drug and alcohol use disorders; and there has been an adoption of the American Society of Addiction Medicine (ASAM) Level of Care Criteria by DSAMH. The proposed regulations make changes to all parts of the Substance Use Treatment Licensure Standards, including definitions, licensure criteria, suspension and revocation of licenses, and integration of ASAM criteria into program standards.

### III. Possible Terms of Agency Action.

There is not a sunset date for this regulation.

### IV. Other Regulations that May Be Affected by the Proposal.

None known.

### V. Notice of Public Comment.

Under the provisions of Title 29, Chapter 101 of the Delaware Code, DHSS/DSAMH gives notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity for public input regarding any proposed change in its standards for establishing Substance Use Treatment Licensure Standards. Comments must be submitted to:

Bryan Gordon  
Provider Relations Unit, Division of Substance Abuse and Mental Health  
1901 North DuPont Highway  
New Castle, Delaware 19720  
or by fax to 302-255-4427

All comments must be received no later than 4:30 p.m. on June 30, 2015.

Upon final adoption of these Standards by DHSS/DSAMH, they will be posted on the DSAMH web site and all current licensed programs will be notified via email of their adoption.

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

**6001 Substance Abuse Facility Licensing Standards**

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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 1124

### REGISTER NOTICE

SAN #2013-31

#### 1. TITLE OF THE REGULATIONS:

Revision to Section 36 "Stage II Vapor Recovery" of 7 DE Admin. Code 1124 "Control of Volatile Organic Compound Emissions."

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

Gasoline vapors contribute to the formation of ground-level ozone pollution, and include hazardous air pollutants. Delaware has implemented, since 1993, Stage II vapor recovery requirements to control gasoline vapor emissions from motor vehicle fueling at gasoline dispensing facilities. In addition, since 1998, automobile manufacturers have been required by the federal clean air act to install on-board refueling vapor recovery (ORVR) systems on new motor vehicles. Now that a large percentage of vehicles on Delaware roads are equipped with ORVR systems DNREC is proposing a regulation revision to begin the phase out of Stage II vapor recovery in Delaware.

# PROPOSED REGULATIONS

DNREC is proposing to revise Section 36 of 7 **DE Admin. Code** 1124 to allow new or modified gasoline stations the option to not install Stage II vapor recovery systems, and to instead install an enhanced Stage I vapor recovery system, and to either 1) conduct enhanced monthly inspections and pressure decay leak testing or, 2) participate in a 1-year trial to demonstrate whether or not a continuous pressure monitoring (CPM) system is able to accurately identify system leaks and times when emissions are being vented from the pressure/vacuum valve. DNREC plans to revise this regulation again in the future based on the data obtained from the trial tests. DNREC hereby withdraws the proposed regulation that was published in the August 2014 Delaware *Register*.

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

None.

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

7 Del.C., Chapter 60, Environmental Control

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

None

### 6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on June 25, 2015, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

### 7. PREPARED BY:

Ron Amirikian Phone: (302) 739-9402 Date: May 14, 2015

E-Mail: ronald.amirikian@state.de.us

## 1124 Control of Volatile Organic Compound Emissions (Break in Continuity of Sections)

### 36.0 ~~Stage II Vapor Recovery~~ Vapor Emission Control at Gasoline Dispensing Facilities

01/11/2002 xx/11/2015

#### 36.1 Applicability

36.1.1 The provisions of 36.0 of this regulation ~~applies~~ apply to any gasoline dispensing facility located in the State of Delaware, except:

36.1.1.1 Any gasoline dispensing facility, which never has a monthly throughput of greater than 10,000 gallons of gasoline, shall be subject only to the requirements of ~~36.5.2~~ 36.7.2 of this regulation. Any gasoline dispensing facility that ever exceeds this throughput shall be subject to all of the requirements of 36.0 of this regulation, and shall remain subject to these requirements even if its throughput later falls below the exemption throughput.

36.1.1.2 Any gasoline dispensing facility that is used exclusively for refueling marine vehicles, aircraft, farm equipment, or emergency vehicles.

36.1.2 ~~On and after May 1, 2003, the~~ The requirements of 36.~~68~~ of this regulation apply to any owner or operator of any company that performs compliance testing of ~~Stage II Systems at gasoline dispensing facilities~~ within the State of Delaware.

36.1.3 The requirements of 36.0 of this regulation are in addition to all other State and Federal requirements, to include the Clean Air Act requirements in 40 CFR 80.22(j) and the permitting requirements of 7 DE Admin. Code 1102. Any gasoline dispensing facility that is currently subject to any ~~state or federal~~ rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.

36.1.4 Compliance Schedule

Any gasoline dispensing facility subject to the requirements of 36.0 of this regulation shall be in compliance as follows: ~~Any facility that first commences operations:~~

36.1.4.1 ~~Before November 15, 1990 and that has any throughput of greater than 10,000 gallons but less than 100,000 gallons: by November 15, 1994 for facilities located in New Castle and Kent Counties, and by November 15, 1996 for facilities located in Sussex County. Any new facility that first commences construction on or after the effective date of this revision of 36.0 of this regulation, or any facility that decommissions its Stage II vapor recovery system, shall do one of the following:~~

36.1.4.1.1 Comply with 36.4.2 and all other applicable requirements of 36.0 of this regulation, or

36.1.4.1.2 Participate in a trial to demonstrate whether or not a continuous pressure monitoring (CPM) system is able to accurately identify system leaks and times when emissions are being vented from the pressure/vacuum valve, by complying with 36.4.3 and all other applicable requirements of this regulation. Failure to demonstrate compliance with any of the requirements of this regulation due to fault or failure of the CPM system shall not constitute a violation of this regulation. The trial period is for a minimum period of one year. Upon completion of the trial period any participating station has the option to either continue to comply with 36.4.3 or to comply with 36.4.2 of this regulation.

36.1.4.2 ~~Before November 15, 1990 and that has any throughput of at least 100,000 gallons: by November 15, 1993 for facilities located in New Castle and Kent Counties, and by November 15, 1995 for facilities located in Sussex County. An owner or operator of any modified facility may decommission its Stage II vapor recovery system pursuant to the procedures in 36.9 of this regulation on or after the effective date of this revision of 36.0 of this regulation.~~

36.1.4.3 ~~On or after November 15, 1990 and before January 11, 1993: by May 15, 1993 for facilities located in New Castle and Kent Counties, and by May 15, 1995 for facilities located in Sussex County. Any facility not identified in 36.1.4.1 of this regulation shall comply with 36.3 and all other applicable requirements of 36.0 of this regulation.~~

36.1.4.4 ~~On or after January 11, 1993: upon commencement of operations.~~

36.1.5 ~~Any Stage II vapor recovery system installed prior to November 15, 1992, and using dual vapor recovery hoses (not coaxial) shall be retrofitted with coaxial hoses no later than January 1, 1994, or upon any vapor system modification, whichever is first. Any system installed after November 15, 1992 shall be equipped with coaxial hoses.~~

36.1.6 ~~Remote vapor check valves in balance type systems installed prior to November 15, 1992, shall be retrofitted with check valves located in the nozzle no later than January 1, 1994, or upon any vapor system modification, whichever is first. Any system installed after November 15, 1992 shall be equipped with remote check valves located in the nozzle.~~

## 36.2 Definitions

Terms being defined in 36.2 of this regulation are used exclusively for 36.0 of this regulation. Other terms not defined herein shall have meanings defined in the Clean Air Act Amendments of 1990 (CAA), 7 DE Admin. Code 1101, or 2.0 of this regulation.

**“Assist System”** means a system that creates a vacuum to assist the movement of vapors back into the storage tank.

**“Balance System”** means a system where pressure develops in the vehicle tank during fueling operations, and vacuum in the storage tank created when the fuel is removed, forces displaced vapors out the vehicle tank and back into the storage tank.

**“Modified Facility”** means a facility that: (1) excavates below a shear valve or tank pad in order to repair or replace its Stage II system or an underground storage tank; or (2) undergoes a major system modification consisting of the replacement, repair or upgrade of at least 50% of a facility’s Stage II vapor recovery system which includes dispensers, vapor return piping, and product piping.

**“New Facility”** means a facility that begins dispensing fuel for the first time.



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“Pressure/Vacuum Valve” or “P/V Valve” means a relief valve installed on the vent stack of a tank system that is designed to open at specific pressure and vacuum settings to protect the system from excessive pressure or vacuum.

“Tank System” means a storage tank or a set of manifolded storage tanks containing gasoline.

“Ullage” means the empty volume of a gasoline storage tank system that contains liquid gasoline. Ullage is expressed as accumulated gallons of empty volume for all of the gasoline storage tanks in a manifolded system.

## 36.3 Standards for Facilities with Stage II Vapor Recovery Systems

36.3.1 The owner or operator of any gasoline dispensing facility ~~subject to the requirements of 36.0~~ identified in 36.1.4.3 of this regulation shall:

36.3.1.1 Design, install, operate, and maintain one of the Stage II Vapor Recovery Systems identified in ~~36.7~~ 36.10.1 of this regulation.

36.3.1.2 For systems with manifolded vapor lines, the liquid shall return into the lowest octane tank. For non-manifolded systems with separate vapor lines, the liquid shall return to the tank that has the same product as is dispensed at the nozzle where the liquid was introduced into the vapor lines.

36.3.1.3 ~~On and after May 1, 2003, i~~ Install and maintain a vapor shear valve that functions similarly to the product shear valve.

36.3.1.4 Conspicuously post "Operating Instructions" on both sides of each gasoline dispenser. Such instructions shall include:

36.3.1.4.1 A clear description of how to correctly dispense gasoline.

36.3.1.4.2 A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.

36.3.1.4.3 A toll-free telephone number to report problems experienced with the vapor recovery system to the Department.

36.3.2 At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is selected for installation or installed on their facility premises. Acceptable forms of training include equipment manufacturer's seminars, classes or workshops, or any other training approved by the Department.

36.3.2.1 Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee within three months of the installation of the Stage II system. The certificate shall display the name of the person who completed the training program.

36.3.2.2 The representative that completed the training program is then responsible for informing all facility employees about conducting routine maintenance pursuant to 36.3.3 of this regulation and about the operation and maintenance of the Stage II system. The representative shall maintain proof of training for all employees who will be conducting daily inspections. If such representative leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three months.

36.3.2.3 Training shall include, but not be limited to, the following subjects:

36.3.2.3.1 Purposes and effects of the Stage II Vapor Control Program.

36.3.2.3.2 Equipment operation and function specific to their facility's equipment.

36.3.2.3.3 Maintenance schedules and requirements for the facility's equipment.

36.3.2.3.4 Equipment warranties.

36.3.2.3.5 Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

36.3.3 Each day personnel trained pursuant to 36.3.2 of this regulation shall perform routine maintenance inspections and record the inspection results.

- 36.3.3.1 Such inspections shall consist of, but not limited to, inspection of the Stage II system for the following defects:
- 36.3.3.1.1 A faceplate or face cone of a balance or assist system nozzle that does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or face cone is over 25% of its' surface.
  - 36.3.3.1.2 A vapor assist system nozzle fitted with an efficiency compliance device that is damaged over 25% of its' surface.
  - 36.3.3.1.3 A nozzle bellows with a triangular tear measuring ½ inch or more to a side, a hole measuring ½ inch or more in diameter, or a slit or tear measuring one inch or more in length.
  - 36.3.3.1.4 A nozzle bellows or efficiency compliance device that is loosely attached to the nozzle body, not attached by a manufacturer approved method, or a vapor check valve frozen in the open position.
  - 36.3.3.1.5 A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.
  - 36.3.3.1.6 A nozzle with a vapor check valve that is defective, or a hose with a disconnected or damaged breakaway.
  - 36.3.3.1.7 A vapor assist system nozzle spout that is damaged and the vapor collection holes are obstructed.
  - 36.3.3.1.8 A dispenser mounted vacuum pump that is not functioning.
  - 36.3.3.1.9 A vacuum assist system with a central vacuum unit or vapor processing unit that is inoperative.
  - 36.3.3.1.10 A hose retractor that does not fully retract.
  - 36.3.3.1.11 Any other component required by the Department for use in the system that is missing, disconnected, or malfunctioning.
- 36.3.3.2 The owner or operator shall post "Out of Order" signs and "Bag-out" the nozzle associated with any part of the defective vapor recovery system until said system has been repaired or replaced.

**36.4 Standards for Facilities without Stage II Vapor Recovery Systems**

**36.4.1 The owner or operator of any gasoline dispensing facility identified in 36.1.4.1 of this regulation shall design, install, operate, and maintain one of the Stage I vapor recovery systems identified in 36.10.2 of this regulation.**

**36.4.2 Requirements for facilities not participating in the CPM trial.**

**36.4.2.1 The owner or operator of any gasoline dispensing facility identified in 36.1.4.1.1 of this regulation shall conduct a monthly inspection of the Stage I EVR systems to monitor the condition of all Stage I components. The inspection shall include at a minimum the following:**

**36.4.2.1.1 Check fill and Stage I swivel adapters to be sure they are tightly sealed.**

**36.4.2.1.2 Visually inspect Stage I dry breaks to be sure they are tightly sealed.**

**36.4.2.1.3 Check ATG caps to be sure they are tightly sealed and that the associated electrical grommets and vent extractor caps are in good working order.**

**36.4.2.1.4 Visually inspect the Riser and P/V valve and cap for damage visible from the ground level.**

**36.4.2.2 Any components found to be in need of repair shall be repaired as soon as possible but before the next scheduled inspection.**

**36.4.3 Requirements for facilities participating in the CPM trial.**

**36.4.3.1 The owner or operator of any gasoline dispensing facility identified in 36.1.4.1.2 of this regulation shall maintain the tank system at a vapor leak rate less than two times the rate allowed in accordance with California Air Resources Board (CARB) Vapor Recovery Test Procedure TP-201.3, "Determination of 2 Inch WC Static Pressure Performance of Vapor**

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Recovery Systems of Dispensing Facilities", dated July 26, 2012, hereby incorporated by reference, and demonstrated in accordance with monitoring requirements in 36.5 of this regulation. Equation 9-2 with N=1-6 from TP-201.3 shall be used for the determination.

36.4.3.2 The owner or operator of any gasoline dispensing facility identified in 36.1.4.1.2 of this regulation shall identify the percentage of time the tank system pressure is greater than 0.5 inches water column below the positive cracking pressure of the P/V valve, on a weekly basis, demonstrated in accordance with monitoring requirements in 36.5 of this regulation. The P/V valve positive cracking pressure shall be determined by the testing requirement in 36.6.2.1.3 of this regulation.

36.4.4 Enhanced conventional nozzles: Reserved.

36.4.5 Dispensing hose requirements: Reserved.

36.4.6 Any facility subject to 36.4 of this regulation shall meet the following posting and maintenance inspecting requirements.

36.4.6.1 Posting. Conspicuously post "Operating Instructions" on both sides of each gasoline dispenser. Such instructions shall include:

36.4.6.1.1 A clear description of how to correctly dispense gasoline.

36.4.6.1.2 A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage.

36.4.6.1.3 A toll-free telephone number to report problems experienced with the gasoline dispensing system to the Department.

36.4.6.1.4 The owner or operator shall post "Out of Order" signs and "bag-out" the nozzle associated with any part of the defective gasoline dispensing system until said system has been repaired or replaced.

36.4.6.2 Each day personnel shall perform daily routine maintenance inspections and record the inspection results. Such inspections shall consist of, but not limited to, inspection of the dispensing systems for the following defects:

36.4.6.2.1 A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.

36.4.6.2.2 A hose with a disconnected or damaged breakaway.

36.4.6.2.3 A hose retractor that does not fully retract.

36.4.6.2.4 Any other component required by the Department for use in the dispensing system that is missing, disconnected, or malfunctioning.

### 36.5 Monitoring Requirements and Corrective Action

36.5.1 The owner or operator of any gasoline dispensing facility identified in 36.1.4.1.2 of this regulation shall design, install, operate, and maintain a continuous pressure monitoring (CPM) system as identified in Exhibit 1 Section II, Exhibit 2 Section II, and Exhibit 3 Section II of CARB Executive Order VR-202-R, dated December 8, 2014, hereby incorporated by reference, to include a console, leak detection software, a vapor pressure sensor, and an automatic tank gauge, in accordance with the following. A vapor flow meter for each dispenser is not required. The owner or operator of any gasoline dispensing facility may petition the Department to allow the use of any other CPM system that has been certified by CARB as being equivalent to the systems identified in CARB Executive Order VR-202-R, and the Department may allow such system on a case-by-case basis.

36.5.1.1 The CPM system shall be operational a minimum of 95% of the time on a monthly basis and shall calculate and record the percentage of CPM operational time.

36.5.1.2 The CPM system shall be capable of assessing the vapor leak rate from the tank system at any working ullage pressure, both positive and negative.

36.5.2 The CPM system shall assess, on a weekly basis, the tank system vapor leak rate and pressure.

36.5.3 When the tank system vapor leak rate fails the requirement specified in 36.4.3.1 of this regulation, then:

36.5.3.1 The CPM system shall activate a warning alarm, and record the event. The owner or operator shall correct the excessive vapor leak rate within one week of the alarm, and reset the CPM system once the correction has been made.

36.5.3.2 Following a corrective action pursuant to 36.5.3.1 of this regulation, the CPM system shall recommence monitoring the tank system. If within one week the tank system again fails to meet the requirements of 36.4.3.1 of this regulation the CPM shall activate a second warning alarm and record the event. Following the second warning alarm, the owner or operator shall use a certified compliance testing company or a certified underground storage tank retrofit/installation company to correct the excessive vapor leak.

## 36.46 Testing Requirements

36.46.1 Any gasoline dispensing facility subject to the requirements of 36.3-4.4 of this regulation shall perform and pass the following tests in accordance with the test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Where any of the following test methods and procedures, in the opinion of the Department, conflict or are redundant with those specified in any CARB Executive Order adopted by reference in 36.710 of this regulation, the following test methods and procedures shall apply.

36.46.1.1 The following tests shall be performed and passed within 10 days of installation of the Stage II vapor recovery system:

36.46.1.1.1 A Pressure Decay/Leak Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

36.46.1.1.2 A Dynamic Backpressure and Liquid Blockage Test, conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 8. This test procedure is hereby incorporated by reference.

36.46.1.1.3 For assist systems, an Air to Liquid Volume Ratio Test conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 9. This test procedure is hereby incorporated by reference.

36.46.1.1.4 A Vapor Tie Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

36.46.1.2 The following tests shall be performed and passed annually for each Stage II vapor recovery system according to the test procedures stated in 36.46.1.1 of this regulation:

36.46.1.2.1 A Pressure Decay/Leak Test, as specified in 36.6.1.1.1 of this regulation.

36.46.1.2.2 For Balance Systems, A Dynamic Backpressure and Liquid Blockage Test as specified in 36.1.1.2 of this regulation.

36.46.1.2.3 For Assist Systems, An Air to Liquid Volume Ratio Test as specified in 36.1.1.3 of this regulation.

36.46.1.3 Any additional testing or testings required by the Department or the manufacturer shall be carried out according to the schedule stated in any permit issued pursuant to 7 DE Admin. Code 1102.

36.6.2 Any gasoline dispensing facility subject to the requirements of 36.4 of this regulation shall perform and pass the following tests in accordance with the test methods and procedures stated, or as otherwise approved by the Department and EPA.

36.6.2.1 The following tests shall be performed and passed within 10 days of installation of the Stage I EVR system:

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- 36.6.2.1.1 A Pressure Decay/Leak Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.
- 36.6.2.1.2 A Vapor Tie Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.
- 36.6.2.1.3 A P/V Valve Leak Rate and Cracking Pressure Test, conducted in accordance with CARB Test Procedure TP-201.1E dated October 8, 2003. This test procedure is hereby incorporated by reference.
- 36.6.2.1.4 For facilities subject to 46.4.3, an operability test of the CPM system in accordance with Exhibit 9 or Exhibit 10, as applicable, of CARB Executive Order VR-202-R, dated December 8, 2014, hereby incorporated by reference.
- 36.6.2.2 The CPM system operability test, as specified in 36.6.2.1.4 of this regulation, shall be performed and passed every three years after the CPM system is installed.
- 36.6.2.3 Owners and Operators subject to 36.4.2 shall conduct an annual pressure decay test (without any corrective action taken before or during the test on the day of the test) and a P/V valve test, as specified in 36.6.2.1.1 and 36.6.2.1.3 of this regulation, respectively. If the annual test is failed (meaning corrective action was needed on the day of the test), quarterly testing shall be required, and annual testing shall resume upon the passing of four consecutive quarterly tests.
- 36.4.26.3 The Department may require the performance of any of the tests identified in 36.46.1 or 36.6.2 of this regulation at anytime at the owner's expense.
- 36.4.36.4 Written notification shall be submitted to the Department not less than 10 working days prior to the performance of any compliance test, unless approval by the Department is granted to the contrary.
- 36.4.46.5 The owner or operator or both and test contractor shall report all test failures to the Department within 24 hours of the failure.
- 36.4.56.6 The owner or operator shall submit the following to the Department within 30 days of the test date:
- 36.4.5-6.6.1 the actual test date; and
- 36.4.5-6.6.2 the installing or testing companies' company's name or names, address or addresses, and phone number or numbers; and
- 36.4.5-6.6.3 if any corrective action was performed pursuant to 36.6-48.4.2 of this regulation then submit all information specified in 36.6-48.4 of this regulation.
- 36.57 Recordkeeping and Reporting
- 36.57.1 The owner or operator of a gasoline dispensing facility subject to the requirements of 36.0 of this regulation shall keep on the facility premises and in a form acceptable to the Department, all of the following information. This information shall be retained for at least three years from the date of record and shall be made immediately available to the Department upon request.
- 36.57.1.1 Permits and Applications. Copies of the Stage I and Stage II System permit applications and the current Construction/Operation Permits shall be permanently maintained.
- 36.57.1.2 Installation and Testing Results. The test results shall be dated, and shall note the installing and test companies' names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new test results verifying proper functioning of the Stage I and Stage II systems, as applicable.
- 36.57.1.3 Maintenance Records. Any maintenance conducted on any part of the Stage I or Stage II vapor recovery system shall be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution.

