
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:

Errata

Proposed

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 February 16, 2015.

Cover photo by
Dolores Michels

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

665

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

Cumulative Tables..... 668

ERRATA

DEPARTMENT OF LABOR

Division of Industrial Affairs

1341 Workers' Compensation Regulations..... 675

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

2400 Board of Examiners of Constables..... 675

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

727 Credit for Experience for Educators and for Secretarial Staff..... 679

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Medicaid 1915 Home & Community-Based Services Waiver Programs - Statewide Transition Plan 681

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

2400 Board of Examiners of Constables..... 684

DEPARTMENT OF STATE

Division of Professional Regulation

100 Board of Accountancy..... 685

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners..... 686

Public Service Commission

4002 Regulations Governing Payphone Service Providers in Delaware (Docket No. 12).... 687

DEPARTMENT OF TRANSPORTATION

Division of Maintenance and Operations

2310 Outdoor Advertising..... 690

FINAL

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

502 Delaware Standardbred Breeders' Fund Regulations..... 691

DEPARTMENT OF EDUCATION

Office of the Secretary

235 Teacher of the Year Award..... 692

TABLE OF CONTENTS

667

DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Medicaid and Medical Assistance	
7000 Certification and Regulation of Medicaid Managed Care Organizations.....	693
Division of Social Services	
DSSM 11003 and 11004: Child Care Subsidy Program, Child Support Policies and Procedures	697
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
607 Defensive Driving Course Discount (Automobiles and Motorcycles).....	700
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Fish and Wildlife	
3541 Atlantic Sharks.....	701
DEPARTMENT OF STATE	
Division of Professional Regulation	
1400 Board of Electrical Examiners.....	704
1900 Board of Nursing, Sections 8.0, 9.0, and 10.0.....	705
2500 Board of Pharmacy.....	707
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2224 Defensive Driving Course, Providers, and Instructors.....	708
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	709
Division of Transportation Solutions	
2406 Policies and Procedures for Acquisition of Certain Real Property Interests.....	733
2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests.....	734
OFFICE OF MANAGEMENT AND BUDGET	
Division of Facilities Management	
4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program....	736

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission, Notice of Public Hearing and Business Meeting.....	738
Dept. of Education, Notice of Monthly Meeting.....	738
Dept. of Health and Social Services, Div. of Management Svcs.; Div. of Medicaid and Medical Assistance, Notice of Public Hearing and Comment Periods.....	738 - 739
Dept. of Safety and Homeland Security, Div. of State Police, Notice of Public Comment Period.....	739
Dept. of State, Div. of Prof. Regulation; Public Service Commission, Notices of Public Hearings and Comment Periods.....	740
Dept. of Transportation, Div. of Maintenance and Operations, Notice of Public Comment Period.....	741

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

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

CASH MANAGEMENT POLICY BOARD

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

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**Office of the Director**

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

DELAWARE ECONOMIC DEVELOPMENT OFFICE

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

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

202 Rent Increase Dispute Resolution Procedures.....	18 DE Reg. 637 (Prop.)
--	------------------------

DEPARTMENT OF AGRICULTURE**Harness Racing Commission**

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

DEPARTMENT OF EDUCATION**Office of the Secretary**

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

405 Minor Capital Improvement Programs.....	18 DE Reg. 368 (Final)
415 Voluntary School Assessment.....	18 DE Reg. 100 (Prop.)
505 High School Graduation Requirements and Diplomas.....	18 DE Reg. 304 (Final)
610 Limitations on Use of Seclusion and Restraint.....	18 DE Reg. 127 (Final)
817 Medications and Treatments.....	18 DE Reg. 130 (Final)
851 K to 12 Comprehensive Health Education Program.....	18 DE Reg. 419 (Prop.)
	18 DE Reg. 639 (Final)
902 Gifted or Talented Education Plan.....	18 DE Reg. 104 (Prop.)
915 James H. Groves High School.....	18 DE Reg. 369 (Final)
	18 DE Reg. 616 (Prop.)
923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies.....	18 DE Reg. 343 (Prop.)
	18 DE Reg. 561 (Final)
	18 DE Reg. 280 (Prop.)
	18 DE Reg. 562 (Final)
	18 DE Reg. 618 (Prop.)
925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	18 DE Reg. 281 (Prop.)
	18 DE Reg. 564 (Final)
	18 DE Reg. 621 (Prop.)
930 Supportive Instruction (Homebound).....	18 DE Reg. 7 (Prop.)
	18 DE Reg. 215 (Final)
Professional Standards Board	
1507 Alternative Routes to Teacher Licensure and Certification Program.....	18 DE Reg. 496 (Prop.)
1510 Issuance of Initial License.....	18 DE Reg. 218 (Final)
1512 Issuance and Renewal of Advanced License.....	18 DE Reg. 346 (Prop.)
1513 Denial of Licenses.....	18 DE Reg. 347 (Prop.)
1514 Revocation, Limitation, or Suspension of Licenses.....	18 DE Reg. 349 (Prop.)
1572 Teacher of Students Who Are Gifted and Talented.....	18 DE Reg. 350 (Prop.)
	18 DE Reg. 566 (Final)
1599 Delaware Educational Technology Standards.....	18 DE Reg. 224 (Final)
DEPARTMENT OF ELECTIONS	
Kent County	
1602 Policies and Procedures Regarding FOIA Requests.....	18 DE Reg. 58 (Final)
DEPARTMENT OF FINANCE	
Office of the State Lottery	
206 Internet Lottery Rules and Regulations.....	18 DE Reg. 182 (Prop.)
	18 DE Reg. 370 (Final)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Long Term Care Residents Protection	
3315 Rest (Family) Care Homes.....	18 DE Reg. 282 (Prop.)
	18 DE Reg. 569 (Final)
3325 Financial Capability Reporting.....	18 DE Reg. 497 (Prop.)
Division of Medicaid and Medical Assistance	
Diamond State Health Plan 1115 Demonstration Waiver Amendment – Promoting Optimal Mental Health for Individuals through Supports and Empowerment (P.R.O.M.I.S.E.).....	18 DE Reg. 186 (Prop.)
	18 DE Reg. 371 (Final)
Freestanding Inpatient Rehabilitation Hospital Services.....	18 DE Reg. 509 (Prop.)
Nursing Facility Services – Preadmission Screening and Resident Review.....	18 DE Reg. 106 (Prop.)
Standards for the Coverage of Organ Transplant Services.....	18 DE Reg. 115 (Prop.)
	18 DE Reg. 310 (Final)

CUMULATIVE TABLES

Title XIX Medicaid State Plan, Attachment 3.1-A, Introductory Page 2 - Telemedicine.....	18 DE Reg. 9 (Prop.) 18 DE Reg. 227 (Final)
Title XIX Medicaid State Plan, Attachment 4.19B, Introduction - Page 4, Increased Medicaid Payment for Primary Care Services.....	18 DE Reg. 11 (Prop.) 18 DE Reg. 229 (Final)
Title XIX Medicaid State Plan, Methods and Standards for Establishing Payment Rates - Primary Care Service Payment.....	18 DE Reg. 424 (Prop.) 18 DE Reg. 642 (Final)
Title XIX Medicaid State Plan, State Plan Rehabilitative Services - Coverage and Reimbursement for Community Support Services.....	18 DE Reg. 429 (Prop.)
Title XXI Delaware Healthy Children Program State Plan - Cost Sharing and Payment, Premium Requirements.....	18 DE Reg. 183 (Prop.) 18 DE Reg. 375 (Final)
70000 Certification and Regulation of Medicaid Managed Care Organizations	18 DE Reg. 504 (Prop.)
Division of Public Health	
4201 Cancer Registry.....	18 DE Reg. 63 (Final)
4203 Cancer Treatment Program.....	18 DE Reg. 67 (Final)
4405 Free Standing Surgical Centers.....	18 DE Reg. 14 (Prop.) 18 DE Reg. 378 (Final)
4407 Hospital Standards (Construction, Maintenance, and Operation).....	18 DE Reg. 119 (Prop.) 18 DE Reg. 390 (Final)
4408 Facilities That Perform Invasive Medical Procedures.....	18 DE Reg. 613(Emer.) 18 DE Reg. 623 (Prop.)
4410 Skilled Home Health Agencies (Licensure).....	18 DE Reg. 133 (Final)
4451 Body Art Establishments.....	18 DE Reg. 352 (Prop.) 18 DE Reg. 645 (Final)
4453 Cosmetology and Barbering.....	18 DE Reg. 512 (Prop.)
4454 Tanning Facilities Regulations.....	18 DE Reg. 191 (Prop.) 18 DE Reg. 392 (Final)
4468 Delivery of Hospice Services.....	18 DE Reg. 135 (Final)
Division of Social Services	
Child Care Subsidy Program, Child Support Policies and Procedures.....	18 DE Reg. 514 (Prop.)
Delaware's Temporary Assistance for Needy Families (TANF) State Plan Renewal.....	18 DE Reg. 354 (Prop.) 18 DE Reg. 646 (Final)
DSSM: 2000 Case Processing Procedures - Applications.....	18 DE Reg. 139 (Final)
2013 & 9037 Food Supplement Program - Income and Eligibility Verification System.....	18 DE Reg. 142 (Final)
3011 Delaware TANF Employment and Training Program Requirements.....	18 DE Reg. 143 (Final)
9013.1 Food Supplement Program - Household Definition.....	18 DE Reg. 147 (Final)
9060, Determining Income Deductions.....	18 DE Reg. 14 (Prop.) 18 DE Reg. 231 (Final)
11003 Determining Technical Eligibility for Child Care.....	18 DE Reg. 148 (Final)
11004.3.1, Service Priorities.....	18 DE Reg. 9 (Prop.) 18 DE Reg. 233 (Final)
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
403 Sale and Purchase of Options [Formerly Regulation 28], Repeal of.....	18 DE Reg. 283 (Prop.) 18 DE Reg. 467 (Final)
404 Derivative Instruments.....	18 DE Reg. 195 (Prop.) 18 DE Reg. 393 (Final)
607 Defensive Driving Course Discount (Automobiles and Motorcycles).....	18 DE Reg. 519 (Prop.)
1003 Credit for Reinsurance.....	18 DE Reg. 355 (Prop.) 18 DE Reg. 574 (Final)

DEPARTMENT OF JUSTICE

Fraud and Consumer Protection Division

Rules and Regulations Pursuant to the Delaware Securities Act.....	18 DE Reg. 202 (Prop.) 18 DE Reg. 394 (Final) 18 DE Reg. 575 (Final)
--	--

DEPARTMENT OF LABOR

Division of Industrial Affairs

1341 Workers' Compensation Regulations.....	18 DE Reg. 357 (Prop.) 18 DE Reg. 577 (Final) 18 DE Reg. 609 (Errata)
---	---

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

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

Division of Energy and Climate

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

Division of Fish and Wildlife

3502 Striped Bass Spawning Season and Area Restrictions.....	18 DE Reg. 624 (Prop.)
3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	18 DE Reg. 624 (Prop.)
3504 Striped Bass Possession Size Limit; Exceptions.....	18 DE Reg. 624 (Prop.)
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.....	18 DE Reg. 624 (Prop.)
3506 Striped Bass; Total Length Measurement.....	18 DE Reg. 624 (Prop.)
3521 Weakfish Size Limits; Possession Limits; Seasons.....	18 DE Reg. 235 (Final)
3541 Atlantic Sharks.....	18 DE Reg. 525 (Prop.)
3801 Shellfish Aquaculture.....	18 DE Reg. 151 (Final)

Division of Waste and Hazardous Substances

1301 Regulations Governing Solid Waste (DRGSW).....	18 DE Reg. 530 (Prop.) 18 DE Reg. 629 (Prop.)
1302 Regulations Governing Hazardous Waste (DRGHW).....	18 DE Reg. 631 (Prop.)