36.57.1.4 Inspection Records. A file shall be maintained of all daily inspection reports including records of daily self-inspections, and any third party inspection records.

36.7.1.5 The CPM system shall generate a daily report which includes the following:

36.7.1.5.1 CPM system operational time as a percentage;

36.7.1.5.2 Percentage of time the tank system pressure is above atmospheric pressure;

36.7.1.5.3 Percentage of time the tank system pressure is at or above 0.5 inches water column below the positive cracking pressure of the P/V valve.

36.7.1.6 The CPM system shall generate a monthly report which includes the following:

36.7.1.6.1 CPM system operational time as a percentage;

36.7.1.6.2 Percentage of time the tank system pressure is above atmospheric pressure;

36.7.1.6.3 Percentage of time the tank system pressure is at or above 0.5 inches water column below the positive cracking pressure of the P/V valve; and

36.7.1.6.4 Warnings, including the date and time of each warning.

36.57.1.57 Compliance Records. A file shall be maintained of all compliance records. This record shall include:

36.57.1.57.1 Any warning letters and notices of violations issued by the Department to the facility, the facility's responses and actions to the Department's warning or notice of violation, the facility's report of compliance to the Department after the facility's actions, and the Department's approval of compliance.

36.7.1.7.2 Daily and monthly CPM reports shall be available for printing and electronic download at the facility, and be made available to the Department upon request. Daily reports shall be available for the previous 12 months. Monthly reports shall be available for the previous 36 months.

36.7.1.7.3 The CPM system shall store the electronic records of the daily and monthly reports, such that the records are maintained despite loss of power to the CPM system.

36.5.1.5-27.1.7.4 Proof of attendance and completion of a training program for each person trained in accordance with 36.3.2-2 of this regulation. This does not apply to the records of an employee who is no longer in service for at least one year.

36.57.2 Any gasoline dispensing facility exempted from the requirements of 36.0 of this regulation pursuant to 36.1.1.1 of this regulation shall maintain records of monthly throughput, and shall furnish these records to the Department upon request. These records shall be maintained on file for a minimum of three years from the date of record.

36.57.3 The owner or operator, or both, of any facility containing sources subject to 36.0 of this regulation shall comply with the requirements of 5.0 of this regulation.

#### 36.68 Compliance Testing Company Requirements

36.68.1 Any owner or operator, or both, of any company that performs ~~Stage-II~~ compliance testing pursuant to 36.6.1 or 36.6.2 of this regulation within the State of Delaware shall submit all of the following information to the Department, prior to performing any ~~Stage-II~~ compliance testing within the State of Delaware:

36.68.1.1 The name and business mailing address of the ~~Stage-II~~ compliance testing company owner or operator;

36.68.1.2 The address and telephone number of the facility or facilities from which the daily compliance testing activities of the compliance testing company originate;

36.68.1.3 A written description of the employee training systems in place at the compliance testing company to ensure required compliance tests are performed in accordance with applicable protocols and procedures.

36.68.1.4 Certification by an individual who is a responsible and trained representative of the compliance testing company containing the following language verbatim:

36.68.1.4.1 I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons

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immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

36.68.1.4.2 Employee training systems are in place at the company to ensure ~~Stage II~~ compliance tests are performed in accordance with all applicable protocols and procedures; and

36.68.1.4.3 I am fully authorized to make this attestation on behalf of this ~~Stage II~~ Compliance Testing Company.

36.68.2 Any company subject to the requirements of 36.68 of this regulation shall notify the Department in writing of any change to any information submitted to the Department within 14 days of the effective date of such change.

36.68.3 No person subject to the requirements of 36.68 of this regulation shall perform any ~~Stage II~~ compliance test unless said person has first been trained in accordance to applicable compliance test protocols and procedures.

36.68.4 Any person subject to 36.68 of this regulation shall certify to the owner or operator of the gasoline dispensing facility that each compliance test performed to meet the requirements of ~~36.9~~ 36.3 and 36.4 of this regulation was performed in accordance with 36.46 of this regulation. Certification shall include:

36.68.4.1 The date each compliance test was first performed and the test results; and

36.68.4.2 An itemized list of all corrective action performed ~~on the Stage II system~~. This list shall include, but not be limited to, component re-installation, tightening, repair or replacement, as necessary, for the system to pass the applicable test or tests; and

36.68.4.3 The date each compliance test was performed and passed; and

36.68.4.4 Certification by a responsible and trained representative or representatives of the compliance testing company containing the following language verbatim:

36.68.4.4.1 I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

~~36.68.4.4.2~~ I am fully authorized to make this attestation on behalf of this ~~Stage II~~ Compliance Testing Company.

### 36.9 Stage II Decommissioning Procedures

36.9.1 The owner or operator of a gasoline dispensing facility shall decommission the Stage II vapor recovery system in accordance with all of the procedures specified in Chapter 14, except Section 14.6.14, of the Petroleum Equipment Institute's (PEI) "Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites", PEI/RP300-09, which is hereby incorporated by reference.

36.9.2 On or after the effective date of this regulation, any site that has decommissioned a Stage II Vapor Recovery System shall cap the vapor return line at the tank top if accessible at the time of decommissioning, per PEI RP300-09. If not accessible at the time of decommissioning, the vapor return line shall be capped when a replacement or repair of the underground storage tank system or associated piping/components involves breaking concrete on top of the tank where the vapor return line terminates or when a pressure decay test indicates a problem with the vapor return line. As part of the decommissioning process additional UST system testing may be required such as performing hydrostatic testing of sumps and line tightness testing of product lines, and ensuring non-vapor recovery nozzles have a flow rate of less than 10 GPM pursuant to Part B, Section 1.28 of the Delaware Regulations Governing Underground Storage Tanks, governing repair, upgrade, and retrofit requirements.

36.9.3 Decommissioning procedures shall be performed only by Stage II vapor recovery system installers certified in the State of Delaware.

36.710 Approved ~~Stage II Vapor Recovery~~ Systems

The following California Air Resources Board (CARB) executive orders are hereby adopted by reference

**36.10.1**     Stage II Vapor Recovery Systems.

<b>Number &amp; Date</b>	<b>Description</b>
G-70-7-AD (03/22/93)	Certification of the Hasstech Model VCP-2 and VCP 2A Phase II Vapor Recovery System.
G-70-14-AA (02/08/83)	Recertification of Red Jacket Aspirator Assist Phase II Vapor Recovery System.
G-70-17-AD (05/06/93)	Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System.
G-70-18-C (08/28/79)	Modification of Certification of the Shell Model 75B1 and 75B1-R3 Service Station Phase II Vapor Recovery System.
G-70-23-AC (04/29/96)	Recertification of the Exxon Balance Phase II Vapor Recovery System.
G-70-25-AA (02/08/83)	Recertification of the Atlantic Richfield Balance Phase II Vapor Recovery System.
G-70-33-AB (03/09/84)	Certification of the Modified Hirt VCS-200 Vacuum Assist Phase II Vapor Recovery System.
G-70-36-AD (09/18/92)	Modification of Certification of the OPW Balance Phase II Vapor Recovery System.
G-70-37-B (01/22/80)	Modification of the Certification of the Chevron Balance Phase II Vapor Recovery System with OPW nozzles for Service.
G-70-38-AB (12/19/90)	Recertification of the Texaco Balance Phase II Vapor Recovery System.
G-70-48-AA (02/08/83)	Recertification of the Mobil Oil Balance Phase II Vapor Recovery System.
G-70-49-AA (02/08/83)	Recertification of the Union Balance Phase II Vapor Recovery System.
G-70-52-AM (10/04/91)	Certification of Components for Red Jacket, Hirt and Balance Phase II Vapor Recovery System.
G-70-53-AA (02/08/83)	Recertification of the Chevron Balance Phase II Vapor Recovery System.
G-70-70-AC (06/23/92)	Certification of the Healy Phase II Vapor Recovery System of Service Stations.
G-70-77 (09/15/82)	Certification of the OPW Repair/Replacement Parts and Modification of the Certification of the OPW Balance Phase II Vapor Recovery System.
G-70-78 (05/20/83)	Certification of the E-Z Flo Nozzle Company Rebuilt Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-101-B (11/15/85)	Certification of the E-Z Flo Model 3006 and 3007 Vapor Recovery Nozzles and Use of E-Z Flo Components with OPW Models 11 VC and 11 VE Vapor Recovery Nozzles.
G-70-107 (05/15/86)	Certification of Rainbow Petroleum Products Model RA3003, RA3005, RA3006 and RA3007 Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-110 (01/20/87)	Certification of Stage I and II Vapor Recovery Systems for Methanol Fueling Facilities.



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- G-70-118-AB Certification of Amoco V-1 Vapor Recovery System.  
(03/31/95)
- G-70-125-AA Modification of the Certification of the Husky Model V Phase II Balance Vapor Recovery Nozzle.  
(03/16/93)
- G-70-127 Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle.  
(08/16/90)
- G-70-134 Certification of the EZ Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery System.  
(12/21/90)
- G-70-139 Addition to the Certification of the Hirt Model VCS-200 Phase II Vapor Recovery System.  
(03/17/92)
- G-70-150-AE Modification of the Certification of the Gilbarco Vapor Vac Phase II Vapor Recovery System.  
(07/12/00)
- G-70-153-AD Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System.  
(04/03/00)
- G-70-154-AA Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System.  
(06/10/97)
- G-70-159-AB Modification of the Certification of the Saber Nozzle for Use with the Gilbarco VaporVac Phase II Vapor Recovery System.  
(07/17/95)
- G-70-163-AA Certification of the OPW VaporEZ Phase II Vapor Recovery System.  
(09/04/96)
- G-70-164-AA Modification to the Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System.  
(12/10/96)
- G-70-165 Healy Vacuum Assist Phase II Vapor Recovery System.  
(04/20/95)
- G-70-169-AA Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System.  
(08/11/97)
- G-70-170 Certification of the EZ-flo Rebuilt 5005 and 5015 for use with the Balance Phase II Vapor Recovery System.  
(02/22/96)
- G-70-177-AA Certification of the VCS400-7 Vacuum Assist Phase II Vapor Recovery System.  
(06/22/00)
- G-70-179 Certification of the Catlow ICVN-V1 Vacuum Assist Phase II Vapor Recovery System.  
(07/02/97)
- G-70-180 Order Revoking Certification of the Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Systems.  
(04/17/97)
- G-70-183 Certification of the Healy/Franklin Vacuum Assist Phase II Vapor Recovery System.  
(03/04/98)
- G-70-186 Certification of the Healy Model 400 ORVR Vapor Recovery System.  
(10/26/98)
- G-70-188 Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System.  
(05/18/99)
- G-70-191 Healy/Franklin VP-1000 Vapor Pump Phase II Vapor Recovery System (Healy ORVR Phase II Vapor Recovery System).  
(08/08/99)
- G-70-196 Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System.  
(12/30/00)

36.10.2 Stage I Vapor Recovery Systems

Number	Description	Date
VR-101-N	Phil-Tite Phase I Vapor Recovery System	June 8, 2013
VR-102-O	OPW Phase I Vapor Recovery System	October 3, 2014
VR-103-G	EBW Phase I Vapor Recovery System	June 3, 2013
VR-104-G	CNI Manufacturing Phase I Vapor Recovery System	June 8, 2013
VR-105-D	EMCO Wheaton Retail Phase I Vapor Recovery	August 27, 2014
VR-401-D	OPW Phase I EVR System for ASTs	May 12, 2014
VR-402-B	Morrison Brothers Phase I EVR System for ASTs	April 15, 2013

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

**1124 Control of Volatile Organic Compound Emissions**

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d) and 903(e)(3) (7 Del.C. §§901(c & d) and 903(e)(3))

### REGISTER NOTICE #2015 - 03

**3500 Tidal Finfish**

**3542 Tilefish**

**1. TITLE OF THE REGULATION:**

3542 Tilefish

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

Blueline tilefish (*Caulolatilus microps*) is an ocean dwelling, deep water species that is susceptible to overexploitation due to its long-lived, sedentary nature. The species is federally managed from North Carolina through Florida by the South Atlantic Fishery Management Council (SAFMC) through the amended Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (1983).

The SAFMC sharply reduced the Annual Catch Limits in 2014 based on results from the 2013 coastwide stock assessment, which indicated the blueline tilefish was overfished and overfishing was occurring. The harvest reductions in the South Atlantic resulted in the commercial sector targeting blueline tilefish in unregulated Mid-Atlantic States, primarily New Jersey. Reported landings from Virginia and northward increased from approximately 11,000 pounds annually (average 2005-2013) to about 217,000 pounds in 2014. Most of these fish were caught in federal waters off the coast of Delmarva. Additionally, Northeast vessel trip reports from the recreational for-hire sector indicated that blueline tilefish landings significantly increased in the areas from approximately Cape Hatteras to mid-New Jersey (Federal Statistical Areas 616 - 636). Virginia and Maryland, although not SAFMC member states, enacted the SAFMC blueline tilefish regulations this year in response to the 2014 landings. The Mid-Atlantic Fishery Management Council (MAFMC) then formally requested that all member states consider adopting incidental commercial trip limits and recreational bag limits that mirror current Virginia and Maryland state regulations. This request was followed by an emergency meeting of the MAFMC in which the council voted to request that the National Marine Fisheries Service (NMFS) implement emergency rules to restrict commercial and recreational landings of blueline tilefish in the Mid-Atlantic.

# PROPOSED REGULATIONS

Consistent with the MAFMC's request and input from Delaware's Advisory Council on Tidal Finfisheries, this action proposes two options for a new tilefish regulation. Both options include a commercial trip limit of 300 pounds and a recreational possession limit of no more than seven fish per person; however, one option limits the new regulation to blueline tilefish and one option applies the regulation more broadly (as in Maryland and Virginia) to include both blueline and golden tilefish (*Lopholatilus chamaelonticeps*).

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

None.

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

§901(c & d), §903(e)(3), Title 7 **Delaware Code**

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

N/A

### 6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed addition of a new 7 **DE Admin Code** §3542 Tilefish will be open June 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on June 24, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

### 7. PREPARED BY:

Stewart Michels      Stewart.Michels@state.de.us      (302) 739-9914

David E. Saveikis, Director

## 3542 Tilefish

### OPTION 1

#### 1.0 Blueline tilefish possession limits

- 1.1 It is unlawful for a recreational finfisherman to possess more than seven (7) blueline tilefish (*Caulolatilus microps*), unless otherwise authorized by the Department.
- 1.2 Notwithstanding the provisions of subsection 1.1, a person issued a valid commercial food fishing license may possess up to 300 pounds of blueline tilefish in any number, provided said tilefish were taken using gear for which said person was lawfully permitted under 7 **Del.C.** §915.
- 1.3 It is unlawful for a person issued a valid commercial food fishing license to possess more than 300 pounds of blueline tilefish.

OR

### OPTION 2

#### 1.0 Tilefish possession limits

- 1.1 It is unlawful for a recreational finfisherman to possess more than seven (7) tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*), unless otherwise authorized by the Department.

- 
- 1.2 Notwithstanding the provisions of subsection 1.1, a person issued a valid commercial food fishing license may possess up to 300 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) in any number, provided said tilefish were taken using gear for which said person is lawfully permitted under 7 Del.C. §915.
- 1.3 It is unlawful for a person issued a valid commercial food fishing license to possess more than 300 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*).
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## 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/adopt Rules: 3.0 – Criminal Offenses – defines moral turpitude, and 5.0 – Firearms Policy – clarifies the 40 hour course shoot requirements, disqualifications, when qualification shoot sheets are due and the instructor certification requirements. If you wish to view these amendments/adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by June 30, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on a date to be determined after June 30, 2015, Room 112, Tatnall Building, 150 Martin L. King Jr. Boulevard, South, Dover, DE.

#### 2400 Board of Examiners of Constables (Break in Continuity of Sections)

### 3.0 Reserved Criminal Offenses

- 3.1 For the purposes of 10 Del.C. Ch. 27, the Director of the Professional Licensing Section may deny an application, suspend or revoke a commission if the applicant or commissioned individual has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):
- 3.1.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:
- 3.1.1.1 §763 Sexual Harassment:
  - 3.1.1.2 §764 Indecent Exposure 2<sup>nd</sup> Degree:
  - 3.1.1.3 §765 Indecent Exposure 1<sup>st</sup> Degree:
  - 3.1.1.4 §766 Incest:
  - 3.1.1.5 §767 Unlawful Sexual Contact 3<sup>rd</sup> Degree:
  - 3.1.1.6 §781 Unlawful Imprisonment 2<sup>nd</sup>:
  - 3.1.1.7 §840 Shoplifting:
  - 3.1.1.8 §861 Forgery:
  - 3.1.1.9 §871 Falsifying Business Records:

- 3.1.1.10§881 Bribery;
- 3.1.1.11§907 Criminal Impersonation;
- 3.1.1.12§1101 Abandonment of a Child;
- 3.1.1.13§1102 Endangering the Welfare of a Child;
- 3.1.1.14§1105 Crime Against a Vulnerable Adult;
- 3.1.1.15§1106 Unlawfully Dealing with a Child;
- 3.1.1.16§1107 Endangering Children;
- 3.1.1.17§1245 Falsely Reporting an Incident;
- 3.1.1.18§1341 Lewdness;
- 3.1.1.19§1342 Prostitution;
- 3.1.1.20§1343 Patronizing a Prostitute; and
- 3.1.1.21§1355 Permitting Prostitution.

3.1.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities:

- 3.1.2.1 §1136 Violations.

3.1.3 Title 31 Welfare Ch. 39 Adult Protective Services:

- 3.1.3.1 §3913 Violations.

- 3.2 Anyone applying for commission under 10 Del.C. Ch. 27 shall not be issued a commission if they have any pending criminal charge(s) for any crimes listed in this Chapter.
- 3.3 The Director of the Professional Licensing Section may suspend anyone commissioned under 10 Del.C. Ch. 27 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

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

## 5.0 Firearm's Policy

- 5.1 Section 5.0 shall apply only to individuals licensed under 10 Del.C. Ch. 27, while such individuals are acting in the performance of their duties as a constable.
- 5.42 No person individual licensed under 10 Del.C. §2703 Ch. 27 shall carry a firearm unless that person the individual has first passed an approved firearms course of instruction and an initial qualification administered by a Board an approved certified 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). The initial qualification course may 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.
- 5.23 In order to carry a firearm, individuals licensed to carry a firearm under 10 Del.C. Ch. 27 must shoot a minimum of three (3) qualifying shoots per constable calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (4) mandatory "low light" shoot and may be combined with a day shoot. Two day shoots shall not be completed on the same date. Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shot may be used to fulfill one day and one low light requirement during the first year.
- 5.2.4 A constable year shall be June 1st to May 31st.
- 5.2.25.3.1 An individual not meeting the minimum qualifications set forth in 5.2 subsection 5.3 may have their firearms license be suspended from carrying a firearm while acting in the performance of their duties as a constable until such time that they meet the minimum three (3) qualifying shoots within the constable calendar year.
- 5.34 Firearms -- approved caliber of weapons Only the handguns with the following calibers are permitted:
- 5.34.1 9mm;
  - 5.34.2 .357;

- 5.34.3 .38;  
5.34.4 .40;  
5.4.5 .45; or  
5.4.6 .357 SIG.