Division of Watershed Stewardship

5101 Sediment and Stormwater Regulations.....	18 DE Reg. 204 (Prop.) 18 DE Reg. 396 (Final)
7401 Surface Water Quality Standards.....	18 DE Reg. 312 (Final)
7408 TMDLs for Nutrients for the Murderkill River Watershed.....	18 DE Reg. 316 (Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies	18 DE Reg. 154 (Final) 18 DE Reg. 211 (Prop.) 18 DE Reg. 436 (Final) 18 DE Reg. 648 (Prop.) 18 DE Reg. 468 (Final)
5500 Bail Enforcement Agents.....	18 DE Reg. 21 (Prop.) 18 DE Reg. 318 (Final) 18 DE Reg. 285 (Prop.) 18 DE Reg. 578 (Final) 18 DE Reg. 610 (Errata)

Officer of the Alcoholic Beverage Control Commissioner

Alcoholic Beverage Control Regulations.....	18 DE Reg. 208 (Prop.)
1407 A Rule Pertaining to Movie Theaters.....	18 DE Reg. 209 (Prop.) 18 DE Reg. 398 (Final)

Office of the Secretary	
101 Regulations Governing the Relief from Disabilities Board.....	18 DE Reg. 649 (Final)
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES	
Division of Family Services, Office of Child Care Licensing	
101 Rules for Early Care and Education and School-Age Centers.....	18 DE Reg. 438 (Prop.)
105 Residential Child Care Facilities and Day Treatment Programs.....	18 DE Reg. 122 (Prop.)
DEPARTMENT OF STATE	
Division of Historical and Cultural Affairs	
100 Historic Preservation Tax Credit Program.....	18 DE Reg. 24 (Prop.)
	18 DE Reg. 237 (Final)
Division of Professional Regulation	
Controlled Substance Advisory Committee	
Uniform Controlled Substances Act Regulations.....	18 DE Reg. 92 (Emer.)
100 Board of Accountancy.....	18 DE Reg. 155 (Final)
	18 DE Reg. 212 (Prop.)
	18 DE Reg. 320 (Final)
	18 DE Reg. 157 (Final)
103 Regulations Governing Charitable Gambling Other Than Raffles	
200 Board of Landscape Architecture, Section 7.0, Continuing Education as a Condition of Biennial Renewal.....	18 DE Reg. 287 (Prop.)
300 Board of Architects.....	18 DE Reg. 321 (Final)
500 Board of Podiatry.....	18 DE Reg. 124 (Prop.)
700 Board of Chiropractic.....	18 DE Reg. 213 (Prop.)
	18 DE Reg. 579 (Final)
	18 DE Reg. 238 (Final)
1000 Board of Pilot Commissioners.....	
1100 Board of Dentistry and Dental Hygiene, Section 6.0, Continuing Professional Education.....	18 DE Reg. 399 (Final)
1400 Board of Electrical Examiners.....	18 DE Reg. 439 (Prop.)
1725 Polysomnography Advisory Council.....	18 DE Reg. 633 (Prop.)
1770 Respiratory Care Practice Advisory Council.....	18 DE Reg. 444 (Prop.)
1900 Board of Nursing, Section 6.0 Requirements & Procedures for Licensure	18 DE Reg. 322 (Final)
1900 Board of Nursing, Sections 8.0, 9.0 and 10.0.....	18 DE Reg. 445 (Prop.)
2000 Board of Occupational Therapy Practice.....	18 DE Reg. 532 (Prop.)
2500 Board of Pharmacy.....	18 DE Reg. 536 (Prop.)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	18 DE Reg. 290 (Prop.)
	18 DE Reg. 447 (Prop.)
	18 DE Reg. 469 (Final)
	18 DE Reg. 126 (Prop.)
	18 DE Reg. 634 (Prop.)
	18 DE Reg. 651 (Final)
	18 DE Reg. 447 (Prop.)
2900 Real Estate Commission.....	18 DE Reg. 538 (Prop.)
2930 Council on Real Estate Appraisers.....	
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	18 DE Reg. 451 (Prop.)
3500 Board of Examiners of Psychologists.....	18 DE Reg. 323 (Final)
4100 Board of Home Inspectors, Sections 4.0 and 10.0.....	18 DE Reg. 358 (Prop.)
4100 Board of Home Inspectors, Sections 4.0 and 18.0.....	18 DE Reg. 158 (Final)
4400 Delaware Manufactured Home Installation Board.....	18 DE Reg. 400 (Final)
5100 Board of Cosmetology and Barbering.....	18 DE Reg. 239 (Final)
Office of the State Bank Commissioner	
1114 Alternative Franchise Tax.....	18 DE Reg. 291 (Prop.)
2101 Operating Regulation.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2102 Minimum Records.....	18 DE Reg. 295 (Prop.)

2102 Minimum Records.....	18 DE Reg. 472 (Final)
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.)
2901 Operating Regulation.....	18 DE Reg. 472 (Final)
	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
2902 Minimum Records.....	18 DE Reg. 295 (Prop.)
	18 DE Reg. 472 (Final)
3401 Regulations.....	18 DE Reg. 159 (Final)
3402 Surety Bond or Irrevocable Letter of Credit.....	18 DE Reg. 159 (Final)
Public Service Commission	
1001 Rules of Practice and Procedure of the Delaware Public Service Commission.....	18 DE Reg. 160 (Final)
4001 Rules for the Provision of Telecommunication Services (Docket Nos. 10 and 45).....	18 DE Reg. 296 (Prop.)
	18 DE Reg. 653 (Final)
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)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2224 Defensive Driving Course, Providers, and Instructors.....	18 DE Reg. 540 (Prop.)
2228 Special Group or Organization Registration Plates for Persons With Disabilities.....	18 DE Reg. 635 (Prop.)
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	18 DE Reg. 240 (Final)
	18 DE Reg. 455 (Prop.)
Division of Transportation Solutions	
2406 Policies and Procedures for Acquisition of Certain Real Property Interests	18 DE Reg. 456 (Prop.)
2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests.....	18 DE Reg. 545 (Prop.)
DIVISION OF RESEARCH	
Office of the Registrar of Regulations	
Regulation Governing Administrative Rulemaking Procedures.....	18 DE Reg. 161 (Final)
EXECUTIVE DEPARTMENT	
Office of Management and Budget	
Division of Facilities Management	
Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	18 DE Reg. 550 (Prop.)
4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	18 DE Reg. 547 (Prop.)
State Employees Benefits Committee	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	18 DE Reg. 79 (Final)

Statewide Benefits Office

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

Office of State Planning Coordination

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

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

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

1341 Workers' Compensation Regulations

*** Please Note:** *The submitted final regulation for 1341 Workers' Compensation Regulations, Section 4.6.3, published in the January 2015 issue of the Delaware Register of Regulations and effective on January 31, 2015, contained a typographical error. Instead of repeating "...CPT Category II and II...", the regulation should read "...CPT Category II and III...". Section 4.6.3 is reprinted below with the correct language as an Errata. The final regulation was published in the January 2015 issue of the Delaware Register of Regulations (18 DE Reg. 577). The effective date remains the same.*

**1341 Workers' Compensation Regulations
(Break in Continuity of Sections)**

4.0 Workers' Compensation Health Care Payment Rates for Physicians, Other Qualified Health Care Professionals, and Hospitals and Hospital Outpatient Facilities, as well as Ambulatory Surgery Centers (the "Fee Schedule"). Instructions and Guidelines

(Break in Continuity Within Section)

4.6 Hospital Outpatient and Ambulatory Surgical Treatment Methodology

(Break in Continuity Within Section)

- 4.6.3 Reimbursement shall be made at the lesser of the maximum allowable or billed charges notwithstanding the contract provision in 19 **Del.C.** §2322B(6). Rules regulating payment of hospital outpatient and ASC fees are primarily from OPPS. Reimbursement for hospital outpatient and ASCs shall be in compliance to The Code of Federal Regulations (CFR) Part 4.19 et seq. Of Title 42. OPPS reimbursement incorporates Ambulatory Payment Classification (APC) groups. Procedure codes (HCPCS Level I and II) are assigned an APC group based on clinical characteristics and cost similarities. CMS assigns relative weights to the APC groups. CPT Category II and III codes may fall in an APC, they are not recognized in the HCPCS.

***Please Note:** As the rest of the sections did not need correction, they are not being published.

**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

2400 Board of Examiners of Constables

*** Please Note:** *This regulation was inadvertently excluded from the Proposed Regulations that were published on January 1, 2015. It is being published here as an Errata.*

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend/adopt Rules: 1.0 - Licensing - combines the old Rules 1.0 Experience, 3.0 Law Enforcement Exemption, and 4.0 Employment; 6.0 - Baton, Nightstick, PR24, Chemical Spray, and Handcuffs, 7.0 - Electronic Control Device (ECD), 8.0 - Canine - makes training mandatory and instructor certification requirements. If you wish to view these amendments/adoptions, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by March 31, 2015, to Delaware State Police, Professional Licensing,

P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on May 1, 2015, at 10:00 a.m., Room 112, Tatnall Building, 150 Martin L. King, Jr. Boulevard, South, Dover, DE.

2400 Board of Examiners of Constables

4.0 Experience

A constable must meet the minimum training standards as established by the Board.