- 5.45 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.56 Under no circumstances will anyone under this Rule be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.67 All individuals must ~~qualify~~ meet the minimum qualifications set forth in 5.3 with the same make/model/caliber of weapon that he/she will carry.
- 5.78 All ammunition ~~will~~ must be factory fresh (no re-loads).
- 5.89 The minimum passing score is 80%.
- 5.910 All licenses/commissions are valid for a period of ~~one (1) constable year~~ two years, 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.
- 5.101 Firearms Instructors providing instruction under Section 5.0:
- 5.101.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), ~~and/or~~ another professional firearms training institution as a "certified firearms instructor".
- 5.101.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified ~~shotgun~~ handgun instructor may only instruct and qualify individuals with the ~~shotgun~~ handgun.)
- 5.101.3 All firearms instructors must be approved by the ~~Board~~ Professional Licensing Section before they are authorized to instruct or qualify licensed/commissioned individuals ~~licensed under 10 Del.C. Ch. 27.~~

**\*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**

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**DIVISION OF STATE POLICE**

**5500 BAIL ENFORCEMENT AGENTS**

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

**PUBLIC NOTICE**

**5500 Bail Enforcement Agents**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rules: Rule 1.0 – Licensing, clarifies penalties for not returning credentials and the training requirements for re-licensure; Rule 4.0 – Firearms Policy, clarifies the qualifications to obtain and maintain a firearm while working; Rule 6.0 – Training Requirements for Issuance of a License, mandates the initial classroom training and procedures and removes the field training and the internship requirement. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by June 30, 2015, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Friday, August 28, 2015, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

# PROPOSED REGULATIONS

## 5500 Bail Enforcement Agents

### 1.0 Licensing

- 1.1 A bail enforcement agent (~~BEA~~) ~~ID~~ identification card, license and badge shall not be issued if the applicant has not complied with the provisions set forth in 24 **Del.C.** Ch. 55 and the regulations set forth herein. Moreover, no identification card, license and badge shall be issued if charges are pending under 24 **Del.C.** §5507.
- 1.2 The individual ~~bail enforcement agent~~ BEA applying for an ~~ID~~ identification card, license and badge under 24 **Del.C.** Ch. 55 must also meet the following qualifications:
- 1.2.1 Must complete the training qualifications set forth in Section 6.0; and
- 1.2.2 If carrying a weapon, must meet and maintain the qualifications set forth in Sections 4.0 and 5.0.
- 1.3 The individual ~~bail enforcement agent~~ BEA applying for licensure under 24 **Del.C.** Ch. 55 must submit the following for approval:
- 1.3.1 A fee of \$75 for a four (4) year ID card license and badge; and
- 1.3.2 Any and all applications required by the Professional Licensing Section.
- 1.4 The ~~ID~~ identification cards, licenses and badges are the property of the Delaware State Police.
- 1.4.1 Any BEA that has been issued an identification card, license and badge and does not return the items to the Professional Licensing Section within 30 days of expiration, termination, suspension or revocation may be subject to penalties under 24 Del.C. Ch. 55.
- 1.5 There shall be no reciprocity with any other state regarding the issuing of an ~~ID~~ identification card, license and badge to a ~~bail enforcement agent~~ BEA.
- 1.6 The individual BEA re-applying for an identification card, license and badge under 24 Del.C. Ch. 55 must submit the following for approval:
- 1.6.1 A fee of \$50 shall be for the re-application of the ID card, license and badge, which shall be valid for another four (4) years; ~~and~~
- 1.6.2 Proof of completion of the continuing education set forth in Section 7.0; and
- 1.6.3 Any and all applications required by the Professional Licensing Section.
- 1.7 ~~Any person wishing to be licensed as a bail enforcement agent must show proof of current and valid sponsorship from a licensed bail enforcement agent that has been licensed, through 24 Del.C. Ch. 55, for at least five (5) consecutive years. Any individual seeking re-licensure within three (3) years after their expiration shall be required to take the current continuing education class before they can be re-instated. Any individual seeking re-licensure after three (3) years of their expiration shall be required to take the initial classroom training again.~~

*(Break in Continuity of Sections)*

### 4.0 Firearms Policy

- 4.1 Section 4.0 shall apply only to individuals licensed under 24 Del.C. Ch. 55, while such individuals are acting in the performance of their duties as a BEA.
- 4.42 No individual licensed under 24 **Del.C.** Ch. 55 shall carry a firearm unless the individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved certified 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). The initial qualification course may 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.
- 4.23 ~~All~~ In order to carry a firearm, individuals licensed to carry a firearm under 24 Del.C. Ch. 55 must shoot a minimum of three (3) qualifying shoots per calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (4) mandatory "low light" shoot and may be combined with a day shoot. Two day shoots may shall not be

~~completed~~ on the same day ~~date~~. ~~Simulation is permitted. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year.~~

- 4.2.1 All renewal shoot sheets must be submitted to the Professional Licensing Section by January 31<sup>st</sup> of each year for the previous calendar year.
- 4.2.23.1 An individual not meeting the minimum qualifications set forth in 4.2 subsection 4.3 may ~~have their firearms license suspended~~ be suspended from carrying a firearm while acting in the performance of their duties as a BEA until such time that they meet the minimum three (3) qualifying shoots within the calendar year.
- 4.34 Only the handguns with the following calibers are permitted:
- 4.34.1 9mm;
  - 4.34.2 .357;
  - 4.34.3 .38;
  - 4.34.4 .40; or
  - 4.34.5 .45; or
  - 4.4.6 .357 SIG.
- 4.45 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 4.56 Under no circumstances will anyone under this Rule be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 4.67 All individuals must ~~qualify~~ meet the minimum qualifications set forth in subsection 4.3 with the same make/model/caliber of weapon that he/she will carry.
- 4.78 All ammunition ~~will~~ must be factory fresh (no re-loads).
- 4.89 The minimum passing score is 80%.
- 4.10 All licenses are valid for a period of four years, subject to proof of compliance of Section 4.0 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.
- 4.911 Firearms instructors providing instruction under Section 4.0:
- 4.911.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), ~~and/or~~ another professional firearms training institution as a "certified firearms instructor".
  - 4.911.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
  - 4.911.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals-~~issued an ID card, license and badge under 24 Del.C. Ch. 55.~~

*(Break in Continuity of Sections)*

## 6.0 Training Requirements For Issuance of a License

- 6.1 All individuals applying for licensure under 24 Del.C. Ch. 55 must complete a minimum of eight hours of training in the following 6.1.1 prior to the issuance of an identification card, license, and badge. This initial eight hours will fulfill the first year of the required continuing education. Must pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the class. A second failed test will require the individual to take the classroom training again at the next scheduled class.
- 6.1.1 Courses in Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bail Enforcement Agents; and any other training as deemed pertinent by the Board.
  - 6.1.2 ~~Mandatory training in the field by a bail enforcement instructor approved by the Board.~~



# PROPOSED REGULATIONS

~~6.1.3 A bail enforcement agent shall go through a minimum one year internship with an approved licensed bail enforcement agent.~~

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

**5500 Bail Enforcement Agents**

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
4100 BOARD OF HOME INSPECTORS**

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

**PUBLIC NOTICE**

**4100 Board of Home Inspectors**

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes reiterate that a trainee home inspector must obtain his/her trainee registration prior to performing any supervised home inspections. The Home Inspector Practice Act mandates that anyone who performs inspections, even if supervised by a Delaware licensed home inspector, must first obtain a trainee registration. Board Regulation 10.1 requires trainees to complete 75 supervised home inspections before becoming eligible for full licensure, and, under 24 **Del.C.** §4107(c) a trainee can only begin to accumulate such inspections after his/her application for registration as a trainee is approved and granted by the Board.

The Board will hold a public hearing on the proposed regulation change on July 14, 2015 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 29, 2015 pursuant to 29 **Del.C.** §10118(a).

**4100 Board of Home Inspectors  
(Break in Continuity of Sections)**

**4.0 Licensure Requirements**

**(Break in Continuity Within Section)**

4.4 For trainee applicants:

4.4.1 Evidence in a form satisfactory to the Board that the applicant has completed the trainee requirements. The applicant shall submit a log on a Board-approved form documenting the experience. The applicant will not receive credit for supervised home inspections performed prior to the date the trainee registration was granted. The Board retains the discretion to request copies of sample home inspection reports for review to verify experience.

**(Break in Continuity of Sections)**

**9.0 Responsibilities of supervising home inspector**

9.1 To qualify as a supervisor, a home inspector shall hold a Delaware home inspector's license in good standing.

- 
- 9.2 The supervising home inspector shall only supervise registered home inspection trainees and supervise no more than two trainees for each inspection. The supervising home inspector shall notify the Board in writing when the inspector is no longer supervising the trainee.

*(Break in Continuity of Sections)*

## **10.0 Responsibilities of registered home inspector trainee**

- 10.1 The trainee shall complete at least 75 home inspections under the active oversight of a licensed home inspector(s). The trainee may not begin performing supervised home inspections until his/her application for registration as a home inspector trainee is granted by the Board.

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

**4100 Board of Home Inspectors**

## 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 PESTICIDES SECTION

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

### ORDER

#### 601 Delaware Pesticide Rules and Regulations

Date of Issuance: April 30, 2015

Effective Date: May 1, 2015

Pursuant to the authority provided by 3 Del.C. §1203(a), the Delaware Department of Agriculture (DDA) issues this Order adopting amendments to 601 Delaware Pesticide Rules and Regulations.

This Order is adopted pursuant to 29 Del.C. §10113(b)(5) to provide uniformity with an amendment to the State of Delaware Code, Title 3, Part II Chapter 12 Pesticide Law that raises the permissible pesticide product registration fee to \$140.00 for a biennial registration. This Order shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation.

So ordered as of April 30, 2015

Ed Kee, Secretary  
Delaware Department of Agriculture

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

#### 4.0 Registration

##### 4.1 Product Registration

*(Break in Continuity Within Section)*

- 4.1.3 The applicant desiring to register a pesticide shall pay a biennial registration fee of ~~seventy dollars (\$70.00)~~ one hundred forty dollars (\$140.00) to the Delaware Department of Agriculture for each brand or grade of pesticide to be registered for such applicant. All registrations shall continue in effect until June 30 of the year in which they expire. Applications received between January 1 and June 30 shall be registered for the upcoming two year period. Applications received between July 1 and December 31 will be registered for a two year period beginning July 1 of the year in which the application was received.

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

**601 Delaware Pesticide Rules and Regulations**

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**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 **DE Admin. Code** 1001

**ORDER**

**1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission ("Commission") 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, the Commission proposed for adoption revisions to the Commission's Regulation 15.1.3.1.4, and 15.20. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations was published in the April 1, 2015 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on April 1, 2015.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective June 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2015 issue of the *Register* at page 758 (18 DE Reg. 758). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1001 Thoroughbred Racing Rules and Regulations**

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**DEPARTMENT OF EDUCATION**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 1105

**REGULATORY IMPLEMENTING ORDER**

**1105 School Transportation**

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1105 School Transportation. This regulation is being amended to align with changes in Title 21 of the Delaware Code including, but not limited to, the maximum age of a school bus for use on a regular route, criminal background checks, and the process for training school bus drivers. Additionally, it will establish a mandatory in-service training program for school bus drivers and aides, it will require an annual physical for school bus aides, and directs districts to make disbursements on a prorated basis when they fund a portion of the transportation costs.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on March 27, 2015, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and an employee of the Colonial School District. Please note that based on the comments received the Department determined a purpose statement was needed, and thus added it as 1.0, which required a majority of the regulation to be renumbered. Please note the references cited below based on comments received have been updated to reflect the newly numbered sections of the regulation.

Specifically, the Councils asked the Department of Education to (1) determine if the regulation applies to charter schools. This regulation does apply to charter schools. The definition of "District" has been modified to "local school district or charter school" to address this issue. (2) There was also a suggestion regarding defining the word "significant" in 3.1.16. The Department does not wish to further define significant as we do not wish to be too specific in what type of accident/incident must be reported, and the ability to distinguish type of accident/incident to be reported is provided as a part of training. (3) There was concern that the regulation requirements were different in terms of time period for points on the licenses for new applicants to be CDSBD trainers and those being renewed as CDSBD trainers. The Department edited 6.3.2 to delete the phrase "in the past three years" in order to make the requirements consistent. (4) It was suggested that the regulation be reviewed for uniformity in terms of capitalizing the term "district". Several changes were made throughout the regulation to capitalize the term "district". (5) It was suggested that the Department consider modifying the language in 7.8.6 to clarify that it is the driver who is to provide a copy of the letter from DMV to the public school or District. The Department made this change in 7.8.6. (6) It was suggested that the words "be sent" be removed from the sentence in 8.1.2.2 in order to make it grammatically correct. The Department agrees with this change, and removed those words. (7) It was noted that the regulation is sometimes inconsistent with authorizing supports based on an IEP or 504 Plan. The sections 10.16, 18.1.7 and 23.1 were examined. The Department will ensure the first two references include the words "504 Plan", but it will not change 23.1, as students with a 504 Plan do not get private placement and thus the change would not apply. (8) Another comment noted that 17.10 of the regulation related to funding a portion of school transportation costs, districts shall make disbursements using state and non-state funds on a prorated basis, was not needed and would create an undue burden on school district financial and transportation staff. The Department has reviewed this comment. Districts are responsible for 10% of the formula funding. The Department has found that if districts code each financial transaction this way, it saves time for the districts and the Department during the reconciliation process at the end of the year.

As noted above, the Department of Education made two changes to the regulation for further clarification. First, the regulation's number has been changed since the original proposal from 1105 to 1150 to allow for the addition of some forthcoming regulations that need to be kept in order within the 1100 series of regulation. Secondly, the Department added an effective date in 7.2.1.6 and 7.3.7 per the Division of Motor Vehicles to match a change in Federal Motor Carrier Safety Administration requirements.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1105 School Transportation in order to align with changes in Title 21 of the Delaware Code including, but not limited to, the maximum age of a school bus for use on a regular route, criminal background checks, and the process for training school bus drivers. Additionally, it will establish a mandatory in-service training program for school bus drivers and aides, it will require an annual physical for school bus aides, and directs districts to make disbursements on a prorated basis when they fund a portion of the transportation costs.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1105 School Transportation. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1105 School Transportation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1105 School Transportation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1105 School Transportation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1150 School Transportation in the Administrative Code of Regulations for the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 21, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** the 21<sup>st</sup> day of May 2015.

#### Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21<sup>st</sup> day of May 2015

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

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

**1105 School Transportation**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### **Draft 1115 Waiver Medicaid Managed Care Comprehensive Quality Strategy Plan**

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) / Division of Substance Abuse and Mental Health (DSAMH) initiated proceedings to make available for public review and comment Delaware Medicaid's *Proposed Draft Comprehensive Quality Strategy Plan*. 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 April 1, 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### SUMMARY OF PROPOSAL

This regulatory posting is to provide public notice and to receive public comments for consideration regarding the Delaware Medicaid Managed Care *Quality Strategy Plan*. Delaware Health and Social Services/Division of Medicaid and Medical Assistance is modifying and updating the current Diamond State Health Plan Medicaid managed care strategy as required by 42 CFR Part 438, Subparts D and E (relating to quality assessment and performance improvement; and external quality review) to incorporate the PROMISE (Promoting Optimal Mental Health for Individuals through Supports and Empowerment) Section 1115 demonstration waiver.

#### Statutory Authority

- 42 U.S.C. §1315, *Demonstration projects*
- Social Security Act §1115, *Demonstration projects*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations*
- Section 1932(c)(1) of the Social Security Act, *Quality Assurance Standards, Quality Assessment and Improvement Strategy*
- 42 CFR 438, Subpart D, *Quality Assessment and Performance Improvement*
- 42 CFR 438, Subpart E, *External Quality Review*

#### Background

Federal regulations at 42 CFR §438.200 et seq. require all States contracting with a managed care organization (MCO) to have a written strategy for assessing and improving the quality of managed care services offered within the State. This is what the Centers for Medicare and Medicaid Services (CMS) refers to as the "State Quality Strategy".

#### State Responsibilities

Each State must obtain the input of beneficiaries and other stakeholders in the development of the State Quality Strategy, and make the State Quality Strategy available for public comment before adopting it final.

Currently, States are required to submit to CMS a copy of the initial quality strategy and a copy of the revised strategy whenever significant changes are made. Additionally, per 42 CFR §438.202(e), States are required to submit regular reports on the implementation and effectiveness of the quality strategy. This requirement may be satisfied one of two ways:

1. By means of the State's annual External Quality Review (EQR) technical report. If a State chooses to use this method, the State must ensure that its EQR technical report includes a section that addresses the effectiveness of the State's quality strategy and determine whether any updates to the quality strategy are necessary based on the EQR assessment.
2. By means of a separate report on the implementation and effectiveness of the quality strategy. This State must submit this separate report to CMS on at least an annual basis.

#### Elements of State Quality Strategies

In accordance with 42 CFR §438.204, at a minimum, State Quality Strategies must include:

- The MCO contract provisions that incorporate the standards of Part 438, subpart D;
- Procedures that assess the quality and appropriateness of care and services furnished to all Medicaid enrollees under the MCO contracts, and to individuals with special health care needs;
- Procedures that identify the race, ethnicity, and primary language spoken of each Medicaid enrollee;
- Procedures that regularly monitor and evaluate the MCO compliance with the standards of Part 438, Subpart D;
- Arrangements for annual, external independent reviews of the quality outcomes and timeliness of, and access to, the services covered under each MCO contract;

- For MCOs, appropriate use of intermediate sanctions that, at a minimum, meet the requirements of Subpart I of this Part 438;
- An information system that supports initial and ongoing operation and review of the State's quality strategy; and,
- Standards, at least as stringent as those in Part 438, Subpart D, for access to care, structure and operations, and quality measurement and improvement.

## Summary of Proposal

### *Purpose*

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) made available for public review and comment a draft proposed Quality Strategy for the State's section 1115 Medicaid demonstration waivers, Diamond State Health Plan and Diamond State Health Plan Plus. This process has been undertaken to fulfill the requirements of the Code of Federal Regulations, specifically 42 CFR §438.202(b) which requires states to obtain the input of recipients and other stakeholders in the development of the strategy and the Waiver's associated Special Terms and Conditions, specifically STC 47, to make the strategy available for public comment. The purpose of this notice is to fulfill that requirement. Comments on public notices and comments received at public hearings will be used to formulate Delaware's Final Quality Strategy that will be submitted to CMS by May 1, 2015.

### *Draft 2015 Managed Care Quality Strategy Summary*

This public input process has been undertaken to fulfill the requirements of the Code of Federal Regulations, specifically 42 CFR §438.202(b) which requires states to obtain the input of recipients and other stakeholders in the development of the strategy and the Waiver's associated Special Terms and Conditions (STC), specifically STC 47, to make the strategy available for public comment. The purpose of this notice is to fulfill that requirement. Comments on public notices and comments received at public hearings will be used to formulate Delaware's Final Quality Strategy that will be submitted to CMS by May 1, 2015.

The Quality Management Strategy (QMS) is a comprehensive plan which incorporates quality assurance monitoring and ongoing quality improving processes to coordinate, assess and continually improve the delivery of quality care to the Medicaid beneficiaries. The proposed draft Comprehensive Quality Strategy addresses and incorporates the development of and integration of the Promoting Optimal Mental Health for Individuals through Supports and Employment (PROMISE) Program. The PROMISE program is an effort to improve clinical and recovery outcomes for beneficiaries with behavioral health needs.

### *Public Comment Submission Process*

Under the provisions of 42 CFR §441.301(c)(6)(iii), DHSS/DMMA gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the Proposed Draft 1115 Waiver Medicaid Managed Care Comprehensive Quality Strategy Plan. Comments were to be received by 4:30 p.m. on March 31, 2015.

Delaware also utilized two (2) prior public input procedures by 1) publishing the Comprehensive Quality Strategy Plan in two (2) major Delaware newspapers for a thirty-day public comment period on March 1, 2015: *The News Journal* and the *Delaware State News*; and, 2) holding two public hearings on Monday, March 23, 2015 in Kent County and on Friday, March 27, 2015 in New Castle County.

### *Draft of Proposed Medicaid Managed Care Comprehensive Quality Strategy Plan*

The Comprehensive Quality Strategy Plan is accessible on both the Division of Medicaid and Medical Assistance (DMMA) website: <http://dhss.delaware.gov/dmma/> and the Division of Substance Abuse and Mental Health (DSAMH) website:

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

## Fiscal Impact Statement

There is no increase in cost on the General Fund. Section 1115 demonstration waivers must be "budget neutral" over the life of the project, meaning that they cannot be expected to cost the Federal government more than it would cost without the waiver.



## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the April 2015 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to make available for public review and comment Delaware Medicaid's *Proposed Draft Comprehensive Quality Strategy Plan*, is adopted and shall be final effective June 10, 2015.

Rita M. Landgraf, Secretary, DHSS

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER****Medicaid 1915 Home and Community-Based Services Waiver Programs - Statewide Transition Plan****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) made available for public review and comment Delaware Medicaid's *Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings*. 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 March 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2015 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

This regulatory posting is to provide public notice and to receive public comments for consideration regarding Delaware Medicaid's *Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings*. The purpose of the transition plan is to ensure Medicaid beneficiaries are receiving HCBS in settings that meet the quality requirements specified in the final rule and are appropriate based on the needs of the individual as indicated in their person-centered service plan.

**Statutory Authority, Citations, and Other References**

- Section 1915 of the Social Security Act, *Provisions respecting inapplicability and waiver of certain requirements of this title*
- 42 CFR §441.301, *Contents of request for a waiver*
- 42 CFR §441.710, *State plan home and community-based services under section 1915(i)(1) of the Act*

**Background**

The Centers for Medicare and Medicaid Services (CMS) published its final rule in the Federal Register on January 16, 2014 related to Home and Community Based Services (HCBS) for Medicaid-funded long term services and supports provided in residential and non-residential home and community-based settings. The final rule took effect March 17, 2014. States are required to submit transition plans to CMS within one year of the effective date indicating how they intend to comply with the new requirements within a reasonable time period. If

states amend or renew any of their currently operating waivers or state plan amendments prior to the effective date, that action serves as a trigger for the state to submit a transition plan for all its waivers under 1915(c), as well as any state plan amendments under 1915(i) or 1915(k) within one hundred and twenty (120) days of the amendment/renewal submission.

These regulations require Delaware to submit a transition plan for the state's 1915(c) waiver, the 1915(i) HCBS state plan option and, the 1115 demonstration waiver programs. Because Delaware's 1115 Demonstration refers to the 1915(c) authority for HCBS services, the state must comply with these regulatory changes. Delaware does not have a 1915(k) waiver. The transition plan must describe the process by which the state will ensure that service settings used in each of its home and community-based waivers meet "community-like" expectations. The final rule provides for a five-year transition process that will allow states to implement this rule in a manner that supports continuity of services for Medicaid recipients and minimizes disruptions in service during implementation; as such, all such services must be in compliance with CMS requirements before March 2019.

For additional information about the CMS HCBS final rule, use the following link to the CMS website:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>. The website includes links to the CMS rule, webinars, guidance and more.

## Summary of Proposal

### *Purpose*

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) made available for public review and comment Delaware's Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings. Comments on public notices and comments received at public hearings will be used to formulate Delaware's Final Statewide Transition Plan that was submitted to CMS by March 17, 2015. All comments were received prior to March 17, 2015 and were included in the submission.

### *Statewide HCBS Settings Transition Plan Summary*

DHSS/DMMA initiated and completed a comprehensive review of HCBS waivers and related regulations, policy and procedures to assess and to identify changes necessary to comply and/or to demonstrate compliance with the new rule. This analysis identified areas where the new regulations are supported in Delaware as well as areas that will need to be strengthened in order to align Delaware's HCBS programs with the regulations.

Pursuant to 42 CFR 441.301(c)(6), Delaware's proposed Statewide HCBS Settings Transition Plan is composed of the following three main components: (1) Assessment Process: an assessment of regulations, standards, policies, licensing requirements, and other provider requirements to ensure settings comply with federal requirements, (2) Remedial Strategy: a description of the actions the state proposes to assure initial and ongoing compliance with the HCBS setting requirements, including timelines, milestones, and monitoring processes, and (3) Public Input, preferably from a wide range of stakeholders representing consumers, providers, advocates, families and others. Therefore, DHSS/DMMA is making the Statewide Transition Plan available for public review and comment.

### *Relevant Waivers/State Plan*

Delaware's proposed Statewide Transition Plan for Home and Community Based Settings contains the actions the state will take to bring all Delaware waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5) along with timelines and milestones for doing so. This plan covers the following three waivers and state plan currently operating in Delaware:

1. Diamond State Health Plan (DSHP) Section 1115 Demonstration Waiver (because the 1115 Demonstration refers to the 1915(c) authority for HCBS services);
2. Division of Developmental Disabilities Services 1915(c) Home and Community-Based Services Waiver; and,
3. 1915(i) Home and Community-Based Services State Plan Option.

### *Public Comment Submission Process*

Under the provisions of 42 CFR §441.301(c)(6)(iii), DHSS/DMMA gave public notice and provided an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the Transition Plan.

Comments were to be received by 4:30 p.m. on March 31, 2015.

Delaware also utilized two (2) prior public input procedures by 1) publishing the Transition Plan in two (2) major Delaware newspapers for a thirty-day public comment period on February 6, 2015: The News Journal and the Delaware State News; and, 2) holding two public hearings on February 23, 2015 and February 27, 2015 in New Castle County and Kent County.

*Draft of Proposed Statewide 1915 HCBS Waiver Settings Transition Plan*

The proposed Statewide Transition Plan offers the steps that DMMA will facilitate and then successfully execute the transition, with the engagement of the public. A draft of the plan is available for review and/or downloads on the Division of Medicaid and Medical Assistance (DMMA) website at: <http://dhss.delaware.gov/dmma/>.

**Fiscal Impact Statement**

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

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

In accordance with CMS guidance, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) sought input from the public and a wide range of stakeholders regarding the proposed statewide transition plan. Stakeholders, including providers, parents, family members and friends of HCBS participants in Delaware, were notified of the opportunity to review the transition plan and provide input using DHSS/DMMA website postings and notification in two (2) statewide newspapers. Stakeholders were able to submit comments regarding the transition plan by focus groups, public hearings, e-mail, standard mail; and, feedback from a public survey.

Public comments were received from the following organizations and associations:

- Center for Disabilities Studies, University of Delaware
- CHIMES Delaware
- Delaware Association of Rehabilitation Facilities (DeARF)
- Delaware Developmental Disabilities Council (DDDC)
- Disabilities Law Program at the Delaware Community Legal Aid Society, Inc. (DECLASI)
- Easter Seals Delaware & Maryland's Eastern Shore
- Governor's Advisory Council for Exceptional Citizen (GACEC)
- National Association of Councils on Developmental Disabilities (NACDD)
- State Council for Persons with Disabilities (SCPD)
- University of Delaware, H. Rodney Sharp Professor of Human Services Policy and Leadership

To view the final transition plan, the summary chart of comments received from organizations, associations individuals and State response, where applicable, to issues identified, please visit the DMMA website at <http://dhss.delaware.gov/dhss/dmma/files/statewidetransitionplan.pdf>. The chart also notes the changes that were made to the statewide transition plan in response to the feedback.

Comments were also received via standard mail and e-mail from over forty (40) family members or representative of members receiving services in the state's HCBS programs and providers of the HCBS waiver services. The following five (5) comments represent their questions and concerns. The "Agency Response" follows the fifth comment.

Please Note: For purposes of confidentiality, the name of the commenter and the location of the facility are not identified.

**Family Member/Representative/Provider #1**

Hi, I would like to explain why the service my son receives from XXXX in XXXX center is the best thing for him. He has a social life with friends there; they plan a program for him to do while he is there, so that he can retain things in life that he needs to learn. Parents with disability children need to have a service like this so that they can work without worry and have a much needed time for themselves. My son is 39 years old and I have him and care for him the rest of my life. It is a very stressful life sometimes and he loves the center. He never wants to stay

home; he gets upset if snow keeps him home. He loves his out trips they go on. I could not ever imagine what he would do without this service. Please consider what the impact would do to people with disabilities if the service they receive now would change.

## **Family Member/Representative/Provider #2**

To Whom It May Concern,

My name is XXXX. I am a Program Manager at XXXX. [It] is my honor to work at XXXX, and [I] have been here for one year. I believe that ALL people should be fully integrated into the community. I realize that those we serve will be able to be fully integrated into the community without a lot more financial support than what is currently available. I realize that providers in Delaware are currently are UNDER funded by \$32 million. Where are the additional financial resources going to come from? I also realize that to move people to the community will take a lot more Transportation resources, which means more money. I believe that if we try to put everyone in the community without the proper resources, which means money, the safety of the people we serve will be compromised, and the safety of the public in some cases will also be put at risk. I also know that many of the people we serve and their families do not want to receive services in the community. I believe our State should provide more choices, not eliminate choices. I also know that other states have affirmed that they are keeping facility-based services as a service option. Delaware has NOT done that. We would like to see our State affirm that facility-based programs will remain in our state for those who would choose it as an option and for those who need it to build skills to move to a community-based program. The people we serve are unable to advocate for themselves, and we have a responsibility to make sure their voices and concerns are heard

## **Family Member/Representative/Provider #3**

My wife and I are the parents of XXXX, a twenty six year old man. XXXX has moderate to severe autism, but fortunately, few behavioral issues. Because of this, the least restrictive most appropriate work environment for XXXX is in the community and we are fortunate to have found for XXXX a 20 hour a week job in the XXXX at XXXX. XXXX is supported in this job and could not work without supports which supports are provided for him through state funding. XXXX continues to live at home but would like to be living more independently. Achieving this goal will not be easy as XXXX's has limited life skills. His present happiness and satisfaction with his life and planning for his future when we are gone weighs heavily on both of us. Where will he live? Who will watch out for his welfare?

We appreciate the great work done by disability advocates to push for inclusion and community-based services that has brought us to this point. However, we are deeply concerned that the pendulum has swung too far to full inclusion without consideration for each individual's level of disability. The saying "One size does not fit all" certainly applies in this situation. Additionally, we are concerned all disabilities are being looked at in aggregate. Our son with an intellectual disability cannot truly speak for himself and has limited critical thinking and life skills. His inclusion scenario is very different from that of someone with a physical disability who has the intellectual capacity to understand when they are in danger, go to college, manage a bank account, etc. We cannot dismiss this fact as we shape our policies on inclusion.

We strongly support regulations for Home and Community Based Services that would be flexible and would allow for all types of residential and employment options for persons with all types of disabilities. Limiting who one can live or work with or where one can work does not seem consistent with the ideals of this nation. Sometimes quality of life might be living quietly with one or two other people, and sometimes it might mean having a larger group in a few close-set apartments or houses. We feel that having these kinds of flexible options and outcome-based regulations will further advance possibilities for happy lives for all of our loved ones with disabilities.

We see great benefit in creating intentional communities for groups of people who can and want to live together and we think this would be an excellent living choice for our son, XXXX and would best meet his needs. This environment would give him needed supports for daily living and would provide a social environment that in our estimation over these many years as his primary care givers, he seems to prefer.

We appreciate the opportunity to address our concerns and thank you in advance for helping us gain some security regarding our son's future.

## **Family Member/Representative/Provider #4**

Regarding Delaware's Division of Medicaid and Medical Assistance (DDMMA) being required to submit a Statewide Transition Plan to Centers for Medicare & Medicaid Services (CMS) about the Community Rule for all

programs offering Home & Community Based Services (HCBS) in the State: In principle we are supportive of the "Community Rule" guidelines to offer "opportunities to access community services in the most integrated settings." This would not only benefit recipients but also the public at large, for when the public gets to know individuals with disabilities, they become the best advocacy source. We ALL would benefit.

Our concern, however, is when changes like this are made; there is always the risk that vulnerable people will fall through the cracks. Since some disabled people require a more restrictive, sheltered environment; that is their best chance to thrive, to be safe, to work and have dignity and self-worth. Therefore it is imperative that these individuals maintain and function in a sheltered work and living environment. Some of these folk have lived in this environment for decades, and are now over 50 years old. They are most unlikely to "gain employment" just like other older individuals are finding it hard to secure work. Implementation of the Community Rule must not disrupt their lives and the lives of their caretakers.

As this process proceeds during the next four years, the committee must communicate with the people in the state of Delaware in language that is understandable by the lay public. (See our first paragraph, for example - is that generally understandable? If it generally is, then we are all in trouble!)

This committee shall also have many evening public meetings in all three counties, to encourage and facilitate public input. The locations shall have seating enough for the public, working sound and media equipment, and enough handouts for all. Hopefully the committee composition should include representation from affected agencies, professional, recipient, caregivers, and the public at large. Communicating what the transition means is so important, because misunderstandings and threats of closures stop us from listening to each other. People are getting scared that their loved ones will not have benefits or facilities that are so much needed for certain persons of disabilities. Yet, the integration into the community can still occur in the sheltered workplaces in very creative ways. Please allow for these creative opportunities, without threatening the funding.

Flexibility is absolutely necessary in this process; the plan must be subject to change during this process. It must never be seen as a "done deal" effective 17 March, 2015! The collective wisdom of the people of Delaware must be sought after. Then Delaware's Plan will be first.

#### **Family Member/Representative/Provider #5**

My name is XXXX. I reside @ XXXX... I'm writing as an advocate for my daughter XXXX who was born with Down Syndrome. After she graduated from the Vocational Special Education Program in the XXXX School District she has been gainfully employed at the Support Services Division of XXXX. Throughout the educational process and thereafter I have been a strong proponent of gaining access for XXXX to enable her to function as independently and successfully as she can given her abilities & limitations. Fortunately for us and her she has managed to learn, adjust & adapt to maintaining a fairly self-guided lifestyle with minimal supervision. Right now she resides with me and my husband at our home. However, since we are getting older we are anxious to find alternate means of living and assistance for her for the eventuality that she will definitely outlive us since she is a healthy, young woman.

In light of the new federal HSBS rules & regulations that are right now being considered as a guide for the state of Delaware's transition plan being developed I feel compelled to bring forth my concerns and views to you as you embark on this process.

1. In determining what constitutes the least restrictive environment practicalities should be a major determining factor. In an ideal and theoretical format each such individual would have all the support and freedom to reside & function in a fully integrated system with one-on-one assistance. However, by the very nature of the fact that such individuals as my daughter need supervision and guidance on a regular basis and learn as well as work more comfortably in an environment that is structured to their needs as well as one that gives them the safety and comfort to function it is not only realistic but imperative that this be given serious weight when considering whether the entity and place providing the service fulfills the guidelines. To be sure we do not want to go back to the days of warehousing such individuals in massive enclaves where they are cutoff from the rest of the world and exist in isolation. But from a practical and economical view it is only reasonably to have a limited number of such individuals who choose of their own to reside and work together as part of a larger whole community. It is akin to like-minded professionals or ethnic communities who congregate in order to satisfy mutual goals and needs. So long as the individuals who choose to do so do it of their own volition why should there be an arbitrary number assigned that would limit their ability to choose such options. If using stringent specifications denies individuals like my daughter the privilege of being able to grow, live and function to their fullest potential then that totally defeats the purpose of helping such individuals and instead restricts the opportunities available to them thus relegating

them to a life of isolation, with nothing to keep them active and productive, ensuring their decline. I believe that in applying the criteria of least restrictive environment the barometer to judge and temper it should be the benefit or lack thereof to each individual's needs and conditions. A universally applied and fixed number without consideration of the individuals needs severely handicaps their ability to achieve their full potential and removes viable options that would work for that individual.

2. Over the past several years the shortfall of state funds for XXXX have been seriously neglected and thus are now well below the level necessary to serve the needs of this population. A concerted effort needs to be made by our state governing bodies to ascertain that there is a steady stream of revenue allocated for that purpose.

In ending, I respectfully offer my input as a constant and strong supporter of my daughter to be a productive and active member of society so that she can contribute to the greater good, participate fully and live a fulfilling life, in spite of the limitations she was born with.

**Agency Response:** Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) appreciates your sincere and thoughtful comments. We acknowledge your questions and concerns and would like to offer the following information:

The federal regulation related to Home and Community-Based Services (HCBS) Transition Settings aims to improve the quality of life for many individuals receiving HCBS. Further, the intent is to ensure that individual rights are not unduly restricted.

The State is mindful of the fact that the experience of the individual receiving HCBS is very important. We recognize that different people will make different choices, and the federal regulation attempts to optimize those choices.

DMMA thanks you for your comments and suggestions. Your comments have been considered in the preparation of the final statewide transition plan. The final transition plan including a summary of public comments received and the agency's response is available on the DMMA website at: <http://dhss.delaware.gov/dmma/>.

DMMA values your input and will continue to engage stakeholders and solicit feedback during the transition process, including review of the assessment tool, remediation strategy, and changes to Medicaid policies that are created as part of the transition process.

Thank you for sharing information relating to your family member and the services they receive.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2015 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to make available for public review and comment Delaware Medicaid's Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings, is adopted and shall be final effective June 10, 2015.

Rita M. Landgraf, Secretary, DHSS

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## 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(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 1.0 Licensing;

- Rule 2.0 Suspensions, Revocations and Appeals;
- Rule 6.0 Baton, Nightstick, PR24, Chemical Spray, and Handcuffs;
- Rule 7.0 Electronic Control Device (ECD); and
- Rule 8.0 Canine,

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:
  - combine three previous rules (Rules 1.0, 3.0 and 4.0) into one to explain the requirements for licensure;
  - clarify the suspension, revocation and appeal process;
  - make the training mandatory and clarify the instructor requirements.

### 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:
  - combine three previous rules (Rules 1.0, 3.0 and 4.0) into one to explain the requirements for licensure;
  - clarify the suspension, revocation and appeal process;
  - make the training mandatory and clarify the instructor requirements;
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:
  - combine three previous rules (Rules 1.0, 3.0 and 4.0) into one to explain the requirements for licensure;
  - clarify the suspension, revocation and appeal process;
  - make the training mandatory and clarify the instructor requirements.

### 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 June 11, 2015.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 1<sup>st</sup> day of May, 2015.

Chief William E. Bryson  
 Ralph K. Durstein, III, Esquire (absent)  
 Lt. Colonel Monroe B. Hudson, Jr.

Captain Douglas Merrill  
 Mr. John F. Tharan

**\*Please note that no changes were made to the regulation as originally proposed and published in the**

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March 2015 issue of the *Register* on pages 675 and 684 (18 DE Reg. 675 & 684). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**2400 Board of Examiners of Constables**

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## **DIVISION OF STATE POLICE**

### **5500 BAIL ENFORCEMENT AGENTS**

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

#### **ORDER**

#### **5500 Bail Enforcement Agents**

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to Rule 7.0 - Continuing Education and Training, and Rule 11.0 - Criminal Offenses, 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 Rule 7.0 to change the continuing education to add on-line training and clarify how any missed training can be made up. The Board also expressed its desire to adopt the amendment to Rule 11.0, to give the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes.

#### **Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of Rule 7.0 will change the continuing education to add on-line training and clarify how any missed training can be made up. The Board also finds that the adoption of Rule 11.0 will give the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment to Rule 7.0 is well written and describes its intent to adopt the rule to change the continuing education to add on-line training and clarify how any missed training can be made up. The Board also finds that the amendment to Rule 11.0 is well written and describes its intent to adopt the rule to give the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes.

#### **Conclusion**

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).



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

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

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 15<sup>th</sup> day of May, 2015.

Major Melissa A. Zebley, Chairman

John Yeomans, Director

Rebecca L. Byrd, Esquire (absent)

Ms. Robin David

Mr. Michael J. Dellose

Mr. R. Dale Hamilton

Mr. Harry O. Jennings

Mr. Kevin C. Jones

Mr. Jack McGhee, II

\*Please note that no changes were made to the regulation as originally proposed and published in the April 2015 issue of the *Register* at page 776 (18 DE Reg. 776). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**5500 Bail Enforcement Agents**

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

### DIVISION OF FAMILY SERVICES

#### OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Section 343  
(29 **Del.C.** §9003(7); 31 **Del.C.** §343)  
9 **DE Admin. Code** 101

#### ORDER

### **101 Regulations for Early Care and Education and School-Age Centers**

#### NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware Regulations for Early Care and Education and School-Age Centers. The proceedings were initiated pursuant to 31 **Delaware Code**, Sections 341-345 and 29 **Delaware Code** Chapter 101.

On April 1, 2015 (Volume 18, Issue 10) DSCYF published in the Delaware *Register of Regulations* its notice of proposed regulations pursuant to 29 **Delaware Code** Section 10115. Written comments were accepted until April 30, 2015. The proposed regulations were also posted in the June 2014 and December 2014 Delaware *Register of Regulations*. Comments were received after each posting and DSCYF evaluated these comments and factual evidence. Additional public comments were received from the Provider Advisory Board, from providers, and stakeholders during a series of Task Force meetings. Many regulations were revised based on these comments. The results of the evaluation of the comments received regarding the April 1, 2015 posting are summarized in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published in the Delaware *Register of Regulations* DELACARE: Regulations for Early Care and Education and School-Age Centers in June 2014, December 2014, and in April 2015. Public notices that proposed regulation changes had been published in the *Register* and that public meetings would be held in June/July 2014 to accept verbal comments were published in two newspapers of general circulation. Comments were gathered from each posting in the *Register*. The last

period of public comment ended on April 30, 2015 with written comments provided by the following:

- Kathie Cherry, The Governor's Advisory Council for Exceptional Citizens (GACEC)
- Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities
- Connie Merlet, on behalf of the Provider Advisory Board
- Mollie Poland, MPP, Nemours Health and Prevention Services

Please note that comments included here are those that pertain directly to the proposed regulations. Those that did not address the regulations have not been incorporated. In some cases, it was necessary to summarize comments.

**Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities and Kathie Cherry, The Governor's Advisory Council for Exceptional Citizens (GACEC)**

First, Section 3.3.7 identifies certain school-based programs as exempt. However, §7.2 requires school-based programs operated by non-employees of the school to be licensed. For clarity, a reference to §7.2 should be included in §3.3.7. Otherwise, someone reviewing the exemption section could interpret §3.3.7 as exempting school-based programs regardless of operation by non-employees of the school. For example, the reference to "(t)his exclusion shall include all programs operated by these schools" could be interpreted as covering a situation in which the school contracts with a third party to provide the child care program.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise regulation 3.3.7 to read "This exclusion shall include all programs operated by these schools, except as stated in Section 7.2, and shall also include preschool education programs for people with disabilities as defined by 14 Delaware Code, Section 3101(4)."

Second, in §4.0, definition of "Section 504 Plan", SCPD recommends inserting "with a disability" between "child" and "to".

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise the definition of "Section 504 Plan" to include "with a disability" after the word child.

Third, Section 13.3.2 requires a licensee to notify OCCL if a child is injured "while in the care of the center when the center is informed the child required medical/dental treatment". See also §61.3. SCPD has a few concerns with this standard.

- A. It provides an incentive to "hide" or "not treat" an injury since reporting is not required if the child does not receive medical treatment. Concomitantly, it provides an incentive not to ask a parent if a child were treated "off-site" since that would "trigger" the reporting requirement.

**Agency Response:** The agency appreciates and acknowledges these comments. Requiring notification to OCCL of medical treatment is not a new requirement. If a child is injured and receives medical treatment by a health care provider, OCCL must be informed to confirm that the child received the necessary treatment, the center corrected any unsafe situation/circumstances that led to the injury, and other children are safe. These regulations will remain as written.

- B. The term "medical treatment" is unclear and a licensee who wishes to avoid attention/scrutiny may interpret the reference to only apply to treatment by a physician. The regulations note that some centers will have a registered nurse (§55.0). If the R.N. treats a wound or injury, does this qualify as "medical treatment" triggering the reporting requirement? Licensees are required to provide "first aid" (§§34.0 and 61.0). Does provision of "first aid" qualify as "medical treatment"? Section 61.1.2 appears to differentiate between "first aid" and "medical care".

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise regulations 13.3.2 and 61.3 by adding the words "other than any first aid provided at the center" after the word treatment.