1.0 Licensing

- 1.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 1.2 All applicants shall be required to submit an application and their fingerprints to the Professional Licensing Section on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 1.3 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the Council on Police Training or a member or employee of a law enforcement organization of any other state or federal jurisdiction.
- 1.4 All applicants who were not prior law enforcement, in any jurisdiction, must meet the minimum training standards as established by the Board. They must also submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position that the applicant is psychologically fit to function as a competent Constable.
- 1.5 Applicants, who were prior law enforcement officers in any jurisdiction in the State of Delaware, and have been away from active law enforcement under five years, will be considered for commissions on a case-by-case basis. Applicants who were prior law enforcement outside the State of Delaware will be required to take, and pass, a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.
- 1.6 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.
- 1.7 Applicants who are retired military law enforcement, corrections officers, or probation & parole shall take the class and submit to the MMPI/PAI.
 - 1.7.1 At the discretion of the Board, for good cause shown, the class may be waived.
- 1.8 If an applicant wishes to work for more than one agency, they must submit an application and be approved by the Board for each agency. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section.
- 1.9 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.10 All applicants seeking a commission renewal as a constable shall be required to submit a \$100.00 renewal licensing fee and shall accompany each re-application thereafter.
- 1.11 All commissions will expire on December 31st, two years from the year the commission was first issued. Any commissions needing to be adjusted will be charged a pro-rated fee.

2.0 Appeal

- 2.1 Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.

- 2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.
- 2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).
- 2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

3.0 Law Enforcement Exemption Reserved

- 3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.
- 3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 4.0, and a comprehensive, multiple choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

4.0 Employment Reserved

- 4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 4.2 All applicants must submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.
- 4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 4.4 No full time police officer may apply for a commission as a constable.
- 4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.
- 4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.
- 4.7 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the council on Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction.

5.0 Firearm's Policy

- 5.1 No person licensed under 10 Del.C. §2703 shall carry a firearm unless that person has first passed an approved firearms course of instruction and an initial qualification administered by a Board 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).
- 5.2 Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per constable 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 (1) mandatory "low light" shoot. 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.
 - 5.2.1 A constable year shall be June 1st to May 31st.
 - 5.2.2 An individual not meeting the minimum qualifications set forth in 5.2. may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the constable year.

- 5.3 Firearms - approved caliber of weapons
 - 5.3.1 9mm
 - 5.3.2 .357
 - 5.3.3 .38
 - 5.3.4 .40
- 5.4 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.
- 5.5 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.6 All individuals must qualify with the same make/model/caliber of weapon that he/she will carry.
- 5.7 All ammunition will be factory fresh (no re-loads).
- 5.8 The minimum passing score is 80%.
- 5.9 All licenses are valid for a period of one (1) constable year.
- 5.10 Firearms Instructors
 - 5.10.1 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".
 - 5.10.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified shotgun instructor may only instruct and qualify individuals with the shotgun.)
 - 5.10.3 All firearms instructors must be approved by the Board before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

6.0 Baton, Nightstick, Pr24, Chemical Spray, and Handcuffs

- 6.1 To carry the above weapons/items a constable must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.
- 6.2 Weapon/Item Instructors
 - 6.2.1 All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

7.0 Electronic Control Device (ECD)

- 7.1 In order for a constable to carry/use an electronic control device (ECD), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.
- 7.2 ECD Instructors
 - 7.2.1 All ECD instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

8.0 Canine

- 8.1 In order for a constable to use a canine, he/she, and the canine, must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.
- 8.2 Canine Instructors
 - 8.2.1 All canine instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 727

PUBLIC NOTICE

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

727 Credit for Experience for Educators and for Secretarial Staff

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 727 Credit For Experience For Educators and For Secretarial Staff. This regulation is amended to clarify the credit for experience received for individuals who graduate from a five year preservice program as defined in the regulation and for individuals who graduate from a four year preservice program with a GPA of 3.75 or higher.

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is not intended to address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

727 Credit for Experience for Educators and for Secretarial Staff

1.0 Educators Graduating from a 5 Year or 4 Year Preservice Program

1.1 Definitions

- 1.1.1 The following words and terms when used in this subsection shall have the following meaning unless the context clearly indicates otherwise:

"Eligible Employee" includes, but is not limited to, teachers, nurses, librarians, psychologists, therapists, and counselors paid in accordance with 14 **Del.C.** §1305 that were hired into their first professional position after June 30, 2001 and zero years of experience. The exception to the zero years of experience would be an employee who qualified for military experience credit under 14 **Del.C.** §1312(a) and 14 **DE Admin. Code** 706.

"Five Year Preservice Program" means a regionally accredited college or university five year planned degree program which includes an extensive clinical component or internship in the fifth year.

"Four Year Preservice Program" means a regionally accredited college or university four year preservice undergraduate bachelor degree program.

"Grade Point Average (GPA)" means the grade point average (GPA) stated on the official transcript of the regionally accredited college or university granting the bachelor's degree in the Four Year Preservice Program.

- 1.2 Pursuant to 14 **Del.C.** §1312(a), ~~a graduate of a five year preservice program, or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent, shall be granted one year of experience on the applicable state salary schedule. one year of experience on the applicable state salary schedule shall be granted to:~~
 - 1.2.1 A graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent; or
 - 1.2.2 A graduate of a five year preservice program as defined above.

1.3 An employee eligible for one year of credited experience shall meet the definition of Eligible Employee in 1.1 and meet the requirements of 1.2.

2.0 Administrators

No credit for experience shall be given for part time employment in administrative or supervisory positions.

3.0 Teachers

3.1 Days taught as a substitute or as a paraeducator may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.

3.1.1 A "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during any 12 consecutive month period.

4.0 Secretarial Staff

Secretaries may be granted one (1) year's of experience for each creditable year of experience as a secretary in private business, public or private school, or other governmental agency.

5.0 Creditable Experience

Creditable experience includes experience obtained while working outside of Delaware.

6.0 Applicability

This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 **Del.C.** Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 **Del.C.** Ch. 13.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Medicaid 1915 Home and Community-Based Services Waiver Programs - Statewide Transition Plan

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is making available for public review and comment Delaware Medicaid's *Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy Development and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 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

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) is making 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 will be submitted to CMS by March 17, 2015.

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 gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the Transition Plan. Comments must be received by 4:30 p.m. on March 31, 2015. Comments and input regarding the draft transition plan may be submitted in the following ways:

By email: Sharon.Summers@state.de.us

By fax: 302-255-4425 to the attention of Sharon L. Summers

By written comments sent to:

Sharon L. Summers
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

Delaware 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.

A summary of comments, in addition to a summary of modifications made in response to the public comments, will be added to the Delaware HCBS Transition Plan. The state will post on the DMMA website a summary of public comments and our responses and, the final transition plan with any modifications after the receipt of public comments.

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/>.

Hard copies are available by contacting Arlene Baal at Arlene.Baal@state.de.us.

Hard copies are available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 a.m. – 4:30 p.m.

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.

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 Rule 2.0 Suspensions, Revocations, and Appeals – to explain the process an individual may go through when their commission has had action against them. If you wish to view this amendment/adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by March 31, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on May 1, 2015, at 10:00 a.m., Room 112, Tatnall Building, 150 Martin L. King, Jr. Boulevard, South, Dover, DE.

2400 Board of Examiners of Constables

(Break in Continuity of Sections)

2.0 Appeal

- 2.1 ~~Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.~~
- 2.2 ~~A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.~~
- 2.3 ~~Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).~~
- 2.4 ~~The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.~~

2.0 Suspensions, Revocations and Appeals

- 2.1 The Director of the Professional Licensing Section shall have the power to suspend or revoke the commission of any individual issued a commission under 10 Del.C. Ch. 27 who violates the Chapter or the promulgated Rules and Regulations.
- 2.2 The Director of the Professional Licensing Section may issue an emergency suspension of any individual issued a commission, under 10 Del.C. Ch. 27, who has been arrested where that arrest could result in the conviction of any misdemeanor or felony that violates the Chapter or the promulgated Rules and Regulations.

-
- 2.3 Any individual whose commission has been placed on emergency suspension, suspended, revoked, or denied may, within 30 days of such notice, submit a written request of the appeal to the Director of the Professional Licensing Section.
- 2.4 A hearing before the Board will be convened on a date determined by the Board to resolve the appeal.
- 2.5 The Board decision, in writing, will be mailed to the applicant within 10 working days after the hearing.

***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

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 Del.C. §105(a)(1))
24 DE Admin. Code 100

PUBLIC NOTICE

100 Board of Accountancy

Pursuant to 24 Del.C. §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to successful completion of the AICPA self-study program "Professional Ethics for CPAs" are proposed to be amended to require completion of the course within 10 years of the date of application for licensure.

A public hearing will be held on April 23, 2015 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until May 8, 2015 in accordance with 29 Del.C. §10118(a).

100 Board of Accountancy (Break in Continuity of Sections)

4.0 Requirements for a Certificate and Permit to Practice Certified Public Accountancy

- 4.1 Each applicant for a certificate and permit to practice certified public accountancy must provide the Board with the following:

(Break in Continuity Within Section)

- 4.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90% within 10 years of the date of the application.

(Break in Continuity of Sections)

6.0 Requirements for Permit to Practice Public Accountancy

- 6.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

(Break in Continuity Within Section)

PROPOSED REGULATIONS

- 6.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90% within 10 years of the date of the application.

(Break in Continuity of Sections)

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

100 Board of Accountancy

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

PUBLIC NOTICE

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

Pursuant to 24 Del.C. §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules are amended to adopt the most recent versions of the International Mechanical and International Fuel Gas Codes.

A public hearing will be held on April 14, 2015 at 8:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be April 29, 2015 which is 15 days following the public hearing.

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

(Break in Continuity of Sections)

4.0 Reserved Code Adoption

The Board hereby adopts the 2015 International Mechanical Code (IMC) and the 2015 International Fuel Gas Code (IFC), as amended. The Board reserves the right to modify both codes, by further rulemaking, as it deems appropriate.

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

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

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 4002

IN THE MATTER OF THE INVESTIGATION AND
ADOPTION OF RULES TO GOVERN PAY PHONE
SERVICES WITHIN THE STATE OF DELAWARE
(OPENED OCTOBER 9, 1984; REOPENED JUNE
7, 1997; REOPENED JANUARY 29, 2002 AND
REOPENED FEBRUARY 5, 2015)

PSC REGULATION DOCKET NO. 12

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S "REGULATION GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE"

TO: ALL TELECOMMUNICATIONS CARRIERS, ALL CONSUMERS, AND OTHER INTERESTED PERSONS

In 2002, the Public Service Commission ("PSC") adopted "Regulation Governing Payphone Service Providers in Delaware" to govern its regulatory oversight of payphone service providers operating within Delaware.

By PSC Order No. 8705 (Feb. 5, 2015), the PSC now proposes to eliminate these Regulations. The proposed change is a result of new legislation (H.B.96) which was effective on July 15, 2013 and the increasing and near total replacement of payphones with mobile phones.

The text of the current Regulations and the red-lined version are attached to PSC Order No. 8705. That Order and the exhibits are reproduced in the March 2015 edition of the Delaware *Register of Regulations*. The Order and exhibits can also be reviewed on-line at the PSC's website at www.state.de.us/delpsc. You can also obtain a paper copy of the Order at the PSC's Dover office. Those paper copies will cost \$0.25 per page.

You can file written comments, suggestions, briefs, compilations of data, or other materials concerning this proposed amendment. Such material (10 copies or file online to our Delafile system) must be submitted to the Commission on or before Thursday April 2, 2015. Send the material to the Commission's Dover office at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckt. No. 12

In addition, the PSC will conduct a public hearing on these proposed changes on Wednesday, April 15, 2015, beginning at 10:00 AM. The hearing will take place at the Commission Hearing Room located at 861 Silver Lake Blvd, First Floor, Dover, Delaware. You can submit additional materials then.

If you are handicapped and might need assistance or aids in participating in this matter, please contact the PSC to discuss the needed assistance or aids. You can contact the PSC with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You can also send inquiries by Internet e-mail addressed to psc@state.de.us.

4002 Regulations Governing Payphone Service Providers in Delaware (Docket 12)

ORDER NO. **8705**

This 5th day of February, 2015, the Commission determines and Orders the following:

A. BACKGROUND AND SUMMARY

1. In June 1984, the Federal Communications Commission ("FCC") released an Opinion and Order¹ permitting the registration of customer owned or provided coin-operated telephones, thereby removing any Federal impediment to competition in the coin telephone market. The FCC determined that technological advances made it possible for pay telephones to be competitively provided by the private sector. Previously, Bell Operating Companies, such as Diamond State Telephone Company (currently Verizon Delaware LLC) provided payphone service. In light of this FCC Opinion and Order, the Commission opened a regulation docket, noticed, took public comments, developed proposed rules and regulations, and finally approved "Rules and Regulations Governing Service Provided by Customer Owned Coin-Operated Telephones" in P.S.C. Order No. 2662 (July 9, 1985).

2. Under the provisions of 47 U.S.C. §276, as added by the Telecommunications Act of 1996, Congress directed the FCC to promulgate regulations to ensure fair compensation for all payphone service providers and to ensure competitive parity between payphone service providers and payphone services provided by Bell Operating Companies. In its orders² implementing §276, the FCC directed the state commissions to open a proceeding to perform a two-phase restructuring and deregulation of payphone services.

3. The Commission determined to pursue this proceeding in two tracks. Track 1 considered issues relating to the removal of exit and entry barriers, the implementation of market-based local calling rates, and such regulations needed to protect consumers in a competitive payphone market place. Track II considered the design of a state plan to implement, administer and fund public interest payphones. The proceeding for Track 1 was opened by P.S.C. Order No. 4525, dated June 17, 1997. New rules and regulations were approved by the Commission in Findings, Opinion & Order No. 4651 dated November 18, 1997. Track II was concluded in August 1998 with the Commission decision (P.S.C. Order No. 4885, dated August 25, 1998) against creating rules for a state plan to implement, administer and fund the placement of "public interest" payphones in locations where payphones are needed but might not otherwise exist.

4. By P.S.C. Order No. 5868, dated January 29, 2002, the Commission reopened this Docket to make amendments to the 1997 "Regulations Governing Payphone Service Providers in Delaware". The proposed changes focused on two areas. First, one revision codified a prior decision by the Commission to allow payphone service providers (and now operator services providers) to disclose orally the price for obtaining directory assistance from the payphone's directory assistance provider. This oral disclosure option could be used in lieu of posting such price on, or near, the payphone instrument. Second, other amendments expanded the scope of the Payphone Regulations to encompass operator services and Operator Services Providers ("OSPs") and required such OSPs to afford the payphone consumer the opportunity to obtain a real-time oral rate quote for a non-coin intrastate call made utilizing the assistance of the OSP. By P.S.C. Order No. 5965, dated June 4, 2002, the Commission approved the Proposed Rules. These are the Rules that are currently in place and as shown in Exhibit "A".

B. AUTHORITY FOR AMENDMENTS

5. The Commission is generally empowered to promulgate regulations governing the operations of public utilities. See 26 Del.C. §209(a)(1).

C. SUMMARY OF THE REVISIONS

6. By this Order, the Commission now proposes to delete these Rules in light of the passage of Delaware House Bill No. 96 which took effect on July 15, 2013. The legislative revisions to Title 26 of the Delaware Code reduces the Public Service Commission's oversight of telecommunications services. Also, with the widespread availability and use of mobile phones, competitive market pressures are adequate to regulate price, availability and

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1. Memorandum, Opinion and Order, FCC84-270, released June 25, 1984.
 2. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("First Report and Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Second Report and Order").

terms of service for telecommunication services. Payphones are still used in “inmate facilities” and state-maintained rest areas, which are State Contracts with certificated telecommunications service providers.

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

1. That, pursuant to 26 **Del.C.** §§209 and 703(3), the Commission proposes to eliminate “Regulations Governing Payphone Service Provider in Delaware” (Docket 12). The current rules are set forth in Exhibit “A” to this Order and the redlined version of the existing rules are set forth in Exhibit “B”.

2. That, pursuant to 29 **Del.C.** §§1133 & 10115, the Acting Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the Delaware *Register of Regulations*.

3. That, pursuant to 26 **Del.C.** §209 and 29 **Del.C.** §10115(a)(2) & (b), the Acting Secretary shall cause the form of public notice attached as Exhibit “C” to be published in two-column format, outlined in black, in the following two newspapers on the following dates:

The News Journal (February 12, 2015)

Delaware State News (February 13, 2015)

The Acting Secretary shall also ensure, pursuant to 29 **Del.C.** §10115, that a copy of such notice is sent to the Registrar of Regulations for its publication in the *Register of Regulations*. In addition, the Acting Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advanced notice of this Commission’s rule-making proceedings. The Acting Secretary shall file a certification of the completion of these tasks by March 1, 2015.

4. That interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before Thursday, April 2, 2015. Pursuant to 26 **Del.C.** §209(a), the Commission, through its designated Hearing Examiner, will hold a public hearing on the proposed amendments on Wednesday, April 15, 2015, beginning at 10:00 AM in the Commission’s Hearing Room located at 861 Silver Lake Blvd., First Floor, Dover, Delaware.

5. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10117, the Commission designates Hearing Examiner R. Campbell Hay to organize, classify, summarize, and make recommendations concerning the rule changes proposed by this Order in light of the submitted materials and public hearings. Hearing Examiner Hay is specifically authorized to conduct further hearings or direct submission of additional documents if deemed necessary or appropriate.

6. 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.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Jeffrey J. Clark, Commissioner

Harold B. Gray, Commissioner

ATTEST:

Donna Nickerson, Acting Secretary

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

4002 Regulations Governing Payphone Service Providers in Delaware (Docket 12)

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF MAINTENANCE AND OPERATIONS

Statutory Authority: 17 Delaware Code, Section 1103 (17 Del.C. §1103)
2 DE Admin. Code 2310

PUBLIC NOTICE

2310 Outdoor Advertising

Comment Period for Draft Regulation Revisions

Background

The Department of Transportation has developed a general revision of its Outdoor Advertising regulations.

The last such general revision took place many years ago. The development of digital advertising media and other changes in both Federal and State law regarding outdoor advertising caused the Department to engage in this process.

Among other changes, the regulations would refer to the National Highway System, instead of the prior references to the Interstate and Primary System. It adds and updates several definitions, such as decorative subdivision entrance signs and historical markers, and makes other changes to deal with variable message signs.

Public Comment Period

The Department will take written comments on the proposed Outdoor Advertising Regulations for this from March 1, 2015 through March 31, 2015. The proposed Regulations appear below.

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

Jeff Leonard
Outdoor Advertising and Roadside Control Manager
Division of Maintenance and Operations
Delaware Department of Transportation
250 Bear-Christiana Road
Bear, DE 19701
(302) 326-4585 (telephone)
(302) 739-2895 (fax)
jeff.leonard@state.de.us

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

2310 Outdoor Advertising

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

HARNESS RACING COMMISSION

DELAWARE STANDARDBRED BREEDERS' FUND

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

ORDER

502 Delaware Standardbred Breeders' Fund Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 **Del.C.** §4815(b)(3)b.2.D and §10115, the State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations. Proposed amended regulation 9.2 includes consolation races as part of the Breeder's Bonus. The added payments will commence with the racing year of 2015.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware *Register of Regulations* for January 1, 2015 in accordance with 29 **Del.C.** §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

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

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and

FINAL REGULATIONS

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

IV. ORDER

AND NOW this 10th day of February, 2015, it is hereby ordered that:

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

IT IS SO ORDERED.

Tom Cook
Mark Davis
Charles Lockhart
Matt Sparacino

Wayne Givens
Garnet O'Marrow
Andy Markano
Garrett Bell

***Please note that no changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 493 (18 DE Reg. 493). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 235

REGULATORY IMPLEMENTING ORDER

235 Teacher of the Year Award

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** 235 Teacher of the Year. This amendment is needed to clarify the representatives serving on the panel of judges for the Teacher of the Year Award.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2015, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 235 Teacher of the Year to clarify the representatives serving on the panel of judges for the Teacher of the Year Award.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 235 Teacher of the Year. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 235 Teacher of the Year attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 235 Teacher of the Year 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** 235 Teacher of the Year amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 235 Teacher of the Year 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 February 19, 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 19th day of February 2015.

Department of Education

Mark T. Murphy, Secretary of Education

***Please note that no changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 494 (18 DE Reg. 494). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

235 Teacher of the Year Award

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

7000 Certification and Regulation of Medicaid Managed Care Organizations

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding fiscal solvency standards for managed care organizations (MCOs) serving State Medicaid clients, specifically, *Certification and Regulation of Medicaid Managed Care Organizations*. 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 January 2015 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 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

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Division of Social Services Manual (DSSM) regarding fiscal solvency standards for managed care organizations (MCOs) serving State Medicaid clients, specifically,

Certification and Regulation of Medicaid Managed Care Organizations.