Fourth, Sections 13.3.5 and 60.5 require licensees to report medication errors (including administering drug to wrong child or administering the wrong dose) only if the error "results in medical treatment". This is an imprudent approach. Comparable regulations require reporting of errors which result in discomfort or jeopardize health. See, e.g. 16 DE Admin Code 3310.2.0 (definition of "reportable incident"); 16 DE Admin Code 3301, 2.0 (definition of "reportable incident"). Adopting a "medical treatment" "trigger" for reporting also provides a licensee with a disincentive to refer a child for medical treatment to avoid attention/scrutiny. By analogy, §60.5 requires immediate reporting of medication errors to a parent regardless of manifest harm or need for medical treatment. Finally, §§13.3.5 and 60.5 are not consistent. The former requires a written report within 3 business days while the latter

does not.

**Agency Response:** The agency appreciates and acknowledges these comments. Previously, there was no requirement for OCCL to be made aware of errors in the administration of medication. This new regulation helps OCCL to ensure children's safety by requiring licensing staff to be informed if center staff did not administer medication properly. The agency will revise regulation 60.5 to read "When known to the center, adverse effects or errors in administering medication that result in medical treatment shall be reported within one business day to the OCCL, followed by a written report within three business days."

Fifth, in its June and December commentary, the Council recommended adding extended physical restraint to the list of reportable "events". This has not been incorporated into the latest proposed regulation. For example, while mechanical restraint is banned (§65.5.6), there are no standards for "physical" restraint which could theoretically last for extended periods without triggering a report to the OCCL. Obviously, some immediate physical restraint to prevent injury or elopement may be appropriate. However, use of physical restraint for extended periods should be reportable.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 65.5.6 to read "Tying, taping, chaining, caging, or physically or mechanically-restraining a child;"

Sixth, there is no limit on certain forms of physical restraint. By analogy, IBSER regulations ban prone (face-down) restraint and seated basket holds. See 16 DE Admin Code 3320.20.11. Some limits could be included in §65.0.

**Agency Response:** The agency appreciates and acknowledges these comments. As mentioned above, the agency will revise 65.5.6 to prohibit physical restraint of children.

Seventh, DFS added a reference to the ADA and DEAL to §14.2 per the Councils' earlier recommendations. SCPD endorses this provision.

**Agency Response:** The agency appreciates these comments.

Eighth, Section 27.3.3 refers to the "GED Test". The Department of Education changed its "GED" regulation and the current reference is "secondary credential assessment" which encompasses a GED and alternatives. See 17 DE Reg. 469 (11/1/13) (proposed); 17 DE Reg. 724 (1/1/14) (final). In other sections, the regulation refers to "high school diploma or equivalent recognized by Delaware Department of Education". See, e.g., §§27.7.1 and 77.2.1.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise regulation 27.3.3 to read "The secondary credential assessment (such as the GED ®Test and alternatives) will only be accepted if the examination was completed through the American Council on Education or individual state-sanctioned agencies."

Ninth, Section 27.10.1 has a plural pronoun (they) with a singular antecedent (intern). Consider substituting "the intern is" for "they are".

**Agency Response:** The agency appreciates and acknowledges these comments. The Agency will revise regulation 27.10.1 to read "A licensee shall ensure that an early childhood intern is at least 16 years of age or 15 years of age if attending a vocational or technical high school's three-year program in early childhood education or a traditional high school's career pathway program in early childhood."

Tenth, SCPD endorses Section 28.6 since it deters staff participating in "personal activities which would interfere with providing care to children". One of the most prevalent sources of "inattention" may be cell phone use. At a minimum, the regulation could be amended to explicitly require licensees to adopt a policy on cell phone use. For example, the following third sentence could be added to §28.6: "Without limitation, each licensee shall adopt and implement a written policy on direct-care staff cell phone use during hours of operation."

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise regulation 28.6 to read "Staff charged with caring for children shall not be given other duties or participate in personal activities such as using a cell phone which would interfere with providing care to children."

Eleventh, Section 36.13 categorically bans use of "portable wading pools". The rationale for such a ban is not intuitive. If it's hot, toddlers and preschoolers would ostensibly benefit from playing in a small inflatable or soft-sided pool. It would be helpful if the Division could explain the rationale regarding the categorical ban regarding "portable wading pools". In addition, the Division may want to consider additional language which would require staff to be present in this context.

**Agency Response:** The agency appreciates and acknowledges these comments. According to Caring for Our Children: National Health and Safety Performance Standards for Early Care and Education Programs (CFOC), "Small portable wading pools shall not be permitted because they do not permit adequate control of sanitation and

safety and provide a superior means of transmission of infectious diseases, including e coli often found in stool. Wading pools can easily become contaminated. Infection with e coli is a primary cause of the most common cause of kidney failure in children in the US and is fatal in 5% of cases." Additionally, the Delaware Department of Public Health regulations require that pools used in a child care facility be in compliance with the pool regulations and a portable wading pool would not qualify under these regulations. The regulation will remain as written.

Twelfth, in §36.17, last sentence, the reference should be to "below 60 degrees F and above 90 degrees F".

**Agency Response:** The agency appreciates and acknowledges these comments. The regulation is written correctly as it provides minimum and maximum temperatures where a center can continue to operate if normal temperatures can be restored within four hours. The regulation will remain as written.

Thirteenth, the Council previously objected to allowing children to ride bikes with wheels below 20 inches in diameter without a helmet. Section 41.0 could still be interpreted as exempting children from wearing a helmet if the wheels are less than 20 inches in diameter. This would violate Title 21 **Del.C.** §4198K.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise regulation 41.0 to read "All children over one year of age shall wear approved safety helmets while riding bicycles and while riding toys with wheels of 20 or more inches in diameter (such as tricycles), or using wheeled equipment (roller blades, skateboards, etc.), and while standing on and using scooters with handles."

Fourteenth, the Council previously objected to the ratio of toilets to children/staff. The new regulation (§43.2) is worse than the December version. For school age children, the December regulation had a toilet to child ratio of 1:15. The latest regulation has a toilet to child ratio of 1:25. As noted previously, the ratio should be lowered.

**Agency Response:** The agency appreciates and acknowledges these comments. The child-to- toilet ratio was increased to 1:25 to achieve consistency within the regulations. Without this change, school-age only programs are allowed a 1:25 standard while a center with both school-age and early care components would be required to maintain a 1:15 ratio, resulting in an inequity. The regulation will remain as written.

## **The Governor's Advisory Council for Exceptional Citizens (GACEC)**

Section 27.5.1 council questions whether someone with a high school diploma and 24 months of experience is sufficiently qualified to be an early childhood curriculum coordinator.

**Agency Response:** The agency appreciates and acknowledges these comments. Per executive order 36, OCCL was required to reduce or simplify regulations to make them more responsive to the needs of the public without jeopardizing the health and safety of children. The age requirement and educational qualifications remain unchanged for this position. Only the amount of experience was decreased from 36 months to 24 months; lowering the total experience needed for this position allows more individuals to serve in this role. People qualifying as a curriculum coordinator without an AA or BA degree must still have 15 college credit hours in child development or early childhood education in order to be qualified as an early childhood curriculum coordinator. The regulation will remain as written.

In section 28.4.2 an administrator or coordinator could not split their time on a 50% basis among sites if responsible for three or more centers.

**Agency Response:** The agency appreciates and acknowledges these comments. Correct, if the early childhood administrator is responsible for two or more centers, an additional staff who meets the qualifications of early childhood administrator or early childhood curriculum coordinator must be on site 50% of the hours of the early childhood center's operation to assist staff and meet the needs of an operating center. This regulation will remain as written.

## **Connie Merlet, on behalf of the Provider Advisory Board**

It is important for all to remember that if a center does not comply with every one of these regulations, the Licensing Specialist does not issue a new license after yearly inspection. That means the center would be operating illegally. This fact makes these regulations particularly onerous. Unless a center has been issued a variance, and most of these regulations are set up so that a variance as defined by OCCL is inappropriate, they will be out of compliance. Therefore, regulation changes should not be taken lightly, nor should they involve anything but the health and safety of children.

**Agency Response:** The agency appreciates and acknowledges these comments. In the event a center could not correct non-compliance prior to license expiration, a provisional license would be issued. Therefore, the center would not operate illegally.

Provider Advisory Board Comments on Center Regulations:

1. Very problematic in this new draft is the use of the term "procedures" for many, many regulations. OCCL seems to want procedures written for every detail of the center's day. Staff and parent handbooks would double in size, but care would not be affected. Furthermore, the term "procedures" implies there is a step-by-step to everything we do. This is simply untrue. This terminology is throughout the regulations and is inappropriate:

... "written explanation of the Center's policy on"...

... "Procedures to regularly report",..

... "create and utilize a written transition plan"...

... "procedure encouraging parent(s)/guardian(s) to review current licensing regulations..."

**Agency Response:** The agency appreciates and acknowledges these comments. Policies and procedures are necessary to inform staff and parents how the center operates. These lay the foundation to protect the health, safety, and well-being of children in care by ensuring care is provided in a planned manner. As long as the center's policies and procedures are written and clear, they can be detailed or more simplistic, depending on the needs of the center. These regulations will remain as written.

2. Also problematic is the continuous use of the term "and follow" after requirements. PAB imagines it is possible for centers to argue that they do not have to follow required written policies, but the argument seems weak and therefore the use of "and follows" after every policy is redundant and condescending to providers. PAB imagines "gotcha" citations using this language.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency added the "and follow" language because there is a history of instances in which some centers were not following their established policies and procedures. The regulations did not actually state that the center had to follow their policies and procedures which was very problematic for the agency when monitoring regulation compliance. The new language is meant to provide clear guidance. These regulations will remain as written.

3. "Provided and served by the center.." It is questionable whether this includes home provided food, which would violate parental rights.

**Agency Response:** The agency appreciates and acknowledges this comment. "Provided and served by the center" only refers to food that the center provides, not food brought from home. These regulations will remain as written.

4.0 Definition of terms- There is no definition for Appeals. We feel this is a necessity for an easier reference for providers. The definition and use for appealing citations should be and is not currently addressed in the regulations as the OCCL use of appeals is very narrow.

**Agency Response:** The agency appreciates and acknowledges this comment. The definition for administrative hearing includes appeal hearings for enforcement actions. The definition of licensing conference explains that it can be used to appeal citations. An additional appeal definition will not be added.

Assistant Director- or assistant Administrator- there is no definition, and centers need a regulatory definition outside of a "teacher who has been trained in the absence of the administrator."

**Agency Response:** The agency appreciates and acknowledges this comment. The agency does not recognize an assistant director position and is not requiring a new position to be created. The agency is requiring someone to be designated as being in charge of the center (28.4) when the administrator or curriculum coordinator is not present. A center can create this title if desired; however an additional definition will not be added.

School Age Child- PAB would like the definition broadened to include rising kindergartners the summer before kindergarten begins. This is an important time for children to be included with school age groups, especially as they are usually no longer napping. PAB agrees that staff/child ratios need not change however.

**Agency Response:** The agency appreciates and acknowledges this comment. Rising kindergartners have not had the same experiences and usually do not have the same skill development as those children who have completed a year of kindergarten, the youngest age of children in a school-age program. Therefore, these children are considered preschool-age children. They are considered school-age children when they begin kindergarten. The regulation will remain as written.

Successful Completion- A passing grade rather than a C grade should be sufficient.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency's designee for staff qualifications, Delaware First, determined a C was the lowest grade that would be accepted. A person who receives lower than a C did not demonstrate mastery of material. The regulation will remain as written.

The definition for Variance (repeated in reg. 12.0) is inadequate and does not allow for alternative methods or philosophies of care. Further, the form for Variances is repetitive and nonsensical. The necessity of "intent" belies honest variance applicability. PAB would like a broader definition for the use of variances.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency believes the definition is adequate. If a center wants to provide what some might consider "alternative methods or philosophies of care," this should be discussed with their licensing specialist to determine if a variance is required. The regulation will remain as written.

We disagree with the following addition to the previous draft:

(6.2) 6.1.1 The Licensee or any other individual shall permit and shall not impede the interviewing of the Licensee, any staff member or substitute, any child in child care, and the parent(s)/guardian(s) of a child in child care by representatives of the Office of Child Care Licensing, and other authorized state or local officials for the purposes of determining regulation compliance and/or investigating complaints of non-conformity with applicable provisions of these regulations, and any other applicable codes, regulations, or laws.

We will not be responsible for giving permission for the interviewing of children by anyone. That is the parents' prerogative. Further, if statements given by staff may implicate them, as providers we feel we have a duty to advise them not to self-incriminate.

**Agency Response:** The agency appreciates and acknowledges this comment. OCCL, as part of the Division of Family Services, is authorized to interview children without a parent's consent as part of an investigation. The DELACARE Regulations authorize OCCL to investigate non-compliance, which reasonably includes talking to children and staff to find out details or facts. This regulation prevents a licensee or other individual from impeding OCCL's ability to determine regulation compliance or prohibiting or otherwise impeding a regulation complaint investigation. The regulation will remain as written.

11.0 License Denial and Revocation- PAB is pleased with bill passed in June that codes specifications but is not sure if this section is in compliance with such.

(11.3.2)11.1.3.1.1 The final decision of the Secretary will remain in place during the appeal process unless otherwise ordered by the Court pursuant to § 10144 of Title 29.

**Agency Response:** The agency appreciates and acknowledges this comment. The regulation is in compliance with this law. The regulation will remain unchanged.

13.3 under Notifications- PAB objections to this reg are explained under 61.1.2.

**Agency Response:** The agency appreciates and acknowledges this comment. Regulation 13.3 places all notifications to the agency in one central location including the time frames for both written and verbal notification. Regulation 61.1.2 only addresses maintaining a written injury report. The regulation will remain unchanged.

13.3.4 Convictions of staff unrelated to childcare need not follow the staff member, especially as to notifying OCCL.

**Agency Response:** The agency appreciates and acknowledges this comment. 11 Delaware Code, Section 8561 stipulates that a person who is employed in a child care facility has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry. OCCL needs to be made aware of these convictions and entry on the Child Protection Registry to protect the health, safety, and well-being of children in licensed child care. In order to protect the health, safety, and well-being of children, individuals providing care should be of good character. This regulation is compliant with Delaware Code. This regulation will remain unchanged.

We strongly object to the following language. It is worse than before. The language below has been moved from another section of the regs. We objected to it earlier and feel the regulation should be reciprocal if included at all:

13.5 0 Telephone calls from the Office of Child Care Licensing requiring a response from the Licensee or staff must be returned within two (2) business days.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency has had numerous instances with centers failing to respond to phone calls. If the agency is calling, it is for a reason that needs prompt attention. While an individual licensing specialist may not be immediately available to respond to a telephone call or email, a provider can receive a prompt response from an intake worker who is available to respond to questions and concerns during business hours each day. The regulation will remain as written.

14.3 We have objected to this regulation in general as it pertains to the business side of center operations which is not the prerogative of OCCL, and when OCCL adds the words "and follows" it is particularly troublesome.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise 14.3 to read "A licensee shall have an organized system of business management and have sufficient staff, space, and equipment to fulfill, at a minimum, administrative, fiscal, clerical Regulation, cleaning, maintenance, food services, direct child care, and supervisory functions."

16.0 Records- PAB needs assurances that FINANCIAL FILES are not included under OCCL review.

**Agency Response:** The agency appreciates and acknowledges this comment. Per 31 Delaware Code,

Section 344, OCCL must conduct a thorough investigation and make a favorable determination of sufficient financial backing to ensure effective work in order to issue a license. However, the regulation states that [only] those records and files that are applicable to licensing are required to be available. This regulation will remain as written.

16.2 PAB objects to the specifics included in this regulation and insists that the regulation should end after the word "departure" in the first sentence. This reg is greatly expanded from the old regs and PAB feels the wording in the old regs (126 and 126A) was sufficient. This new reg is extremely time consuming and therefore costly for staff and providers and does not guarantee any increased security for children. Especially problematic is the inclusion of 3 months retention of records. This is a business decision, not the purview of OCCL.

"A licensee shall establish and use a system for documenting attendance at arrival, departure, and every transition to ensure the location of each group of children in attendance at any given time. This system shall verify the location of individual children when a child does not remain with the entire class. These daily attendance records shall be retained by the center for a minimum period of three months."

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise the first sentence of the regulation to read "'A licensee shall establish and use a system for documenting attendance at arrival and departure."

16.3 PAB objects to the specifics included in this regulation and insists that the regulation should end after the word "whereabouts". PAB feels the wording in the old regs (127) was sufficient. This new reg is time consuming and therefore costly for providers and does not guarantee any increased security for children. Especially problematic is the inclusion of 3 months retention of records. This is a business decision, not the purview of OCCL.

"A licensee shall keep a record of the daily work assignment and hours of each staff member to ensure this individual's whereabouts and classroom assignment, and retain these records for a minimum period of three months."

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation helps to keep children safe by tracking staff members' whereabouts throughout the day to ensure staff/child ratios are maintained. Although no time frame for retention of staff attendance sheets was previously included in the regulations, this regulation now provides clear guidance and allows the agency to ensure staff/child ratios were maintained when conducting complaint investigations. OCCL contends that tracking of staff during the work day is not a time-consuming effort and can be recorded easily on a form that OCCL can provide if desired. The regulation will remain as written.

17.1 is redundant. It is the law that we cannot go over capacity.

**Agency Response:** The agency appreciates and acknowledges this comment. There is no law which stipulates capacity. This regulation was created to clearly communicate the center is not permitted to go over licensed capacity which is determined by measured square footage of classroom space. The regulation will remain as written.

17.2 Under Right To Know, PAB realizes that this has been encoded. However PAB feels that the following specifics are an unnecessary interpretation of the law:

"A licensee shall provide a prospective purchaser of care with information detailing the individual's right to inspect the active record and complaint files of the center as described in 31 Delaware Code, Section 398. As a part of the enrollment or application process, the licensee shall require the parent/guardian of children who are enrolled to read and sign the Parents Right to Know Act form and keep the signed document on file at the center. A copy of the signed document shall be given to the parent/guardian. In the event that the parent/guardian does not enroll the child, the signed document shall be kept on file for a minimum period of three months as proof of presenting the information."

PAB believes that this is a poor interpretation of Delaware Code. This is a requirement that providers must inform basically anyone who walks in the door their right to inspect record pertaining to the daycare. It is unnecessary and burdensome. Sentences 1, 3 and 4 (italicized above) should be removed. There is no safety reason for this requirement. All enrolled children have the signed paperwork anyway. Keeping such paperwork for non-enrolled children for an arbitrary period of 3 months "as proof of providing the information" serves no purpose and wastes paper and space. As proof for OCCL? Why would providers need to do this?

**Agency Response:** The agency appreciates and acknowledges this comment. The Parents Right to Know Act, 31 Delaware Code, Section 398, requires that prospective purchasers of care be given this information. Since no time frame was included in this section of the Delaware Code, the previous regulations required centers to keep the signed form indefinitely. Realizing that keeping this paperwork indefinitely could be perceived as burdensome,

centers are now required to keep this form for only three months to ensure compliance with the law. The regulation will remain as written.

18.1- This section has been expanded needlessly. This added verbiage causes extra paperwork, extends needless regulatory language, something OCCL has been charged to reduce, and is not going to save any children. The extra language could possibly be placed in the guidebook to help new providers.

**Agency Response:** The agency appreciates and acknowledges this comment. Having procedures to follow documenting that the release of a child from the responsibility of center staff shall only be to a person authorized by the parent/guardian ensures children's safety by releasing them to the proper people. The regulation will remain as written.

19.0 Remove last sentence. "This file shall be maintained on site for at least 3 months after disenrollment." There is no reason for this. It does not increase safety, and although it can be considered good business practice that is not the purview of the OCCL.

**Agency Response:** The agency appreciates and acknowledges this comment. OCCL receives many complaints voiced by parents after leaving a center. By keeping the file for at least three months, the agency is able to conduct proper investigations to show that the center was or was not compliant with regulations. Also this regulation now provides clear guidance as to how long a child's file must be kept. The agency will revise this regulation to read "This file shall be available upon request for at least three months after disenrollment and shall include the following:".

19.8 "...hours/days child is scheduled..." Again, an expansion which is unnecessary and another example of OCCL doing the opposite of what they have been charged to do. Again, if a part-time child comes an extra day, is the center out of compliance?

**Agency Response:** The agency appreciates and acknowledges this comment. The hours a child is scheduled to attend was a part of the previous regulations. The days were added so that a center can ensure enough staff are scheduled for the children who will be in the center on any given day. If a child comes an additional day (as mentioned in the comment), the center will not be out of compliance unless there are not enough staff present. The regulation will remain as written.

20.1 Remove "maintained onsite for at least 3 months after employment/association terminates". Although it can be considered good business practice that is not the purview of the OCCL.

**Agency Response:** The agency appreciates and acknowledges this comment. OCCL receives many complaints voiced by parents after leaving a center. By keeping the file for at least three months, the agency is able to conduct proper investigations to determine that staff were finger printed, given an orientation with the required components, etc. Also, this regulation now provides clear guidance as to how long a personnel file must be kept. Regulation 20.0 will be revised to read "This file shall be available upon request for at least three months after employment/association ends."

20.4 Requests and follow up requests for Service letters have arguable usefulness. PAB feels that this is an onerous regulation and would like exemption after the initial request. Wording was actually added in this newest draft.

**Agency Response:** The agency appreciates and acknowledges this comment. Service letters are required per 19 Delaware Code, Section 708 to ensure employers are not hiring individuals with a past history of violent behavior, or who have engaged in abuse or neglect of adults and children who are dependent on their care. Due to the significance of the Service Letters for the protection of children in care, the agency added wording to ensure the center follows-up after making the initial "good faith effort" to obtain them. Centers will not be cited for non-compliance for failure to obtain required service letters when "good faith efforts" to obtain such letters is documented and additional references are present. The regulation will remain as written.