Statutory Authority and Other References

- Section 1902(a)(4) of the Social Security Act, *State Plan for Medical Assistance, Methods of Administration*
- Section 1903(m), *Medicaid Managed Care Organization*
- 29 Del. C. §7931, *Division of Medicaid and Medical Assistance*
- 42 CFR § ~~483.1~~ **[438.1]**, *Managed Care, Basis and scope*
- 42 CFR § ~~483.116~~ **[438.116]**, *Solvency standards*
- State Medicaid Director Letter, December 30, 1997, *An array of provisions including beneficiary protections, solvency standards and contract administration*

Background

Medicaid Managed Care

Managed Care is a health care delivery system organized to manage cost, utilization, and quality. Medicaid managed care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements between state Medicaid agencies and managed care organizations (MCOs) that accept a set per member per month (capitation) payment for these services. By contracting with various types of MCOs to deliver Medicaid program health care services to their beneficiaries, states can reduce Medicaid program costs and better manage utilization of health services. Improvement in health plan performance, health care quality, and outcomes are key objectives of Medicaid managed care.

Managed Care in Delaware

Delaware has been operating a mandatory managed care program since 1996 when it implemented Diamond State Health Plan (DSHP), which covers acute, primary, and behavioral health care services for low-income children, families, and adults; children and adults with disabilities; and foster care children. In April 2012, the state expanded managed care to additional populations and added long term supports and services (LTSS) to the benefit package with the implementation of the DSHP-Plus program. This program enrolls dual eligible beneficiaries, individuals enrolled in the Elderly and Disabled and AIDS home and community-based service (HCBS) waivers, and nursing facility residents on a mandatory basis and provides LTSS and acute, primary, and behavioral health care services to eligible individuals. DSHP and DSHP-Plus cover a limited number of outpatient and inpatient behavioral health and substance abuse services and any services in excess of the limits on visits are provided as a fee-for-service wraparound.

Solvency Standards

With respect to solvency standards imposed on the MCO by the State, federal law indicates that MCOs should meet solvency standards that the State establishes for its private MCOs or should be licensed by the State as risk-bearing entities. In accordance with above-referenced federal and state regulations:

1. States are authorized to administer Medicaid through Medicaid managed care organizations (each an "MMCO").
2. An MMCO shall provide assurances satisfactory to the State showing that its provision against the risk of insolvency is adequate to ensure that its Medicaid enrollees will not be liable for the debts if the MMCO becomes insolvent.
3. An MMCO, in order to make the required showing under Section 438.116(a), must either meet state solvency requirements for a private health maintenance organization, or be licensed or certified by the State as a risk bearing entity.

Summary of Proposal

Purpose

The purpose of these regulations is to create standards of fiscal solvency. These regulations establish the standards by which Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) will evaluate and, where appropriate, certify insurers as MMCOs.

Summary of Proposal

This administrative regulation establishes the operational and related requirements and policies of managed care organization serving State Medicaid clients. DHSS/DMMA proposes new DSSM 70000 concerning the solvency standards required by managed care organizations participating in the Delaware Medical Assistance Program (DMAP). This new section is proposed as, *Certification and Regulation of Medicaid Managed Care Organizations* and is consistent with federal regulations.

Public Notice

In accordance with public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act, and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is seeking public comment on the proposed regulations.

Fiscal Impact Statement

There is no fiscal impact.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

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

GACEC and SCPD

As background, DMMA contracts with MCOs to administer the Diamond State Health Plan and Diamond State Health Plan Plus programs. Federal regulation 42 C.F.R. §438.116 (attached) requires MCOs to either meet state solvency standards for private health maintenance organizations or be licensed or certified by the state as a risk-bearing entity. Delaware DMMA is adopting the second option, i.e., it will certify MCOs which meet certain standards contained in the proposed regulation.

Agency Response Note: This characterization is correct. Thank you for your thoughtful comments on the proposed standards for the regulation of the financial solvency of MCOs.

GACEC and SCPD have the following observations:

First, on p. 504, the references to 42 C.F.R. §483.1 and 42 C.F.R. §483.116 are incorrect. The correct citations are 42 C.F.R. §438.1 and 42 C.F.R. §438.116 respectively.

Agency Response: This edit has been made.

Second, §3.1.2 requires an MCO to demonstrate "net equity in excess of \$[10] million." At a minimum, the brackets should be deleted. On a substantive level, the Councils questions whether net equity of \$10 million is sufficient. Delaware's Medicaid population has grown to approximately 230,000 individuals. See DHSS Secretary's FY16 budget presentation to OMB (November 20, 2014), available at <http://www.dhss.delaware.gov/dhss/index.html>. Most of Delaware's Medicaid population is served by two MCOs (Highmark; United Healthcare). Assuming equal enrollment, each MCO would serve 115,000 individuals and have approximately \$86 in equity for each participant. Some of the \$10 million in equity could be in fixed or non-liquid assets out-of state or out of the country. We recognize that the managed care system is intended to not tap equity, i.e., monthly State capitation payments (§5.2) should ideally cover MCO outlays. Moreover, DMMA enjoys the protection of a performance bond equal to one month's capitation payment. In reality, an MCO could suffer huge losses if an epidemic or natural disaster resulted in unanticipated health costs. An MCO with only \$10 million in net equity may be unable to absorb such costs.

Agency Response: The recommended deletion of the brackets has been made. DMMA believes that the \$10 million in net equity, coupled with the required performance bond and certification of financial stability, is adequate.

Third, §5.0 may merit further review to ensure consistency. On the one hand, an MCO is required to submit a performance bond equal to the projected first month's capitation payment "up front". See §§5.1 and 5.2. On the other hand, §5.4 requires MCO supplementation of the bond "if the performance bond falls below 90% of the first month's capitation in any month". Literally, this could never occur since the performance bond based on 100% of

the first month's capitation amount was already submitted to DMMA up front. If DMMA intends that the MCO increase the bond based on later increases in monthly capitation amounts, the regulation should be reworded.

Agency Response: DMMA has made changes to the regulation based on this comment. First, it has stricken the words "and submit" since the MCOs will maintain the performance bond, and report that to DMMA. The performance bond is only required to cover startup costs for the first 12 months of the MCO contracts. Thereafter, DMMA gauges and assesses the financial stability of the MCO through record review and mandatory notice requirements contained in the MCO contracts.

Fourth, §9.1 contemplates MCO maintenance of a system for tracking incurred but unreported costs and unpaid claims by category (e.g. hospital; nursing facility). The MCO is expected to review its system annually and DHSS can prompt adjustments. DMMA may wish to consider requiring a 6-month report of data under this section. If a year passes, and the system/methodology has resulted in grossly inadequate reservation of funds, it may be too late to intervene in the face of huge unpaid bills.

Agency Response: DMMA believes that the regulation as written, e.g. annual reviews, not biannual reviews, of the methodology for estimating and tracking IBNR, is appropriate. The MCOs are required to report actual IBNR to DMMA quarterly. DMMA believes that this mechanism addresses the concerns raised by this comment.

Fifth, it's unclear when the performance bond required by §5.0 lapses. Obviously, an MCO which terminates its participation as an MCO will still have to cover bills incurred during the contract period. It is possible that the DMMA-MCO contract addresses the duration of the performance bond. If it does not, the regulation could be revised to include some standards.

Agency Response: The DMMA-MCO contract does indeed authorize collection of unpaid monies from the performance bond to collect in the event of an MCO default.

GACEC

Sixth, Council would also recommend that GAAP and STAT be spelled out in sections 3.1.2 and 4.1.1.

Agency Response: This edit has been made.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding fiscal solvency standards for managed care organizations (MCOs) serving State Medicaid clients, specifically, *Certification and Regulation of Medicaid Managed Care Organizations*, is adopted and shall be final effective March 10, 2015.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #15-05

NEW

70000 Certification and Regulation of Medicaid Managed Care Organizations

(Break in Continuity of Sections)

3. Experience and Net Worth

3.1 Either the MMCO, or a parent company or person affiliated with the MMCO, shall demonstrate, to the satisfaction of DHSS, the following:

3.1.1 Five years' experience writing or administering health insurance benefits or administering health plans, or both.

3.1.2 Audited financial statements for the most recent calendar or fiscal year demonstrating, on a consolidated basis, [GAAP generally accepted accounting principles] net equity in excess of [~~\$10~~ \$10] million.

4. Identification of Accountant, Auditor and Actuary

4.1 Each MMCO seeking certification shall identify:

4.1.1 The person or persons responsible for preparing the MMCO's financial statements in U.S. [GAAP and/or STAT generally accepted accounting principles] format and for preparing any financial reporting required under the Contract. Such person shall have accounting or finance training and experience, and shall have experience in the preparation of financial statements for health plans.

(Break in Continuity Within Section)

5. Performance Bond

5.1 Prior to certification, the MMCO shall obtain [and submit to DHSS] a performance bond from a surety licensed to write surety business in Delaware and rated A- (Excellent) or better by A.M. Best and Company. The performance bond shall be restricted to the Contract.

(Break in Continuity Within Section)

(Break in Continuity of Sections)

*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 504 (18 DE Reg. 504). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

70000 Certification and Regulation of Medicaid Managed Care Organizations

DIVISION OF SOCIAL SERVICES

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

ORDER

REVISION OF THE REGULATION OF DELAWARE'S DIVISION OF SOCIAL SERVICES MANUAL (DSSM)

11003.4, 11003.4.2, 11003.4.3, 11003.4.4, 11003.4.6, 11003.4.7, 11004.2.1 and 11004.11

Child Care Subsidy Program, Child Support Policies and Procedures

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*. 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 January 2015 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced January 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

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures*.

Statutory Authority

45 CFR §98.1, *Goals and purposes*

45 CFR §98.20, *A child's eligibility for child care services*

45 CFR §205.10, *Hearings*

Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead

agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

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

Summary of Proposed Changes

The Division of Social Services (DSS) is removing and amending child support rules that require a client to cooperate with the Division of Child Support Enforcement (DCSE) as a condition for eligibility for subsidized child care services. The current rule creates unintended delays and barriers to accessing child care services to low income working families seeking assistance.

There are a number of valid reasons that lead parents to decide not to pursue formal child support services. Many parents have informal agreements that establish the non-custodial parent will assist the custodial parent in supporting their children in common. Sometimes those agreements include cash payments to the non-custodial parent at other times support is made in the form of non-cash assistance such as paying specific bills, providing services, or purchasing items needed by the family. Mandating child support cooperation or court involvement is seen by many custodial parents as potentially jeopardizing the relationship that has been forged with the non-custodial parent and as a threat to relationship between the non-custodial parent and their children. Additionally there are circumstances when parents decide not to pursue child support services for fear of retributions from the absent parent; this is often the case in domestic violence situations even though parents may request good cause for non-cooperation with child support enforcement. In these cases, employment or appropriate care of children can be put in jeopardy. Whatever the immediate reason for not accessing services through DCSE, these families have the option of pursuing assistance through DCSE on a volunteer basis at any time.

The following policy sections in the Division of Social Services Manual (DSSM) are affected by the proposed changes:

- DSSM 11003.4, ~~Cooperating with Child Support~~ RESERVED
- DSSM 11003.4.2, ~~Sanctions for Child Support Non-Cooperation~~ RESERVED
- DSSM 11003.4.3, ~~Curing Child Support Sanctions~~ RESERVED
- DSSM 11003.4.4, ~~Good Faith Determination~~ RESERVED
- DSSM 11003.4.6, ~~Fair Hearings~~ RESERVED
- DSSM 11003.4.7, ~~Child Support Enforcement Procedures~~ RESERVED
- DSSM11004.2.1, ~~Conducting the Interview~~
- DSSM 11004.11, ~~Review/Determination~~

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

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

GACEC

The Division of Social Services (DSS) is removing and amending child support rules that require a client to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for subsidized child care services. The current rule creates unintended delays and barriers to accessing child care services to low income working families seeking assistance. GACEC **endorses** the proposed amendment since the Child Care Subsidy Program is an important support service for individuals enrolled in vocational training or engaging in employment.

GACEC would also like to share one minor observation. Section 11004.11 refers to a six month interim report. We did not identify any other references to a six-month report within Chapter 11000. DSS may wish to access whether the six-month report is still current practice.

SCPD

Historically, participants have been required to cooperate with the Division of Child Support Enforcement as a condition of eligibility. The Division is proposing to delete all regulations requiring such cooperation. Justification includes the following: 1) elimination of delays in accessing child care services; 2) undermining informal arrangements in which non-custodial parents provide supports; and 3) fear of retribution in domestic violence situations.

SCPD **endorses** the proposed regulation. The Child Care Subsidy Program is an important support service for individuals enrolled in vocational training or engaging in employment. Council has only one minor recommendation. Section 11004.11 refers to a six month interim report. SCPD did not identify any other references to a 6-month report within Chapter 11000. DSS may wish to assess whether the 6-month report is still current practice. If it is, the Division may wish to revise the following sentence: "Only child care/food benefit cases will receive an interim report." SCPD suspects that the word "receive" should be "require".

Agency Response: To clarify that the six-month interim report is current practice, DSS inserted the DSSM section number (DSSM 9068.1) as reference in Section 11004.11 and changed the word "receive" to "require". We further clarified the seventh paragraph of Section 11004.11 by inserting the title of the section (Prioritizing Service Needs). DSS appreciates and thanks both councils for the endorsement.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Child Support Policies and Procedures* is adopted and shall be final effective March 10, 2015.

February 16, 2015

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #15-03 REVISION:

~~11003.4 Cooperating with Child Support~~ **RESERVED**
(Break in Continuity of Sections)

11004.11 Review/Determination
(Break in Continuity Within Section)

Close the child care case if parents/caretakers fail to complete a review or return the six month interim report [(See **DSSM 9068.1 12-Month Certification Periods**)]. Only child care/food benefit cases will **[receive require]** an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.

(Break in Continuity Within Section)

Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1 **[Prioritizing Service Needs]**).

(Break in Continuity Within Section)

***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 514 (18 DE Reg. 514). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

Child Care Subsidy Program, Child Support Policies and Procedures

FINAL REGULATIONS

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2503 (18 **Del.C.** §§311 and 2503)
18 **DE Admin. Code** 607

ORDER**607 Defensive Driving Course Discount (Automobiles and Motorcycles)**

Proposed Amended Regulation 607 relating to Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37] was published in the Delaware *Register of Regulations* on January 1, 2015. The comment period remained open until January 30, 2015. There was no public hearing on proposed amended Regulation 607. Public notice of the proposed amended Regulation 607 was published in the *Register of Regulations* in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed amended Regulation 607 from:

- Delaware Defensive Driving, Inc., President Robert P. Reeder; and
- Property Casualty Insurers Association of America (PCI), State Government Relations Counsel Oyango A. Snell.

The collective comments were reviewed and considered. No amendments or changes were made to the proposed amended Regulation 607.

FINDINGS OF FACT

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

1. 18 **Del.C.** §§311 and 2503 of the Insurance Code requires a regulation to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Code.
2. The requirements of proposed amended Regulation 607 best serve the interests of the public and of insurers and comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 **Del.C.** §§311 and 2503, and of 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed amended Regulation 607 as may more fully and at large appear in the version attached hereto to be effective 10 days after being published as final.

TEXT AND CITATION

The text of proposed Regulation 607 last appeared in the *Register of Regulations* Vol. 18, Issue 7, pages 519-525.

IT IS SO ORDERED this 16th day of February, 2015.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 519 (18 DE Reg. 519). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

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

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §§901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3541

Secretary's Order No.: 2015-F-0003

3541 Atlantic Sharks

Date of Issuance: February 18, 2015

Effective Date of the Amendment: March 11, 2015

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-07 dated October 24, 2014. The Department published its initial proposed regulation amendments in the January 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on January 22, 2015. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through February 6, 2015.

The purpose of this Order is to adopt as final the aforementioned proposed amendments to these regulations ("Amendments") consistent with Addenda II and III to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks. The proposed Amendments will, through a variety of changes summarized below, maintain consistency between the federal 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (as amended) and ASMFC management plans, preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings, and protect hammerhead shark to maturity.

In accordance with Addendum II to ASMFC's IFMP, these proposed Amendments define a smoothhound (colloquially referred to as "smooth dogfish" or "sand sharks") complex. Although the smoothhound complex has not been assessed, NOAA Fisheries is developing a coastwide smoothhound quota. In anticipation of a coastwide quota, the ASMFC developed state allocations under Addendum II to preserve the historical distribution of smoothhound. Additionally, the proposed Amendments will also implement smoothhound shark finning limits consistent with the federal Shark Conservation Act of 2010 and 7 Del.C. §928A.

Consistent with Addendum III, the proposed Amendments adjust species groupings for management purposes. Most significantly, the proposed Amendments group scalloped (*Sphyrna lewini*), great (*S. mokarran*) and smooth (*S. zygaena*) hammerhead sharks into a single complex, as it is difficult to differentiate the species. A recent assessment of scalloped hammerhead sharks indicated that the species is overfished, and that overfishing is occurring. It was also determined that female scalloped hammerhead sharks reach maturity at 78 inches fork length (Hazin, et al. 2001, NOAA Fisheries FEIS for Amendment 5a, pp. 2-19). Therefore, NOAA Fisheries changed the recreational size limit for all hammerhead sharks to 78 inches, and the proposed Amendments adopt this restriction. The proposed Amendments also separate the blacknose shark (*Carcharhinus acronotus*) from the small coastal shark complex.

Lastly, these Amendments propose editorial and clerical changes to improve readability, and to enhance the public's understanding of the existing regulation, without changing the intent of the same.

The proposed Amendments to Delaware's existing *Atlantic Sharks* regulations were presented and thoroughly vetted by the Department at the public hearing on January 22, 2015. It should be noted that no members of the public attended said public hearing, nor was any comment received by the Department from the public at any time

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

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 9, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 3541: *Atlantic Sharks* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory amendments. The adoption of these regulatory amendments will allow Delaware to (1) maintain consistency between the federal 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (as amended) and ASMFC management plans; (2) preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings; (3) protect hammerhead sharks to maturity; (4) implement quota-based management for smoothhound (smooth dogfish); (5) implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 **Del.C.** §928A; (6) adjust the shark species groupings for management purposes; and (7) formally adopt a 78-inch minimum size limit for hammerhead sharks.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3541, pursuant to 7 **Delaware Code**, Sections 901 (c) & (d), 903(e)(2)a, and 903(e)(3);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on January 22, 2015, and held the record open through close of business on February 6, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory amendments will allow Delaware to (1) maintain consistency between the federal 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (as amended) and ASMFC management plans; (2) preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings; (3) protect hammerhead sharks to maturity; (4) implement quota-based management for smoothhound (smooth dogfish); (5) implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 **Del.C.** §928A; (6) adjust the shark species groupings for management purposes; and (7) formally adopt a 78-inch minimum size limit for hammerhead sharks;
6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory amendments, as published in the January 1, 2015 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed amendments to 7 **DE Admin. Code** 3541: *Atlantic Sharks* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

3541 Atlantic Sharks

(Break in Continuity of Sections)

2.0 Prohibited Species

- 2.1 It ~~shall be~~ is unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species ~~[(1-9)]~~.
- 2.42 It ~~shall be~~ is unlawful for any hook and line fisherman to remove from the water sandbar shark, or any other species of shark when prohibited from harvest under §3541.
- 2.3 It is unlawful for any person to engage in a directed commercial fishery for a prohibited ~~[(1-9)]~~ or research species ~~[(1-10)]~~.

3.0 Finning

- 3.01 ~~It shall be~~ Except as provided in 3.2, it is unlawful for any person to possess the fins from any shark in the management unit ~~[(1-6)]~~ prior to landing said shark unless said fins are naturally attached to the body of said shark.
- 3.2 A person issued a valid commercial food fish license may completely remove the fins from any smoothhound, provided the total weight of the fins does not exceed twelve (12) percent of the total dressed weight of smoothhound complex carcasses on board a vessel.

(Break in Continuity of Sections)

5.0 Filleting Prior to Landing

- 5-0 It ~~shall be~~ is unlawful for any person to fillet a shark in the management unit ~~[(1-6)]~~ prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, ~~except that~~ as provided in 3.2 and commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain

6.0 Shark Handling

- 6-0 It ~~shall be~~ is unlawful to release any shark in the management unit ~~[(1-6)]~~ or any sandbar shark in a manner that will not ensure said sharks maximum probability of survival. All species of shark when prohibited from harvest under §3541 must be immediately released.