20.5 Professional development plans have been another source of disagreement between providers and OCCL, especially for the start of employment. PAB feels this should be a relicensing requirement only and the Professional Development form should be revamped to make it more relevant for the needs of providers, not OCCL. The Professional Development Plan should be a tool for administrators to work with their staff for the betterment of the center and to raise the educational standards of their staff. The usefulness has completely flip-flopped into a compliance tool for the state.(20.12)20.1.11 Remove regulation. This is unnecessary and onerous regulation. This has no place in our regulations.

**Agency Response:** The agency appreciates and acknowledges this comment. Among others, this agency has worked to have child care regarded as a profession. Thoughtful planning and purposeful selection of professional development training assists staff to identify the areas where they would like to strengthen their skills



and how they wish to advance their career. OCCL is in agreement a meaningful professional development plan is one often created with the center administrator that includes the needs of the staff member and the needs of the center. Research has shown that staff education is a primary factor in determining the quality of care children receive. This regulation now allows a three month period at the start of employment to create a plan which allows the center administrator to assess the employee's strengths and areas that would benefit from additional training in regard to the individual's needs and the needs of the center. The previous regulations required a complete staff file without a specific time frame mentioned. To better meet the specific needs of the individual and the center, the professional development plan no longer has specific requirements other than to list a staff's professional development goals for the upcoming year. Each center can choose a format and other information to be included. The regulation will remain as written.

20.12 "DOCUMENTATION acknowledging that the use of alcohol or a drug could adversely ...job functions...distribution...is prohibited in the work place." Why? If there are people working in daycare who believe it's okay to drink on the job, the problem is larger than this regulation could address.

**Agency Response:** The agency appreciates and acknowledges this comment. OCCL has received complaints alleging alcohol or drug use by staff. This regulation documents the prohibition of these substances in the work place from the beginning of employment.

20.15 Safe Sleep procedures as addressed by OCCL are cultural, and therefore problematic for state requirements. Furthermore requiring review yearly is onerous.

**Agency Response:** The agency appreciates and acknowledges this comment. The American Academy of Pediatrics (AAP) recommends safe sleep practices to reduce the risk of sudden infant death syndrome (SIDS) or suffocation deaths and other infant deaths that could occur while an infant is in a crib. Since infants are the most vulnerable human beings, the agency has adopted these standards. Yearly review of safe sleep practices reminds staff how to practice safe sleep as well as the importance. The Child Death, Near Death and Stillborn Commission (CDNDSC) reviewed 128 unsafe sleep deaths from 2003 to 2012 and found that "78% were not in a crib or bassinette, 63% were sleeping with other people, 43% were not sleeping on their back, 25% were found with unsafe bedding or toys in the sleep environment, 24% were sleeping with an obese adult, 5% had an adult with alcohol impairment, and 7% had an adult with a drug impairment." This regulation will remain as written.

20.17 Record of annual training hours- These are recorded on the current Professional Development form, and addressed in 20.5.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation is included in 20.17 and further explained in 20.5 because 20.0 lists in one location all of the items that are required in a personnel file. The regulation will remain as written.

21.0 Personnel Policies Wording was actually added in this newest draft. This added "regulation" is unnecessary and should not be included in regulations. All businesses must comply with state and federal employment law. Therefore this is not the purview of OCCL. The wording that "personnel policies and practices .....must be available...on request by prospective staff" is actually nonsensical. Who are these prospective staff?

**Agency Response:** The agency appreciates and acknowledges this comment. Requiring a center to have and follow personnel policies and practices helps ensure an organized approach to managing a center. Making these policies and practices available (even to prospective staff upon request), allows current and prospective staff to understand the center's expectations and helps potential staff to make informed decisions about where they are choosing to work. The regulation will remain as written.

22.2- This is added in the newest draft also. And it is insulting.

**Agency Response:** The agency appreciates and acknowledges this comment. The previous regulations only required a licensee to inform staff that drugs/alcohol were unacceptable and prohibited. This revised regulation requires licensees to protect children by ensuring staff are not using drugs or alcohol and that staff are informed of this prohibition. The regulation will remain as written.

24.2.1 "The license shall ensure that children are not abused or neglected." Really?

**Agency Response:** The agency appreciates and acknowledges this comment. The previous regulations grouped improper discipline with abuse. To emphasize its importance and provide clarity, the prohibition of abuse and neglect was placed in a separate regulation. The regulation will remain as written.

Abuse and neglect required a new regulation. The regulation will remain as written.

25.1 This regulation involves staff orientation in which administrators explain center policies. The items in this section have been greatly expanded from the last drafts and the current regulations- "abusive head trauma...storage of hazardous material...disposal of bio-contaminants". This is unnecessary, burdensome

regulation.

**Agency Response:** The agency appreciates and acknowledges this comment. The federal government under the Child Care Development Fund Block Grant is requiring these added topics in order for the state to continue to obtain this federal grant which includes funds to subsidize the cost of child care for eligible families. Since many families receive subsidized care, this regulation was changed to comply with these upcoming federal mandates. The regulation will remain as written.

26.1.4 and 5 Remove regulations. They have been addressed above.

**Agency Response:** The agency appreciates and acknowledges this comment. Regulation 26 includes all of the requirements for a center owner. These items are placed in one location for ease of use by the child care community. The regulation will remain as written.

27.3 This entire section is EXTREMELY onerous. It places a huge burden on the licensee when it requires that all new employees have documentation to Delaware First within 30 days of employment of their qualifications. State licensing officials should understand that employees DO NOT have the burden for this- employers do. All that can happen to an employee is that they can be fired. PAB asserts that submitting it to OCCL within any time frame other than relicensing is onerous. It is almost impossible for many providers to compile this information within 30 days or even 60 days. Large centers hire 5-10 staff at a time during certain periods; small centers may have just one administrator. OCCL has added intern/aide designations, but when they add this regulation, it effectively makes the new training requirements superfluous. Is OCCL now going to contact the centers every time a new employee is fingerprinted requiring the employee's documentation? This doesn't even seem practical for OCCL!

**Agency Response:** The agency appreciates and acknowledges this comment. The previous regulations did not include any timeframe to obtain a Delaware First Qualifications certificate. This regulation clearly states the requirements for staff without a qualifications certificate; however many child care staff already have documentation of their qualifications. While it is the individual's responsibility to obtain their qualifications certificate, a center administrator may choose to submit the information to OCCL's designee, Delaware First, for the individual. In monitoring, OCCL will confirm that the appropriate qualifications certificate is in an individual's personnel file or qualification materials have been submitted to Delaware First within thirty days of hire for those without prior certification. No qualifications certificate is required for those individuals filling the role of aide. The agency will not contact a center every time someone is hired. The agency will revise the regulation to include a 60 day time frame.

27.3.1 This section is, again, added, and while PAB has no problems with adding supervised experience there seems to be some excess requirements here for certification for assistant teacher- To participate in the supervised experience process for the applicable positions contained in these regulations, a staff member must demonstrate ... the ability to create, select, present, and evaluate developmentally appropriate lessons, activities, and curriculum for individual children as well as for small and, where appropriate, whole groups of children. ...

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation was created to reduce the time required for a staff member to be qualified to be left alone with children. Because an assistant teacher may function as the only teacher in a classroom, supervised experience for an assistant teacher is the same as that for a teacher. This regulation will remain as written.

27.3.2 The section is improved but still problematic. An exaggeration on hours is quite different than falsifying certification and should be considered separately. This section still needs to be revised. The sanction against staff should be trimmed to 6 mos and assurances of no citation for providers.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency does not believe there is a difference in the types of false information that can be submitted without negative consequences. The agency believes that a one year sanction is an appropriate amount of time. If a licensee knowingly uses or submits false documents, they will be cited. Unfortunately, OCCL has had false documents submitted by individual staff as well as administrators. The regulation will remain as written.

27.3.4 Regionally accredited high school diplomas needs to be defined. Many providers employ persons of foreign status. Does this preclude them? This section needs to be revised. Who is paying for this? Isn't this reducing EOE statutes? How do we do this?

**Agency Response:** The agency appreciates and acknowledges this comment. Regionally accredited high schools are listed with Delaware First. Staff who have foreign credentials must pay to have their information translated. The regulation will remain as written.

27.4 Early childhood administrator. It is unclear why 5 college courses in early childhood would be required of an administrator who employs a curriculum coordinator.

**Agency Response:** The agency appreciates and acknowledges this comment. The early childhood administrator is responsible for running the center and should have education to support the staff in best practices, appropriate activities, child development, etc. Not all curriculum coordinators function in this capacity on a full-time basis. The regulation will remain as written.

28.4.1 This appears to be a new addition to this newest draft. The regulation requires that "documented training in the day to day operations" be required of a staff member when the Administrator is not present. The PAB is not sure what that entails and would need to see details in order to okay this reg. The added language is not acceptable when it states this teacher must have "access to staff files". This would never be allowed in a center. An administrator would never be able to leave if she had to leave staff files accessible. It just cannot happen.

**Agency Response:** The agency appreciates and acknowledges this comment. The regulation includes the following information: "such as the center's emergency procedures, opening/closing procedures, location of and access to child and staff files, and supervision of children and staff." This specifically spells out what "day to day operations" are. Access to staff files with contents as described in these regulations is necessary in case of unannounced center visits by the agency. The center may choose to have additional staff files that are not available to the designated staff person or to OCCL staff that might contain other information acquired by the center, such as staff contracts and salary that are not required by this agency. The regulation will remain as written.

30.1 School age ratios. This has changed from the last draft. PAB requests a 1:20 ratio. OCCL has added specific language that "A Licensee may apply for a variance from the minimum staff/child ratio to a staff/child ratio of 1:20 when a currently certified State of Delaware teacher is teaching school-age children in his/her area of certification. The Licensee must have and follow a plan to comply with the staff/child ratio of 1:15 when a certified teacher as described above is not present (such as during planned or unplanned absences, before and after care, etc.). A copy of the teacher's current certification and the Licensee's plan for teacher absence must be submitted to OCCL with the Variance Request form. No variance from the maximize group size of 30 will be granted. This is not acceptable to PAB. Certified teachers should be allowed the state ratios in public schools, so 1:20 is NOT acceptable. Further, PAB is confident that Delaware certified "people" (teachers with 2 or more years of experience in daycare) can handle 20 children in an afterschool non academic group.

**Agency Response:** The agency appreciates and acknowledges this comment. Caring for Our Children recommends the ratio for staff-to-school-age children be 1:12. These regulations already exceed this national recommendation. The agency created the 1:20 ratio to allow centers employing a certified teacher to be able to educate and care for more children. These regulations differ from public school regulations, but are appropriate to protect the health and safety of the young children served and the less strenuous educational qualifications of staff, including administrators

30.6 This regulation has been changed in the newest draft but is still restrictive in smaller centers. PAB feels that strict ratios, not absolute numbers, are more important in child safety. This still needs clarification and flexibility.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation was created to permit the mixing of children from different age groups when the center opens and closes so that classrooms of mixed-aged children could to be combined when fewer than 12 children are present or during certain hours of the center's operation. This agency will revise this regulation to include a 90 minute period in the morning and evening to allow for the mixing of age groups.

31.4.2 states outside contractors do not need a complete staff file. This is a needless regulation. Of course not. They are not employees.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation was added to provide clarification for finger printing and staff file requirements for contracted staff. The agency has received many questions regarding this topic from the child care community. The regulation will remain as written.

33.0 This concerns details of the Professional Development Plan, which PAB has discussed above.

**Agency Response:** The agency appreciates and acknowledges this comment. See response above. The regulation will remain as written.

(35.0) PAB respectfully disagrees with the following: "A Licensee shall and follow have an organized system of respectful communication with parent(s)/guardian(s)..." As business owners successful providers do not need to be regulated into respecting their paying clients.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency receives complaints regarding the treatment of parents. This regulation requires respectful communication which is a baseline requirement. The regulation will remain as written.

35.2 The additional language added into the new draft is already part of state code under nondiscrimination

language.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation is included so that the child care community can easily be aware of this law that is pertinent to operating a child care center. The regulation will remain as written.

35.5 Delete. People are not required to enroll their children if they are refused this information, and unless the state decides to require the divulging of "Anonymous Corporate Owners" in all other Delaware businesses daycare owners should not be under more scrutiny than other corporations. This is not the purview of OCCL.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise 35.5 to read "Upon request, a procedure for informing the parent/guardian of the identities of the governing body members and owners, as applicable;"

35.15 PAB does not understand the following exclusion. Parents do not understand this either and it seems that all of a sudden OCCL is worried that providers have been allowing OCCL staff to view HIPPA information as regular inspection practices. PAB agrees that this is a problem, but this regulation doesn't overrule parental and child privacy rights:

"Procedures stating that written permission from parents/guardians is required prior to disclosing or using any child's written, electronic, or digital information except in the performance of official duties by employees or representatives of the Office of Child Care Licensing or other entities with statutory responsibilities for issues relating to the health, safety, and well-being of children."

**Agency Response:** The agency appreciates and acknowledges this comment. Regulation 35.14, not 35.15, refers not only to health information but also to pictures of children used in marketing the center. The agency has received complaints from families regarding the unauthorized use of their child's picture in advertising, posted on the center website, etc. During the complaint investigation, some center administrators responded that they did now know this practice was prohibited. This regulation provides clarity and protects families' right to privacy. This regulation will remain as written.

35.1.16 This is another added regulation, which OCCL has been charged with reducing, not expanding. This is not in our current regulations, and is again just added paperwork. A Licensee shall ensure that staff create and utilize a written transition plan when admitting a child new to the Center or when moving a child permanently from a particular group or room. Parents shall be informed in advance of any permanent change in the placement of their child.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation (35.15) was expanded to protect a child's well-being during a potentially stressful transition and to insure that families are informed prior to a permanent change in their child's placement, which, based on complaints received by the agency, does not always happen. While written transition plans are required when admitting a child to the center or moving an individual child permanently to another room, depending on the needs of the center, the center may choose to create a generalized written transition plan used for **all** new or transitioning children or may create individual plans for each designated child. This regulation seeks to ensure children moving to a new classroom are introduced to the new environment in a planned manner. The regulation will remain as written.

36.13 This regulation prohibits portable wading pools. This is an onerous restriction for summertime in Delaware, and is unnecessary for child safety. Instead, PAB advises an age restriction or a stricter ratio when using such pools. PAB cannot understand the inclusion of this reg. It really affects practice.

**Agency Response:** The agency appreciates and acknowledges these comments. Caring for Our Children states "Small portable wading pools shall not be permitted because they do not permit adequate control of sanitation and safety and provide a superior means of transmission of infectious diseases, including e coli often found in stool. Wading pools can easily become contaminated. Infection with e coli is a primary cause of the most common cause of kidney failure in children in the U.S. and is fatal in 5% of cases." The Delaware Department of Public Health states that if a pool is used in a child care facility, it would need to be in compliance with pool regulations and a portable wading pool would not qualify under these regulations. Soaker hoses, sprinklers, and other similar devices can provide opportunities for water play. The regulation will remain as written.

39.0 This regulation is repeated under 59.3.

**Agency Response:** The agency appreciates and acknowledges this comment. Regulation 39.0 lists the requirements for the separate area where sick children requiring exclusion can be cared for as well as the requirements for meeting their needs while waiting for the family to pick-up the child. Regulation 59.3 does not list these requirements. The regulation will remain as written.

41.0 Riding toys. This regulation doesn't allow for riding toys without helmets on indoor surfaces with rugs. This is

an onerous regulation.

**Agency Response:** The agency appreciates and acknowledges this comment. Riding toys are permitted to be used without helmets if they are not bicycles and if they do not have wheels that are 20 or more inches in diameter. This applies to both indoor and outdoor spaces. The regulation will remain as written.

42.0 Sleeping- these regulations have become more restrictive and PAB supports the language in the current regulations.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation places the safe sleep practices as well as the sleep equipment in one section, whereas the previous rules listed them in different places. Swaddling was included as well as information on sleep positioning devices to provide clarification as well as to protect children's safety. The regulation will remain as written.

42.4.2 Prohibition on mobiles is onerous. This change is better but PAB does not feel it is sufficient. Parents WANT and bring in mobiles and music boxes for their children.

**Agency Response:** The agency appreciates and acknowledges this comment. Caring for Our Children states, "Toys, including mobiles and other types of play equipment that are designed to be attached to any part of the crib should be kept away from sleeping infants and out of safe sleep environments." Mobiles can be hung in other locations. The regulation will remain as written.

42.6 Since this a cultural requirement and statistics in other countries for SIDS are not born out, the requirement for health providers to "stipulate the specific sleeping position in which that infant may be placed" is onerous. Documentation from a health provider should suffice.

**Agency Response:** The agency appreciates and acknowledges this comment. Regulation 42.5, not 42.6, requires the health care provider to stipulate the sleeping position to ensure the device is used as prescribed. This is important to protect the child's health and safety. The regulation will remain as written. See above response citation from the Child Death, Near Death and Stillborn Commission (CDNDSC) contained in the response to regulation 20.15.

43.1 PAB is not sure what "enclosed" toilet rooms are in toddler areas.

**Agency Response:** The agency appreciates and acknowledges this comment. An enclosed toilet room is a room with walls and a door as opposed to an open area in a classroom or hallway. The regulation will remain as written.

47.4.3 While it is understandable that OCCL wants clean and disinfected surfaces for changing diapers, the practicality of this regulation has always been problematic. It is already required that the changing table be covered with a disposable cover for each change. Once that cover is removed regulations state that the changing table then be washed, then disinfected, before another child is changed. There are often 8-12 children using this changing table, but there are no specifications for drying the table. OCCL needs to explain in this regulation what the next step is after disinfecting (wiping dry?) realizing that time is an important practical consideration.

**Agency Response:** The agency appreciates and acknowledges this comment. The drying time for disinfecting the changing surface varies depending on the type of disinfectant that is being used. Using a bleach and water solution as a disinfectant works the fastest. The center can use a paper towel to dry the diaper changing area after allowing the disinfectant to work for the time listed on the manufacturer's instructions. The regulation will remain as written.

48.6 Although the wording has been changed somewhat from the last draft, PAB is still concerned about wording. This regulation does not stipulate food from home or food provided specifically by the center and therefore "labeled with contents" is confusing. Food regulations are addressed later (63.0). In this section there are several problematic phrases- "clean", "free from spoilage and adulteration", "safe for human consumption." All these are covered by not only state and federal law and therefore unnecessary, but are insulting in a childcare regulation manual. Centers serving foods not "safe for human consumption" have problems much larger than this regulation covers.

**Agency Response:** The agency appreciates and acknowledges this comment. The regulation refers to food that the center provides. The agency will revise the regulation to read "A licensee shall ensure that all food provided and prepared by the center and then served to children complies with the center's written policy on nutritional quality, is clean, wholesome, free from spoilage and contamination, correctly labeled with contents and date of preparation, and safe for human consumption."

49.2.3 Adds "Exits Used" to the requirements on fire drill documentation. This is unnecessary, and was considered apparently before consulting the state Fire Marshall, who disagrees with the added documentation.

**Agency Response:** The agency appreciates and acknowledges this comment. The previous regulations

require centers to vary the exit used when practicing drills. By adding this additional wording, the agency can ensure various exits are being used so children and staff practice evacuating the building using more than one exit. The State Fire Marshal was contacted and he does not disagree with the changes. The regulation will remain as written.

52.2 OCCL has added the language "and local" to fire department number of 911. Is this really necessary? We are trying to reduce extra language, not increase it in regulations.

**Agency Response:** The agency appreciates and acknowledges this comment. The words "and local" will be deleted from the regulation.

54 Field Trips-These regulations are quite different from the current regs which PAB feels are sufficient, but are also actually more specific, making it easier for providers to comply. PAB doesn't feel the safety of children has been compromised with the current rules. The ratios have been changed since the last draft and made more reasonable which PAB appreciates.

**Agency Response:** The agency appreciates and acknowledges this comment.

57.1.3 A chart documenting required immunizations would be helpful.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will not monitor the specific immunization status of individual children but will monitor that a health appraisal includes a listing of the child's immunizations or that the child's file contains the required documentation regarding the lack of immunizations. This agency recommends contacting the Delaware Department of Health if specific immunization requirements for children or an immunization chart are desired.

57.3 This section makes it appear that licensees must enroll children whose parents refuse to immunize them (for whatever reason). Either a rewriting of the section with clarification or a statement delineating the licensee's right to refuse care is in order.

**Agency Response:** The agency appreciates and acknowledges this comment. Centers are not required to enroll a child without immunizations. If a center enrolls a child without immunizations, the center must obtain a notarized statement as described in this regulation. The regulation will remain as written.

58.0 This has been lengthened from the old rule. It should remain the same. Also the term "trained in recognizing signs of common ...ill health" means little. Trained how? Should be changed to completed state approved First Aid course. Providers are not nurses and any teacher in a classroom, both head and assistants, admits children.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise 58.0 to read "by a staff member trained in recognizing common signs of communicable disease, physical injury, other evidence of ill health as listed in Section 59, ..." Every staff member who signs the required orientation form affirms that they have received training in identifying these concerns. Staff can be trained by the owner, administrator, curriculum coordinator, etc. so that the staff member is familiar with the required health exclusions as stated in the regulations, or by taking a more formalized training.

59.4 This regulation implies that we accept the word of health care providers. No, Providers (business owners) have the right to decide when a child is well enough to be in their building. Simply unacceptable.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise 59.4 to read, "A licensee may permit a child to return to the center when the symptoms are no longer present, written documentation from the child's health care provider indicates the child has been diagnosed and the illness or symptoms poses no serious health risk to the child or to other children, or the child does not present symptoms for exclusion as contained in the center's written health exclusion policy."

61.0 Child Accident and Injury- this entire section is troubling for PAB. It includes specific procedures for notification and PAB believes it puts providers on shaky legal ground. Providers do the very best they can to care for children in their care. They are not medical professionals and as such should not be held to such a high level of responsibility.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency receives numerous complaints from parents stating they were not made aware of accidents/injuries that occurred to their child while in the center's care or that they were informed days later. Current regulations do not contain a timeframe for notification of parents/guardians. This regulation now requires specific time frames for notification dependent on the seriousness of the injury. The regulation will remain as written.

61.1.2 This regulation requires a parent signature on every injury report which then must be maintained in a log. This is impractical as multiple copies of reports must be made and the signature cannot be obtained until pick up time, meaning parents would have to sign the report then wait until someone makes copies. This just isn't always possible and also will end up inevitably violating HIPPA rules.

**Agency Response:** The agency appreciates and acknowledges this comment. HIPAA does not apply to accident/injury reports in non-healthcare facilities. Parents need to be informed of accidents and injuries to their child. When a parent signature is on a form that the center maintains, the center is protected when parents from parents claiming they were not informed of the injury/accident. This regulation protects providers during complaint investigations as it prevents parents from claiming they didn't receive a report if their signature appears and from centers claiming a report was given and not having any documentation to prove it. The regulation will remain as written.

61.1.3 This is new. Now providers must document **when** they have tried to inform a parent. This may be good business practice but is not the purview of OCCL.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency has received numerous complaints from parents alleging that the center failed to notify parents of accidents/injuries while the center contends that they attempted to notify the parent but was unable to do so. Documenting unsuccessful attempts to notify parents provides documentation during a complaint investigation that the center attempted to contact the parent but was unsuccessful. The regulation will be revised to read "The licensee shall maintain a written record for serious injuries of when the parent/guardian was notified or of attempts to notify the parent/guardian."

Section 63- Food , Water and Nutrition- The PAB requests that this section be divided in half, one for centers which serve meals, and one in which parents provide meals. The listings are confusing and it is not easy to delineate which rules pertain to each. For centers which serve only snacks to the children this is excessive. For centers which have a meal program, they are regulated by other agencies. Therefore OCCL's lengthy policies seem excessive for both groups.

This section has been changed again since the last draft. Every draft brings Food and Nutrition rules which are completely different and therefore difficult to sift through. PAB has had difficulty transferring old numbers to the new numbers.

Continuous use of the phrase "provided and served" is troublesome. Does that include food from home??

**Agency Response:** The agency appreciates and acknowledges this comment. This section of the regulations was divided into these categories based on the comments previously submitted by PAB on the December 2014 proposed regulations. Regulation 63.7.4 requires a description of which food services will be provided by the licensee or by the parent/guardian and regulation 63.7.4.1 and its subsections pertain only to meals and snacks provided by the center. These regulations will remain as written.

63.7 This regulation has been greatly lengthened from the last draft and PAB has had no explanation for the reason for this. It is filled with newly required policies, procedures, assurances, and statements. It would greatly lengthen the parent handbooks which already have food policies required, and for no reason that would change care. There are 8-10 new statements about food. "Times of snack"- too restrictive. OCCL already requires snacks and meals within certain hours. Would we be out of compliance then if we serve snack a half hour later? PAB feels that this regulation is burdensome and not in compliance with the charge that OCCL reduce regulations on our businesses. The terms "procedures" and "statements" are used throughout this section, but are not defined. PAB questions the use of these terms for each regulation.

**Agency Response:** The agency appreciates and acknowledges these comments. This regulation was divided into categories per PAB's request. A parent needs to know the center's times of meals and snacks so that they are aware that a late arriving child will or will not be fed. Conversely, a center is not required to provide meals and snacks at all times during the day, but according to regulation requirements and their own policy. The statements and procedures ensure children receive appropriately times meals and snacks with required components (if provided by the center) and clearly explain the center's policies on nutrition. The agency will revise 63.7.2 to read "Approximate times of snacks and meals."

63.7.4.2.2- Remove- "must be clean and safe". Please don't insult us.

**Agency Response:** The agency appreciates and acknowledges this comment. In order to protect the health and safety of children, food served must be clean and safe. This regulation is not intended to be insulting but to protect the well-being of children. The regulation will remain as written.

63.2.3 Remove. This regulation is already addressed in the CACFP requirements for food.

**Agency Response:** The agency appreciates and acknowledges this comment. There is no regulation 63.2.3.

63.8.5.1 This has been lengthened from the old rule. It should remain the same. This is a burden.

"Menus noting actual food served being retained by the center for 30 days. Changes made in actual food served on a particular date shall be documented on or before that date."

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation was lengthened to ensure centers are documenting what was served on a particular day. The agency receives many complaints regarding children not being fed all required meal components. This helps to ensure children are being fed the required meal components each day while providing the flexibility to change published menus. The regulation will remain as written.

63.5 This is changed since the last draft. It is better but- This is not currently a regulation, and while it is laudable, should not be added to regs. It is a burden to staff which then is a burden to administrators. Many of our staff are below the poverty line. This requirement would in effect force administrators to provide food to staff even when they do not provide it to children. How do we actually go about "encouraging" adults?

**Agency Response:** The agency appreciates and acknowledges this comment. Staff are role models and have great influence on children, including the foods children eat. This regulation applies to when staff are eating with children and there is no implied requirement that staff meals components are restricted or required. The regulation will remain as written.

63.8.2.1 Concerns 1% or nonfat milk served to children over age two. Nonfat milk should not be recommended to children age 2-5. Children need fat in order to develop healthy brains. Surely OCCL knows this!

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise regulation 63.8.2.1 to include 2% milk.

63.9 This does not specify whether food from home or provided by center. This seems to imply that if a child has a gluten allergy so the snacks served in that room are all gluten free then there must be a note from the health care provider. This is a burden for parents. Parents should not be required by the state to order a doctor's note. They certainly can do this on their own if desired.

**Agency Response:** The agency appreciates and acknowledges this comment. 63.9 will be revised to read "A licensee shall ensure that special, therapeutic diets are prepared and served by center staff..." This regulation ensures children are receiving proper nutrition when fed by the center. The regulation will remain as written.

63.12 does not specify whether food from home or provided by center. The state (OCCL) does not dictate food from home.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise 63.12 to read "For foods prepared and served by the center, a licensee shall provide for the introduction of a variety of food textures, finger foods, and a cup and utensils as appropriate in the training of self-feeding and nutrition education.

64.1.1 On requiring a health provider to okay anything other than formula and water in a bottle. Why would parents not be able to make this decision on their own as long as they inform the provider? PAB objects to OCCL requiring parents to obtain written documentation from a health care provider for any and every modification. Of course, centers may choose to do this on their own.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation requires parents to obtain a note because mixing formula without medical consultation (or other than as indicated on the label) may result in an infant being overfed, choking, or tooth decay. Infants instinctually know how much breast milk or formula to drink based on volume, not calories. While it is difficult to overfeed an infant, this applies to breast milk or formula. In addition, inattention to an infant's true hunger cues has been associated with infant overfeeding. Placing cereal in the bottle can cause infants to receive too many calories for their need, placing them at risk for overweight and obesity. An infant's digestive system is not well prepared to process cereal until 4 to 6 months old, at which point they are old enough to eat from a spoon. Offering cereal before an infant is developmentally ready increases the likelihood of gagging or inhaling the thickened mixture into their lungs. Nursing bottle cavities have long been recognized as a consequence of feeding juice in bottles, using the bottle as a pacifier, and prolonged bottle feeding. Avoiding the number of times parents give their children sugary substances, especially at the youngest ages, will assist in the prevention of tooth decay. The regulation will remain as written.

64.2 This is not currently in our regs and should not be added. Again, this is insulting to staff, and again, requirements of a written note from health provider is unjustified:

"A licensee shall practice paced bottle feeding...stop when full unless written documentation from an infant's health provider is supplied."

**Agency Response:** The agency appreciates and acknowledges this comment. The regulation was added to ensure infants are allowed to determine when they are no longer hungry and would like to end a feeding. Unless otherwise recommended by a health care professional, this regulation helps allow an infant to determine when he/she is full, rather than staff requiring an infant to consume the entire contents of a bottle. The regulation was added



to ensure infants are being fed properly. This regulation helps staff know that they are not to keep feeding when an infant is full unless a doctor's note says otherwise. The agency will revise 64.2 to read "...and shall be allowed to stop a feeding when full unless written documentation from an infant's health care provider requires the feeding to continue;"

64.3 This is not currently in our regs and should not be added. This is unnecessary. It is already a requirement that centers cannot provide food to infants unless parents approve.

**Agency Response:** The agency appreciates and acknowledges this comment. Caring for Our Children states infants exclusively receiving breast milk shall not be given formula. This regulation prohibits staff from providing formula supplements to a breastfed infant without parental consent. The regulation will remain as written.

64.3.3 Last sentence is not currently in our regs and should not be added. We are not James Bond. (Sorry, could not resist.) The science of this regulation is highly suspect. Without documented peer reviewed studies justifying this regulation it should be immediately removed. If left in it will be challenged and likened to the Autism-immunization scare link:

"Bottles of breast milk shall be gently swirled to mix contents, and shall never be shaken."

**Agency Response:** The agency appreciates and acknowledges this comment. The agency will revise 64.3.3 by removing "and shall never be shaken."

64.3.4 Again, written documentation from health care provider should not include breast fed babies at least. This also does not specify length of time infant is in care per day.

"..semi-solid foods shall be required..."

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation ensures infants are receiving proper nutrition based on generalized feeding standards but allows individualized feeding plans when recommended by a health care provider. Regulation 64.1 states "that foods and beverages provided to an infant are served on demand or during a span of time consistent with the infant's eating habits...." Therefore the length of time the infant is in care is not relevant. The regulation will remain as written.

64.3.5 Second sentence is unnecessary. It has already been stated that only foods of which parents approve can be served to infants.

64.3.5 Second sentence is unnecessary. It has already been stated that only foods of which parents approve can be served to infants.

**Agency Response:** The agency appreciates and acknowledges this comment. The only regulation 64.3.5 requires obtaining parent permission for introduction of new foods. The regulation will remain as written.

64.3.13 Remove first sentence. It is insulting:

Breast milk shall be served only to that mother's own infant."

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation is not new. There are serious health concerns if a child is given breast milk intended for different child. The regulation will remain as written.

64.3.14 Remove. It has already been stated that only foods of which parents approve can be served to infants.

**Agency Response:** The agency appreciates and acknowledges this comment. Because of the concern regarding issues of tooth decay, this regulation requires juice served to infants be placed in a cup, not a bottle, unless otherwise requested by a parent. The regulation will remain as written.

65.4 and 65.4 This language is better than the last draft but: Regulations on "Time outs" is too specific. While PAB members have no objections to the philosophy behind this, we also feel that these regs are restrictive and may not work in every situation. If a teacher calls a child back into group but does not discuss "in a way that encourages the child to make more positive decisions in the future" are they out of compliance?

**Agency Response:** The agency appreciates and acknowledges these comments. Use of "time out" is not required; a center may choose a different technique for behavior management. Per PAB's previous request, the regulation was previously revised to allow the teacher to talk to a child at a more appropriate time rather than before returning to the group. The regulation will remain as written. The regulation will remain as written.

66.0 Program Goals-This draft is better than the last draft but: The PAB is concerned with the use of the word "Goals". We feel that it is often interpreted in a number of different ways and should be defined in the Definitions section to avoid confusion. In PAB each member defined Goals quite differently and feel that statewide this has the potential to cause wide spread confusion. Furthermore, PAB feels that current state policy is "to ensure that children are kindergarten ready", a goal not all are in agreement with as a blanket statement, but if that is indeed the "Goal" then let's be upfront about it so that we can have that discussion.

**Agency Response:** The agency appreciates and acknowledges this comment. The agency appreciates and

acknowledges this comment. While there are required domain components and a requirement that goals be "appropriate to the ages and developmental levels of children....," the center shall develop its own goals for "what the center [emphasis added] plans to accomplish with children," not this agency. Each center can create their own goals for their enrolled children. The regulation will remain as written.

66.3 PAB finds all of section 66.3 problematic. The PAB feels that individual centers' mission and philosophy dictate whether a written lesson plan should even be required, but PAB is willing to concede a basic plan. The following sentence is not currently in our regs and should not be added.

"Changes made in the actual lesson plan for a particular date shall be documented on the posted lesson plan on or before that date." Having to update any changes on that plan "before or on that date" is a burden and completely unnecessary, and also completely against the personal philosophies of many early childhood (and even K-12) educators. Furthermore, the requirements delineated in this section for what is required in these lesson plans is burdensome and against mission statements of many early childhood providers.

**Agency Response:** The agency appreciates and acknowledges these comments. The agency will revise 66.3.1 by removing the second sentence of this regulation.

66.3.4 in this section regarding adaptations is acceptable.

**Agency Response:** The agency appreciates this comment.

While laudable, 66.3.2, 66.3.3, 66.3.5 restrict administrators from having centers which may reflect alternative philosophies, and PAB does not believe in doing so. There are laudable, even exemplary Early Childhood and elementary schools that could not exist in our state under these rules.

66.6, 66.7 PAB feels that the wording and placement of the phrase "such as" further restricts rather than expands the ability of centers to apply alternative methods of teaching in their centers. "Identifiable activity areas" should be eliminated. Use of the word "orderly" will be problematic for Licensing Specialists. While PAB feels that children should have a variety of activities and experiences, they cannot and should not be defined by OCCL. Particularly problematic is the chart of daily and weekly activities. These are just nonsensical both as far as break down and delineation. As an example, some weeks a cooking activity is appropriate each day and others not at all. As far as an activity for "Healthy Habits" that is something that should come up every day, and indeed every time we set down fruit in front of a child and therefore should not be required to set down on a lesson plan but is part of the natural rhythm of care. When OCCL requires these types of "activities" to be recorded on the lesson plans which teachers create each week, the plans become just so unwieldy that their usefulness is diminished or they become just something to hang on the wall but are not utilized in a way that truly benefits children.

Members of the PAB each had different ways of rearranging this section and could not come up with an acceptable statement. Therefore PAB feels the regulation should be moved to the guidebook and not be part of the regulation book. PAB looks forward to helping OCCL put this book together.

**Agency Response:** The agency appreciates and acknowledges these comments. In order to protect the well-being of children, the agency is requiring lesson plans to ensure children are actively engaged in a structured program that helps them to develop in a positive manner. These regulations require purposeful planning for children. The use of the term "such as" in Regulation 66 is to provide examples of possible types of materials/activities that could meet the regulation, but is not intended as a listing of required materials/activities. These regulations will remain as written.

67.2 While PAB is not opposed to individual plans for children it does feel that it is important to allow leeway in the timelines for such and we must emphasize that this regulation involving individual plans must include the term "developmentally appropriate," for this age group, especially since OCCL has decided to use the word "concerns" when referring to information to be shared with parents. Examples of difficulty complying with 67.2 include part time children, children whose parents speak no English, specific times of year for enrollment and updating.

**Agency Response:** The agency appreciates and acknowledges this comment. The second sentence of regulation 67.2 includes the requirement that a child's individual plan contain goals that are both age and individually appropriate and that the activities and experiences also be developmentally appropriate. The agency has provided a timeframe of 45 days from enrollment to create a plan so that purposeful planning for that child occurs. The agency has provided a timeframe of 45 days from enrollment to create a plan. Early intervention is best so this must be done in a timely manner. The regulation will remain as written.

68.7 "This daily record shall include documentation that each infant was visually monitored every thirty (30) minutes when placed in the crib, playpen, or pack and play to nap/sleep to observe the infant for normal breathing, any signs of distress, and to be ready to assist and respond in case of emergency."

This regulation is very controversial at best. It places an unneeded burden on staff. The ratio in infant rooms does

not change when children are at nap. It is always 1:4. Staff is always watching babies. There is no data that indicates that this requirement would save a single child. Infants who die of SIDS can perish with no warning and at any time. They could stop breathing while the staff is writing down that they were just checked, and a baby without oxygen for even one minute would suffer irreparable brain damage EVEN if staff was able to begin breathing, and that chance is minute. Making this a regulation would give parents an unfounded belief that we could somehow save their child when we could not.

**Agency Response:** The agency appreciates and acknowledges this comment. This regulation was added to ensure the most vulnerable population is monitored while sleeping. These checks require very little time to complete and document (as the documentation could be a simple check mark placed on a form) and should not place an undue burden on staff or promote a false sense of security among families. The regulation will remain as written.

#### **Mollie Poland, MPP, Nemours Health and Prevention Services**

Nemours Health & Prevention Services commends the Department of Services for Children, Youth and their Families and the Office of Child Care Licensing for leadership on regulatory developments that advance health for all children in Delaware in revisions of Rules for Early Care and Education and School-Age Centers. We strongly support the recent and collaborative inclusion of:

- The provision of daily, outdoor play opportunities and daily, moderate to vigorous physical activity;
- Breastfeeding support in requiring that centers create and follow a policy allowing a mother to breastfeed her child in a private, designated place in the center other than a kitchen or restroom;
- The practice of paced bottle feedings and observations of cues for infant satiety;
- The provision that formula may not be fed to any infant without direct and prior parental permission;
- The provision that drinking water is always available to children in classrooms and outdoors, either by request or for self service;
- Support for protections around the use of screen time and digital media through time limits for use, appropriate adult supervision and review for age-appropriate, educational material, prohibition from inappropriate material as well as standard prohibition for children younger than two years of age; and
- Support for the Delaware Early Learning Foundations in application to lesson plans and curriculum, classroom activities, and daily interactions between staff or caregivers, infants and children.

**Agency Response:** The agency appreciates these comments.

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for early care and education and school-age centers as authorized in 31 **Delaware Code**, Sections 341-345, also known as "The Delaware Child Care Act". The terms "Early Care and Education and School-Age" Centers are now used in the field instead of "day care" centers. The Code refers to these types of licensed facilities as day care centers. All previous rules, regulations, and standards pertaining to such facilities are null and void except to the extent all rules, regulations, standards, enforcement actions, decisions, investigations, and the like previously promulgated or taken by the Office of Child Care Licensing shall continue unabated and shall remain in full force and effect notwithstanding promulgations of these regulations or rules. These rules shall take effect on July 1, 2015.

Jennifer Ranji, Secretary  
Department of Services for Children, Youth and Their Families

Victoria Kelly, Director  
Division of Family Services

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

**101 Regulations for Early Care and Education and School-Age Centers**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF LANDSCAPE ARCHITECTURE**

Statutory Authority: 24 Delaware Code, Section 205 (24 **Del.C.** §205)  
24 **DE Admin. Code** 200

**ORDER**

**200 Board of Landscape Architecture**

**NATURE AND STAGE OF THE PROCEEDINGS**

On October 1, 2014, the Delaware Board of Landscape Architects published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 18, Issue 4. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 12, 2015 at a regularly scheduled meeting of the Delaware Board of Landscape Architects to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

There was no verbal testimony given at the public hearing on February 12, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments 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 two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §205(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed revisions to Rules 7.0, *et. seq.* address continuing education requirements and set forth a procedure by which licensees and continuing education sponsoring organizations may seek pre-approval of continuing education units.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

**DECISION AND EFFECTIVE DATE**

The Board hereby adopts the changes to its rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 14<sup>th</sup> day of May, 2015.

**BY THE DELAWARE BOARD OF LANDSCAPE ARCHITECTS**

Eric Wahl, RLA, President

Jeffrey Clark, RLA

William Bullock

Mary Ann Whidby

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2014 issue of the *Register* at page 287 (18 DE Reg. 287). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**200 Board of Landscape Architecture**

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**DIVISION OF PROFESSIONAL REGULATION**

**1800 BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION  
EXAMINERS**

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

**ORDER**

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

On March 1, 2015 the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 9. The proposed rule would adopt the most recent versions of the International Mechanical and International Fuel Gas Codes. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 14, 2015 at a regularly scheduled meeting of the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. The Board received no comments at the public hearing.
3. The Board received no written comments.
4. Pursuant to 24 Del.C. §1806(a)(2) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
5. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

**DECISION AND ORDER CONCERNING THE REGULATIONS**

**NOW THEREFORE**, pursuant to 24 Del.C. §1806(a)(2) and for the reasons set forth above, the Board does hereby ORDER that the regulations are adopted and promulgated as set forth in the Delaware *Register of Regulations* on March 1, 2015. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(g).

The proposed regulations are attached hereto as Exhibit A.