7.0 Recreational Possession Limits

- 7.01 It ~~shall be~~ is unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit ~~[(1-6)]~~, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.
- 7.2 It is unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit ~~[(1-6)]~~ per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

8.0 Unlawful Sale

- 7-4 It ~~shall be~~ is unlawful for any shark from the management unit ~~[(1-6)]~~ caught in state waters to be bought and sold without a federal ~~Commercial~~ shark dealer permit.

9.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species. Commercial Quotas and Limits

- 8-09.1 It ~~shall be~~ is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from ~~among those species in the~~

FINAL REGULATIONS

management unit ~~[(4-6)]~~ during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce after the closure date set by NOAA Fisheries for that fishery. Further, it ~~shall be~~ is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any ~~non-sandbar large coastal sharks, small coastal sharks, or pelagic~~ non-prohibited sharks from the management unit in excess ~~excess~~ of current federal daily harvest limits administered by the National Marine Fisheries Service NOAA Fisheries.

(Break in Continuity Within Section)

10.0 Recreational Size Limits

10.01 ~~It shall be~~ is unlawful for the operator of any vessel to possess without a valid commercial foodfishing license ~~to have on board said vessel~~ any non-prohibited shark from among those species in the management unit ~~[(4-6)]~~ that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), ~~with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies~~ except as provided in 10.2 and 10.3.

10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species [(4-4)] that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

10.3 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.

(Break in Continuity of Sections)

*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 525 (18 DE Reg. 525). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

3541 Atlantic Sharks

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1400 BOARD OF ELECTRICAL EXAMINERS

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 Del.C. §1406(a)(1))

24 DE Admin. Code 1400

ORDER

1400 Board of Electrical Examiners

On December 1, 2014, the Delaware Board of Electrical Examiners published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 6. 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 January 7, 2015 at a regularly scheduled meeting of the Board of Electrical Examiners 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 on January 7, 2015. 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 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 written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §1406(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1406(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 December 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 4th day of February 2015.

DELAWARE BOARD OF ELECTRICAL EXAMINERS

Daniel Creedon

James Murrian

Thomas Hartley

Nathan Schreppler

Robert MacLennan

Michael Travers

Richard Millar

*Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 439 (18 DE Reg. 439). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1400 Board of Electrical Examiners

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1904(c), proposed to revise Regulations 8.10.2.1, 9.2.1.1.1.1.4, and 10.4.2.17. The proposed changes seek to correct a cross-reference error; bring Delaware into line with other states in regard to CME contact hours such that a contact hour will equal a clock hour; and allow the Board to discipline a nurse who possesses, obtains, supplies or administers an illegal drug.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on December 1, 2014 a public hearing was

held on January 14, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

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

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; 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 January 14, 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.** §1906(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes amend Board's Regulations 8.10.2.1, 9.2.1.1.1.1.4, and 10.4.2.17 and seek to correct a cross-reference error; bring Delaware into line with other states in regard to CME contact hours such that a contact hour will equal a clock hour; and allow the Board to discipline a nurse who possesses, obtains, supplies or administers an illegal drug.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as **Exhibit A**

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.54 and;

9.2.1.1.1.1.4 4 One C.M.E. = ~~4-2~~ 1.0 Contact Hours = 60 minutes

10.4.2.17 Diverting, possessing, obtaining, supplying or administering illegal drugs or prescription drugs to any person, including self, except, in the case of prescription drugs, as directed by a person authorized by law to prescribe drugs.

Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations* on March 1, 2015.

IT IS SO ORDERED this 11th day of February, 2015 by the Delaware Board of Nursing.

Robert Contino, EdD, RN, President

Raymond Moore, Public Member

Pam Tyranski, RN, Vice-President

Christine Moses, RN, CRNA

Kathy L. Bradley, LPN

Madelyn Nellius, Public Member

George Brown, Public Member

David Salati, RN

Linda Darling, RN

Harland Sanders, Jr., Public Member

Valerie Devereaux, RN

Victoria Udealer, RN (absent)

Dianne Halpern, RN (absent)

Megan Williams, RN, DNP, FNP-C

Nikki Lane, Public Member

*Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 445 (18 DE Reg. 445). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

2500 Board of Pharmacy

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 21, 2015 at a scheduled meeting of the Delaware Board of Pharmacy to receive comments regarding the Board's proposed revisions to its rules and regulations.

The proposed revisions consist of a new Rule 5.1.14.3 which specifies that disposal methods for prescribed medications must comply with State and Federal requirements. In addition, Rule 14.1.1 is amended to state that CPR certification must be obtained through hands-on education.

A public hearing was held on January 21, 2015 with deliberations conducted on February 18, 2015. The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 18, Issue 7, on January 1, 2015. Notice of the January 21, 2015 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was February 5, 2015, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 18, 2015.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

The Board received no written or public comment.

Findings of Fact and Conclusions

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

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed revisions will specify the disposal methods for dispensed medications and will require that all CPR certifications must be accomplished through hands-on education. The Board concludes that adoption of the rules and regulations as amended advances professional practice standards and is in the best interest of the public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 18, Issue 7 on January 1, 2015.

FINAL REGULATIONS

IT IS SO ORDERED this 18th day of February, 2015 by the Delaware Board of Pharmacy.
 Susan Esposito, R.Ph., Professional Member, Vice President
 Jay Galloway, Public Member
 Tejal R. Patel, PharmD, Professional Member
 Kimberly Robbins, R.Ph., Professional Member
 Hooshang Shanehsaz, R.Ph., Professional Member
 Bonnie Wallner, R.Ph., Professional Member
 Julia Wheatley, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 536 (18 DE Reg. 536). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2500 Board of Pharmacy

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 18 Delaware Code, Section 2503; 21 Delaware Code, Section 302
 (18 Del.C. §2503; 21 Del.C. §302)

ORDER

2224 Defensive Driving Course, Providers, and Instructors

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Proposed Regulation 2224 relating to Defensive Driving Course, Providers, and Instructors was published in the Delaware *Register of Regulations* on January 1, 2015. This proposed Regulation 2224 is pursuant to Senate Bill 178 with Senate Amendment 1 of the 147th General Assembly, which transfers the authority to regulate Delaware's state-approved defensive driving courses from the Department of Insurance to the Division of Motor Vehicles, with the exception of the regulatory authority over the insurance discount, as required by the program, which remains under the Department of Insurance.

Written comments were to be accepted regarding this proposal until January 30, 2015. There was no public hearing on proposed Regulation 2224. Public notice of the proposed Regulation 2224 was published in the *Register of Regulations* in conformity with Delaware Law.

No written comments were received on the proposed Regulation 2224. No amendments or changes were made to the proposed Regulation 2224.

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*.

TEXT AND CITATION

The text of proposed Regulation 2224 last appeared in the *Register of Regulations* Vol. 18, Issue 7, pages 540-545.

IT IS SO ORDERED this 20th day of February, 2015

Jennifer Cohan, Secretary
 Department of Transportation

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

January 2015 issue of the *Register* at page 540 (18 DE Reg. 540). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

2224 Defensive Driving Course, Providers, and Instructors

DIVISION OF PLANNING AND POLICY

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

2 DE Admin. Code 2309

REGULATORY IMPLEMENTING ORDER

2309 Standards and Regulations for Subdivision Streets and State Highway Access

1. Summary of the Evidence and Information Submitted

The Department of Transportation sought to adopt significant general revisions to its existing regulations regarding subdivision streets and state highway access, to broaden the title of these regulations to "Development Coordination Manual," and make several other changes.

The draft regulations were first published at 17 **DE Reg.** 1055 (05/01/2014), and written comments were sought. In addition, DeDOT held three public hearings regarding the proposed regulations, the notice for which appeared in 17 **DE Reg.** 1204 (06/01/14). These hearings were conducted on June 9, June 16, and June 23, 2014, in Kent, Sussex, and New Castle Counties respectively.

Based on the comments received, as well as additional review and input within the Department, DeDOT then sought additional comments regarding substantive changes made in the draft regulations issued May 1, 2014. The regulations were re-proposed and re-published for comment at 18 **DE Reg.** 455 (12/01/2014).

The Department received further comments from different sources, including additional review by its own staff. The comments received led to several non-substantive changes in the proposed regulations, detailed in the accompanying matrix, incorporated by reference into this Order.

2. Findings of Fact

The Secretary finds that it is appropriate to amend the existing regulations as proposed and amended as discussed in the accompanying matrix.

3. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the existing Standards and Regulations for Subdivision Streets and State Highway Access, by renaming the Regulations as the Development Coordination Manual, and further by adopting the general revisions to those regulations as described herein.

4. Text and Citation

The text of 2 **DE Admin. Code** 2309 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 11TH DAY OF FEBRUARY, 2015.

Jennifer L. Cohan, Secretary
Department of Transportation

FINAL REGULATIONS

No.	By	Section	Comment	Response
1	D.J. Hughes	P.5 Review Fees	TIS Review Fee has been pending since 2007. It should either be brought to a vote by the general assembly or removed. DelDOT responded to this previous comment that this was in the process. Hopefully, something is occurring either way.	Thank you for the comment and we hope to bring it to a vote this year. There was not support for any new fees in the past election year.
2	D.J. Hughes	P.6 and P.7	Thank you for adding LONC eligibility for projects over 200 ADT. However, the 3-year limit appears inconsistent with, and may be in conflict with, Title 17 Subsection 146 Access to state-maintained highways (d) which states: "For purposes of this section whenever the use to which a property is being put is changed such that there will be a significant alteration in the character, flow, or volume of traffic, as determined within the sole discretion of the Department, a new permit shall be required." There is no mention of references to time.	We established a time frame such that a business would get credit for recently operating and therefore be included in traffic counts in the area. If a large business is vacant for a period of time, it may not be reflected in traffic counts and analysis to accurately determine the level of service at an intersection. We decided on 3 years as a reasonable amount of time before the data gets old.
3	D.J. Hughes	P.8 Definitions	Thank you for adding the Travel Demand Model.	Noted.
4	D.J. Hughes	Section 1.1 Purpose	The last paragraph at bottom of Page 1-2 notes: "All new access permitting and other access design decisions shall meet the design standards in this chapter". Suggest changing shall to should as often site constraints do not lend the ideal conditions the standards are often intended for.	We believe that within the standards there is flexibility. That is if the standard provides for flexibility then you can still meet that standard. We will leave the language as proposed.
5	D.J. Hughes	Figure 1.1-a	Seems appropriate for say New Castle County but not Sussex County. Local streets are shown more as urban streets whereas Sussex has an expansive local roadway network.	The graphic is intended to show an overview of the different types of classifications and is not specific to Delaware or any particular County.
6	D.J. Hughes	Section 1.2.1	Is this intended for when a parcel is being subdivided and sold to others? Otherwise, what is meant by original property owner? If addressing separately owned adjacent commercial properties, should the section reference the property that develops first?	The original owner is the first owner to develop. We will make the change.