**SO ORDERED** this 12<sup>th</sup> day of May, 2015

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

Charles Robbins, President

John M. Mills

James Anderson

Matthew Reilly (absent)

Harold Caswell, Vice President

Frank Beebe

Craig Tenaro (absent)

Sheila Littleton (absent)

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2015 issue of the *Register* at page 686 (18 DE Reg. 686). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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### DIVISION OF PROFESSIONAL REGULATION

### 2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** §2006(a)(1))  
24 **DE Admin. Code** 2000

### ORDER

#### 2000 Board of Occupational Therapy Practice

On January 1, 2015, the Delaware Board of Occupational Therapy Practice published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held

on March 4, 2015 at a regularly scheduled meeting of the Board of Occupational Therapy Practice to receive verbal comments regarding the Board's proposed amendments to its regulations.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony presented at the public hearing. No written comments were received by the Board.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §2006(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §2006(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2015 with the exception of correction of a typographical error in

section 3.2.1. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

**SO ORDERED** this 6th day of May, 2015.

**DELAWARE BOARD OF OCCUPATIONAL THERAPY PRACTICE**

Kelly M. Richardson	Karen M. Virion
Mara Beth Schmittinger	Evan Park
Angelita Mosley	

**2000 Board of Occupational Therapy Practice  
(Break in Continuity of Sections)**

**3.0 Continuing Education**

**(Break in Continuity Within Section)**

3.2 Definition of Acceptable Continuing Education Credits:

3.2.1 ~~Activities~~ Continuing education must be earned in two (2) or more of the seven (7) categories ~~beginning~~ **[activities categories]** for continuing education ~~beginning~~ described in Rule 3.35.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 532 (18 DE Reg. 532). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**2000 Board of Occupational Therapy Practice**

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**DIVISION OF PROFESSIONAL REGULATION  
5200 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS  
Statutory Authority: 24 Delaware Code, Section 5206(1) (24 **Del.C.** §5206(1))  
24 **DE Admin. Code** 5200**

**ORDER**

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

On April 1, 2014 and June 1, 2014, the Delaware Board of Nursing Home Administrators published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issues 10 and 12. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter.

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 10, 2015 at a regularly scheduled meeting of the Board of Nursing Home Administrators to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

There was no verbal testimony presented at the public hearing. No written comments were received by the Board.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §5206(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having reviewed no public comments, the Board finds no reason not to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §5206(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on April 1, 2014 and June 1, 2014. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 12<sup>th</sup> day of May, 2015.

### DELAWARE BOARD OF NURSING HOME ADMINISTRATORS

Michael Salitsky, NHA, President

Jane Ketterman, NHA, Secretary

Elizabeth Hague, Public Member (absent)

Cecelia Jones, Public Member

Jenifer Vaughn, Healthcare Member

E. Ray Quillen, NHA, Vice President

Timothy Bane, Public Member

Gwendolyn Benton, Healthcare Member

Eleanor Allione, Healthcare Member (absent)

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2014 and June 2014 issues of the *Register* at pages 976 and 1166 (18 DE Reg. 976 & 1166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

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### PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 201(a) and 209(a) (26 **Del.C.** §§201(a) & 209(a))

26 **DE Admin. Code** 1001

IN THE MATTER OF REVISION TO THE RULES OF  
PRACTICE AND PROCEDURE OF THE DELAWARE  
PUBLIC SERVICE COMMISSION

(FILED JANUARY 6, 1999; RE-OPENED OCTOBER 9, 2012)

| PSC REGULATION DOCKET NO. 99-9

### **ORDER NO. 8727**

**AND NOW**, this 21<sup>st</sup> day of April, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, the Commission has jurisdiction over this matter pursuant to 26 **Del.C.** §§201(a) and 209(a)(1); and

**WHEREAS**, by Order No. 8232 (October 9, 2012), the Commission reopened Regulation Docket No. 99-9 to



review and amend the “*Rules of Practice and Procedure of the Delaware Public Service Commission*,” 26 *Del. Admin. C.* §1001 et seq. (the “Rules”); and

**WHEREAS**, minor revisions to the Rules (the “Amendments”) are necessary to update certain outdated references and to ensure consistency in the Rules; and

**WHEREAS**, because the Amendments are strictly procedural and statutorily exempt from formal notice requirements pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2), and because they are not substantive amendments which would otherwise require publication and a public comment period pursuant to 29 **Del.C.** §§10115 to 10118;

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

1. Pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2), decretal paragraphs 2 and 3 of Order No. 8232 are hereby waived.
2. Pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the *Amended Rules of Practice and Procedure of the Delaware Public Service Commission* (the “Amended Rules”) as its official regulations as defined by 29 **Del.C.** §1132(3). A true and correct copy of the version reflecting the changes as between the current Rules and the Amended Rules is attached as **Exhibit “A”**. A clean version of the Amended Rules reflecting the changes is attached as **Exhibit “B”**.
3. Pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the *Delaware Register*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.
4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chair

Joann T. Conaway, Vice Chair

Jaymes B. Lester, Commissioner

Harold B. Gray, Commissioner

ATTEST:

Donna Nickerson, Secretary

**1001 Rules of Practice and Procedure of the Delaware Public Service Commission**

**1.0 General Provisions**

*(Break in Continuity Within Section)*

1.2 Definitions

*(Break in Continuity Within Section)*

”**Intervenor**” - means a person who is admitted as a party pursuant to Rule ~~24~~2.9 of these rules.

*(Break in Continuity Within Section)*

1.7 Types of Filings and General Requirements

*(Break in Continuity Within Section)*

- 1.7.3 All filings must be accompanied by a signed certificate of service pursuant to Rules ~~6(f)~~1.6.5 and ~~6(g)~~1.6.6.

*(Break in Continuity Within Section)*

**2.0 Hearings**

*(Break in Continuity Within Section)*

2.3 Formal Complaints

*(Break in Continuity Within Section)*

- 2.3.3 Except for investigations under Rule ~~442.2.1~~, any Commission Staff investigation of an alleged violation shall be deemed a formal complaint, and the notice of investigation shall, unless otherwise ordered, be served in a like manner as a formal complaint. Notice of this investigation to the public may be given in order to elicit public input.

*(Break in Continuity Within Section)*

2.9 Petitions for Leave to Intervene

*(Break in Continuity Within Section)*

- 2.9.3 The Commission may delegate to the designated Presiding Officer or Hearing Examiner the authority to grant or deny a party's intervention, subject to an interlocutory appeal pursuant to Rule ~~282.16~~.

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

**1001 Rules of Practice and Procedure of the Delaware Public Service Commission**

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF MAINTENANCE AND OPERATIONS

Statutory Authority: 17 Delaware Code, Section 1103(a)(2) and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §1103(a)(2) and 29 **Del.C.** §8404(8))  
2 **DE Admin. Code** 2310

#### REGULATORY IMPLEMENTING ORDER

#### 2310 Outdoor Advertising

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

The Department of Transportation sought to revise its existing regulations regarding outdoor advertising. Notice for public comment was properly noticed in 18 Delaware Register 690, March 1, 2015.

The Department received one question from the public regarding which roads would be impacted in Sussex County. The question was answered without need for any change to the proposed regulation. In its own review, the agency staff did identify two non-substantive changes in the proposed regulation. In Section 1.3, "his" was changed to "their" to reflect a gender change that is more universal. In Section 12.1.1, it was identified that the word "no" at the beginning of the sentence had been left off of a previous version. Without the word, the sentence is not comprehensible as it appears to contradict itself. Therefore, the word was returned to the final version.

#### 2. Findings of Fact

The Secretary finds that it is appropriate to amend the existing Outdoor Advertising regulation as proposed and slightly amended as discussed above, to incorporate appropriate changes to the Outdoor Advertising regulations since the original regulations were adopted.

#### 3. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Outdoor Advertising regulations as described herein.

#### 4. Text and Citation

The text of 2 **DE Admin. Code** 2310 shall be in the form attached as Exhibit "A".

**5. Effective Date of Order**

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

IT IS SO ORDERED THIS 18<sup>TH</sup> DAY OF MAY 2015.

Jennifer L. Cohan, Secretary  
Department of Transportation

**2310 Outdoor Advertising****1.0 Authority**

- 1.1 The following rules and regulations are issued under the authority granted to the Department by Section ~~4404~~ 1103, Subchapter 1, Chapter 11, Title 17 of the **Delaware Code**.
- 1.2 The Department of ~~Highways and~~ Transportation shall have overall jurisdiction and control throughout the State subject to the certification process for political subdivisions as defined under section ~~48~~ 20.0 of this regulation. Within the Department, the responsibility for administration of the program shall rest with the Roadside Control Section in the Division of ~~Highways~~ Maintenance and Operations.
- 1.3 All interpretations will be made by the Secretary of the Department of ~~Highways and~~ Transportation and ~~his~~ their decision will be final except in those cases where a point of law is raised.

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

**102.0 Standards for Public Service Signs****102.1 General**

- 102.1.1 **[No]** public service sign shall be erected or maintained without first securing a permit from the Department as required by these regulations. Applications for permits shall be processed in accord with procedures promulgated by the Department. A certification by the Department of Public Instruction that each shelter on which signs are or are to be erected is needed to provide shelter for students at that location shall accompany each application. Applications and approval shall be processed in accord with procedures promulgated by the Department.

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

**179.0 Permits and Fees****179.1 General**

- 179.1.1 Section ~~[4405]~~ 1104, Subchapter 1, Chapter 11, Title 17 of the **Delaware Code** includes provisions for:
  - 179.1.1.1 The Department to issue and renew permits for each sign for a period of at least one year for the erection and maintenance of outdoor advertising signs, displays, and devices, and
  - 179.1.1.2 The Department to establish and collect fees for the issuance of permits and renewals thereof in an amount deemed necessary to defray the costs of this operation.

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

**2310 Outdoor Advertising**

## DIVISION OF MOTOR VEHICLES

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

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

### ORDER

#### **2288 Special Group or Organization Registration Plates for Persons With Disabilities**

#### **Comment Period for Draft Regulations**

Proposed Administrative Code 2288 allows DMV to make any specialty plate with the international wheelchair symbol. Under Subchapter 2 of Chapter 21 of Title 21 of the Delaware Code, the DMV is authorized to issue special license plates to organizations and groups. The DMV is also authorized under Section 2134 of the same Title to issue special license plates for persons with disabilities which limit or impair the ability to walk. These plates feature the international person with disability wheelchair symbol. Some of these persons with disabilities may also wish to display their affiliation or support for an organization or group, while retaining their rights to consideration as a person with disabilities. The draft regulations would authorize the DMV to design and issue special registration plates for groups and organizations that also include the international person with disability wheelchair symbol.

The proposed regulation was published in the Delaware *Register of Regulations* on February 1, 2015. The comment period remained open until March 4, 2015. There was no public hearing on proposed Regulation 2288.

#### **Summary of the Evidence and Information Submitted**

The Department received no public comments on the proposed regulation.

#### **Findings of Fact**

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

1. The proposed regulation is not in conflict with Delaware law.
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

#### **Decision and Effective Date**

Based on the provisions of 21 Del.C. §§302 & 303; 29 Del.C. §8404, and the record in this docket, I hereby adopt Administrative Code 2288 and as may more fully and at large appear in the version attached hereto to be effective on June 11, 2015.

#### **Text and Citation**

**IT IS SO ORDERED THIS 15<sup>th</sup> day of April, 2015.**

Jennifer Cohan, Secretary of Transportation

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2015 issue of the *Register* at page 635 (18 DE Reg. 635). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**2288 Special Group or Organization Registration Plates for Persons With Disabilities**

**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE****Proposed Amendments to the *Rules of Practice and Procedure* to Allow Each Signatory Party and the DRBC to Administer a Single Process for the Review and Adjudication of Projects**

The Delaware River Basin Commission ("DRBC" or "Commission") is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its commissioners are the governors of the four basin states – Delaware, New Jersey, New York, and Pennsylvania – and a federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedures Act. This notice is published by the Commission for information purposes.

The Commission will hold a **public hearing** to receive comments on proposed amendments to its *Administrative Manual Part III – Rules of Practice and Procedure* (18 C.F.R. Part 401) to provide for DRBC and each of the parties to the *Delaware River Basin Compact* (United States Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large 688; and 53 Delaware Laws, Chapter 71, Approved May 1, 1961, ("the Compact") – Delaware, New Jersey, New York, Pennsylvania and the federal government ("Signatory Parties") – to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The program, called "One Process/One Permit," (also herein, "the Program") will allow DRBC and administrative agencies of the Signatory Parties participating in the Program to incorporate the requirements and determinations of both DRBC and the Signatory Party agency into a single permit or other approval instrument.

The **public hearing** will start on or around 2:00 P.M. on Tuesday, June 9, 2015, during the Commission's regularly scheduled public hearing. The hearing will continue until all those wishing to testify have had an opportunity to do so. Depending upon the number of people wishing to speak, the hearing officer may impose time limits on speakers. Written comments will be accepted by any of the means described below and must be received by 5:00 P.M. on Wednesday, July 1, 2015. More information regarding the procedures for the hearing and comments is set forth in the section "Oral Testimony and Written Comments."

The **public hearing** will be held at the Washington Crossing Historic Park Visitor's Center at 1112 River Road in Washington Crossing, Pennsylvania. Please check [washingtoncrossingpark.org/contact/](http://washingtoncrossingpark.org/contact/) for directions, as Internet mapping services provide unreliable directions to this location.

Persons wishing to testify at the hearing are asked to register in advance by contacting Paula Schmitt at 609-883-9500, ext. 224 or [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us). Written comments may be submitted as follows: If by email (preferred), to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); by fax, to Commission Secretary at 609-883-9522; by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during DRBC's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "One Process/One Permit" or "OPOP" in the subject line.

The rule text is available on the DRBC website, DRBC.net. Also posted to the website are an extensive FAQ document; DRBC Resolution No. 2015-4, authorizing the Executive Director to initiate rulemaking and enter into an administrative agreement with the New Jersey Department of Environmental Protection (NJDEP) for demonstration of the Program; and the administrative agreement between DRBC and the NJDEP to provide for the demonstration program, which includes provisions for fully implementing One Process/One Permit once a final rule has been adopted. Detailed procedures of the DRBC for public hearings, public meetings and "Public Dialogue" are available on the web at: <http://www.state.nj.us/drbc/library/documents/procedures120414.pdf>. For further information, please contact Commission Secretary Pamela M. Bush, 609-477-7203.

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**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Tuesday, June 9, 2015 beginning at 1:30 p.m. A business meeting will be held on the following day, Wednesday, June 10, 2015 beginning at 1:30 p.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. For more information, visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION****PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt the ARCI rule relating to cobalt. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. 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 June 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 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](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 Thoroughbred Racing Commission 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 July 1, 2015. Written materials submitted will be available for inspection at the above address.

On or after July 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed new rule 15.21 relating to adoption of the ARCI cobalt rule or make additional changes because of the public comments received.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, June 18, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****OFFICE OF ANIMAL WELFARE****PUBLIC NOTICE****4502 Regulations for Certification of Animal Control Officers and Animal Cruelty Agents**

On June 1, 2015, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare, plans to publish proposed regulations for Certification of Animal Control Officers and Animal Cruelty Agents and hold them out for public comment per Delaware law.

The purpose of the regulations is to establish minimum training requirements for the certification of animal control officers and animal cruelty agents working in the State of Delaware. They also establish procedures for documenting all complaints filed against officers/agents, and conducting investigation of complaints concerning violations of this chapter.

The regulation has been established to include:

- "training and certification requirements for animal control officers and animal cruelty agents in Delaware;
- "procedures for obtaining a certification from the Office of Animal Welfare;
- "the training course approval process;
- "continued education and recertification obligations;
- "disciplinary sanctions; and
- "complaint documentation and investigation procedures.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Tuesday, June 30, 2015 to:

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

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**DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH**  
**PUBLIC NOTICE**  
**6001 Substance Abuse Facility Licensing Standards**

In accordance and compliance with the procedures set forth at 29 **Del.C.** §1131, *et seq.* and 29 **Del.C.** §10101, *et seq.*, the Delaware Department Health and Social Services (DHSS) / Division of Substance Abuse and Mental Health (DSAMH) is proposing to repeal the current Substance Use Treatment Program Licensure Standards, located at 16 **DE Admin. Code** 6001, and replace them in their entirety with the following proposed regulation. Copies of the proposed regulations are available in the June *Register of Regulations* or by contacting DSAMH as provided below.

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.

Under the provisions of Title 29, Chapter 101 of the Delaware Code, DHSS/DSAMH gives notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity for public input regarding any proposed change in its standards for establishing Substance Use Treatment Licensure Standards. Comments must submit them to:

Bryan Gordon  
Provider Relations Unit, Division of Substance Abuse and Mental Health  
1901 North DuPont Highway  
New Castle, Delaware 19720  
or by fax to 302-255-4427

All comments must be received no later than 4:30 p.m. on June 30, 2015.

Upon final adoption of these Standards by DHSS/DSAMH, they will be posted on the DSAMH web site and all current licensed programs will be notified via email of their adoption.

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

**1124 Control of Volatile Organic Compound Emissions**

Revision to Section 36 "Stage II Vapor Recovery" of 7 **DE Admin. Code** 1124 "Control of Volatile Organic Compound Emissions."

Gasoline vapors contribute to the formation of ground-level ozone pollution, and include hazardous air pollutants. Delaware has implemented, since 1993, Stage II vapor recovery requirements to control gasoline vapor emissions from motor vehicle fueling at gasoline dispensing facilities. In addition, since 1998, automobile manufacturers have been required by the federal clean air act to install on-board refueling vapor recovery (ORVR) systems on new motor vehicles. Now that a large percentage of vehicles on Delaware roads are equipped with ORVR systems DNREC is proposing a regulation revision to begin the phase out of Stage II vapor recovery in Delaware.

DNREC is proposing to revise Section 36 of 7 **DE Admin. Code** 1124 to allow new or modified gasoline stations the option to not install Stage II vapor recovery systems, and to instead install an enhanced Stage I vapor recovery system, and to either 1) conduct enhanced monthly inspections and pressure decay leak testing or, 2) participate in a 1-year trial to demonstrate whether or not a continuous pressure monitoring (CPM) system is able to accurately identify system leaks and times when emissions are being vented from the pressure/vacuum valve. DNREC plans to revise this regulation again in the future based on the data obtained from the trial tests. DNREC hereby withdraws the proposed regulation that was published in the August 2014 Delaware Register.

A public hearing will be held on June 25, 2015, beginning at 6:00 pm, in DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****3500 Tidal Finfish****3542 Tilefish**

Blueline tilefish (*Caulolatilus microps*) is an ocean dwelling, deep water species that is susceptible to overexploitation due to its long-lived, sedentary nature. The species is federally managed from North Carolina through Florida by the South Atlantic Fishery Management Council (SAFMC) through the amended Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (1983).

The SAFMC sharply reduced the Annual Catch Limits in 2014 based on results from the 2013 coastwide stock assessment, which indicated the blueline tilefish was overfished and overfishing was occurring. The harvest reductions in the South Atlantic resulted in the commercial sector targeting blueline tilefish in unregulated Mid-Atlantic States, primarily New Jersey. Reported landings from Virginia and northward increased from approximately 11,000 pounds annually (average 2005-2013) to about 217,000 pounds in 2014. Most of these fish were caught in federal waters off the coast of Delmarva. Additionally, Northeast vessel trip reports from the recreational for-hire sector indicated that blueline tilefish landings significantly increased in the areas from approximately Cape Hatteras to mid-New Jersey (Federal Statistical Areas 616 - 636). Virginia and Maryland, although not SAFMC member states, enacted the SAFMC blueline tilefish regulations this year in response to the 2014 landings. The Mid-Atlantic Fishery Management Council (MAFMC) then formally requested that all member states consider adopting incidental commercial trip limits and recreational bag limits that mirror current Virginia and Maryland state regulations. This request was followed by an emergency meeting of the MAFMC in which the council voted to request that the National Marine Fisheries Service (NMFS) implement emergency rules to restrict commercial and recreational landings of blueline tilefish in the Mid-Atlantic.

Consistent with the MAFMC's request and input from Delaware's Advisory Council on Tidal Finfisheries, this action proposes two options for a new tilefish regulation. Both options include a commercial trip limit of 300 pounds and a recreational possession limit of no more than seven fish per person; however, one option limits the new regulation to blueline tilefish and one option applies the regulation more broadly (as in Maryland and Virginia) to include both blueline and golden tilefish (*Lopholatilus chamaelonticeps*).

The hearing record on the proposed addition of a new 7 **DE Admin Code** §3542 Tilefish will be open June 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on June 24, 2015 beginning at 6:00 PM



in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

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**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/adopt Rules: 3.0 – Criminal Offenses – defines moral turpitude, and 5.0 – Firearms Policy – clarifies the 40 hour course shoot requirements, disqualifications, when qualification shoot sheets are due and the instructor certification requirements. If you wish to view these amendments/adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by June 30, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on a date to be determined after June 30, 2015, Room 112, Tatnall Building, 150 Martin L. King Jr. Boulevard, South, Dover, DE.

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**DIVISION OF STATE POLICE****5500 BAIL ENFORCEMENT AGENTS****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rules: Rule 1.0 – Licensing, clarifies penalties for not returning credentials and the training requirements for re-licensure; Rule 4.0 – Firearms Policy, clarifies the qualifications to obtain and maintain a firearms while working; Rule 6.0 – Training Requirements for Issuance of a License, mandates the initial classroom training and procedures and removes the field training and the internship requirement. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by June 30, 2015, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Friday, August 28, 2015, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****4100 BOARD OF HOME INSPECTORS****PUBLIC NOTICE**

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes reiterate that a trainee home inspector must obtain his/her trainee registration prior to performing any supervised home inspections. The Home Inspector Practice Act mandates that anyone who performs inspections, even if supervised by a Delaware licensed home inspector, must first obtain a trainee registration. Board Regulation 10.1 requires trainees to complete 75 supervised home inspections before becoming eligible for full licensure, and, under 24 **Del.C.** §4107(c) a trainee can only begin to accumulate such inspections after his/her application for registration as a trainee is approved and granted by the Board.

The Board will hold a public hearing on the proposed regulation change on July 14, 2015 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 29, 2015 pursuant to 29 **Del.C.** §10118(a).