7	D.J. Hughes	Section 1.3	<p>Signalized Access Requirements. Traffic Signal Justification Study requirements being detailed are a welcome addition to the regulations. <i>The concern is the potential challenges in maintaining the existing bandwidth while also accommodating minimum pedestrian green times for the side streets. What if existing signals do not accommodate minimum pedestrian green times? Will maintaining existing bandwidth be feasible?</i> It is suggested to revise the word “shall” to “should” with respect to signal installation and the bandwidth requirements. There may be cases where the existing bandwidth perhaps cannot be maintained, but signalization is still the best option. For example, restricting movements at the site access to right turns could “flood out” an adjacent signalized intersection resulting in reduced bandwidth, perhaps more so than if a new signal were installed. The proposed King Property in Camden comes to mind as an example of that potential situation.</p>	We will revise to say should.
8	D.J. Hughes	Section 1.5 Arterials	<p>Private access should not be restricted to only the lower classification road. DeIDOT has agreed on multiple occasions that right-turn access for corner parcels on arterials is a safe alternative and in some cases more safe than prohibiting all access along the arterial. Implementing the regulations as written will not allow any access for corner parcels along US 13, US 113, US 9, US 301, SR 1, SR 2, SR 4, SR 6, SR 7, SR 8, SR 10, SR 10A, SR 12, SR 14, SR 15, SR 16, SR 18, SR 20, SR 37, SR 48, SR 52, SR 71, SR 202, SR 273, SR 299, SR 300, SR 404, Clapham Road, Carpenter Bridge Road, etc.</p>	We stand by our previous response. It is written in this way to explain that access on the arterial is the less desirable option but can be an acceptable option if the access from the lower classification roadway is not reasonable.

8	D.J. Hughes	Section 1.5 Arterials	<p><i>(continued)</i></p> <p>Many corner parcels need at least a right-in to function as safely and efficiently as possible. Access on the mainline is vital for corner parcel site access and often provides a safer option than funneling all traffic through a single access on the side street that may not be located an ideal distance from the mainline. Not allowing such access would be detrimental to corner parcels throughout the State, discourages businesses from locating on corner parcels without proper access, and is detrimental to economic development initiatives within the State of Delaware. Many examples can be found up and down US 13, US 113, and SR1. That option should still be readily available for corner parcels if access can be safely permitted. The character of the area and not simply the classification of the roadway should also be considered. While the DeIDOT response to this comment previously stated the intent is to explain access along the arterial is a less desirable option, the text reads as if the option is a last resort. Often times, access to the arterial is essential for site circulation purposes.</p>	
9	D.J. Hughes	Section 1.6.2 Collectors	<p>Design Standards notes "all collector roadways" and references 35 mph to 45 mph speeds. It is noted that there are many collector roadways within 25 mph speed zones that it would not make any sense to be designed for 40 mph or greater speeds. DeIDOT should consider acknowledging that. DeIDOT responded to the previous comment stating text would be added regarding 25 mph speed zones in municipalities but that does not appear to have occurred. Please consider doing so.</p>	We will add text for 25 mph.

10	D.J. Hughes	Section 2.2 Traffic Impact Studies	First paragraph mentions withholding a LONOR. Suggest revising text to: "including meeting all requirements for issuance of a Letter of No Objection to Recordation." That removes the negative connotation but implies the letter will not be issued, i.e. withheld until all requirements for the LONOR are met.	The suggested wording change does not make sense to us. However, if the concern is with the tone of the paragraph, we will delete the words "or withholding".
11	D.J. Hughes	Section 2.2.1.3 Study Costs	Suggest revising last phrase after or to: "as calculated per the Area-Wide Study Fee." Often, there may not be an actual study as referenced.	We agree with and will make this change. We will delete the last clause, beginning with "or".
12	D.J. Hughes	Section 2.2.1.5 Requirement of a New TIS	The term significantly is too subjective with respect to the change. Is there a certain percentage change in traffic that is significant, say more than 10%? Is there a certain time period in mind? Or is LOS referenced? Traffic could increase without impacting LOS. In the first sentence of paragraph two, suggesting replacing "necessitates a new or amended record plan" with "increases the traffic by more than 500 ADT or 50 peak hour trips." A record plan amendment that does not involve an increase in traffic should not invalidate a TIS or the corresponding improvements.	Given the variety of ways in which conditions in a study area could change, we believe the current wording in the first paragraph is sufficient. Note that this paragraph has been in effect since April 2013 without incident. Regarding the second paragraph, because a recorded plan can remain unbuilt for many years, as DeIDOT standards continue to change, it is important that DeIDOT have an opportunity to revisit previous approvals when plans are revised, even when the expected traffic is not proposed to increase.
13	D.J. Hughes	Section 2.2 Traffic Impact Studies	Last sentence of 1st paragraph is very misleading and factually incorrect based on numerous years of experience working for DeIDOT and the private sector. "Direct requirements by DeIDOT typically are limited to the location and design of the development access." The sentence should be removed in its entirety and brings into question the purpose of a TIS if improvements are limited to the site access.	Requirements by DeIDOT can be divided into direct requirements and indirect requirements. Direct requirements are things required by DeIDOT to obtain an approval issued by DeIDOT. As the regulation states, such requirements are typically limited to the location and design of the development access. Indirect requirements are things required by DeIDOT to obtain a Letter of No Objection or No Contention that in turn is used to obtain an approval issued by the local government.

FINAL REGULATIONS

13	D.J. Hughes	Section 2.2 Traffic Impact Studies	<p><i>(continued)</i></p> <p>DeIDOT responded to this previous comment and added language claiming to clarify the statement. I do not see any clarity. I re-iterate, based on years of experience with numerous projects TIS recommendations often are not limited to the location and design of the development access. Most TIS to the contrary include some level of off-site improvements not at the site access. DeIDOT will withhold an entrance approval for an off-site improvement or contribution and can do the same with an entrance permit. The explanation appears to imply the local jurisdictions require off-site improvements, which is far from the truth in Sussex County especially. DeIDOT requires off-site improvements as part of a TIS per its own standards irrespective of local requirements. DeIDOT will accommodate local requirements at the request of the local jurisdiction, but DeIDOT controls the off-site recommendations and the review that leads to them.</p>	<p>As Mr. Hughes says, TIS recommendations often include off-site improvements. Mr. Hughes states that it is “far from the truth” that local jurisdictions require off-site improvements, but in requiring a Letter of No Objection to Recordation and in recording plans with notes that DeIDOT asks to have placed on those plans pertaining to off-site improvements, local jurisdictions are effectively doing just that.</p> <p>We acknowledge that most local jurisdictions in Delaware lack the technical expertise to address transportation themselves, the City of Wilmington being the chief exception, and that Sussex County, in particular, takes a relatively passive role with regard to transportation, but without the support of those local jurisdictions, DeIDOT would be extremely limited in what we could require. We see no reason to further revise this part of the regulation.</p>
14	D.J. Hughes	Section 2.2.2.1.A.1	<p>Suggest deleting first sentence and word “subsequently” from 2nd sentence. After the 2nd “shall”, suggest replacing text with “determine if deductions beyond the site entrance are appropriate. If so, warrants shall be based upon external primary trips.”</p>	<p>We accept what we believe to be the intent of the comment and will change the subject section to read as follows: If an Applicant provides information regarding internal capture and/or pass-by trips, DeIDOT shall evaluate the information submitted and determine what, if any, reductions in site traffic beyond the site entrance are appropriate. If so, warrants shall be based on the reduced traffic.</p>

<p>15</p>	<p>D.J. Hughes</p>	<p>Section 2.2.2.2 Area Wide Study Fee</p>	<p>The trip generation cap is too restrictive and should be eliminated. There have been and will be cases where it is beneficial to all parties to implement the use of the Area-Wide Study Fee regardless of any trip limit. Osprey Point is an example. DelDOT should acknowledge that often there is no actual study or planned future study the fee is applied to. Sometimes, the fee is simply paid so the development can move forward without the time a TIS takes to complete.</p> <p>Often developers are leery of paying the fee because of potentially obligating themselves to unknown improvements and costs. Once the fee is paid and the project has proceeded significantly toward approvals, receiving requirements at the last minute can potentially kill a project. A proposed Popeye's at US Route 40 and Delaware Route 72 is a good example of that almost occurring. While determining required off-site improvements at the time the AWS Fee is agreed to is ideal, it is suggested a timeframe be implemented to determine the off-site improvements can be required. Because it can take a significant amount of time to obtain a LONOR, perhaps determining any off-site requirements as part of the 1st round of comments may be acceptable. There needs to be a reasonable cut-off point for the developer to know what they are agreeing to.</p>	<p>We disagree that the cap is should be eliminated. The intent of the fee is to provide an expedited process for relatively small developments while still holding them accountable for their traffic impacts. There is necessarily some size above which those impacts should be examined in detail. In considering future changes to the Manual we will entertain discussion as to whether the cap should be raised.</p> <p>While we have accepted Osprey Point as a case in which enough previous work had been done that a TIS is not necessary, we did not reach that conclusion lightly and we believe such cases will continue to be rare.</p> <p>We hereby acknowledge that often there is no actual study or planned future study to which the Area Wide Study Fee is applied. Funds collected are accumulated by County and are available for use in area studies when those studies are done. We further acknowledge that sometimes, perhaps often, the fee is simply paid so the development can move forward without the time a TIS takes to complete. We do not plan to add these statements to the Manual.</p>
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FINAL REGULATIONS

15	D.J. Hughes	Section 2.2.2.2 Area Wide Study Fee	<i>(continued)</i>	We appreciate that developers are concerned about the possibility of obligating themselves to unknown improvements and costs and DelDOT staff does try to identify those improvements and costs for them early in the process. We would disagree that the proposed Popeye's restaurant that Mr. Hughes cites is a good example in the sense of being typical. It is an example of an occurrence that we try to avoid and that we think is relatively rare. We will continue to look for ways to bring more certainty to the development process but we are making no changes to this part of the Manual now.
16	D.J. Hughes	Section 2.2.2.4	How many TIDs have been developed and is there funding to develop any/more? Is there any State funding for the massive data collection required to develop a TID and determine phased improvements?	Presently there are two TIDs in operation, Westtown in Middletown and the Southern New Castle County TID in the area between US Route 13 and Delaware Route 71 and between the C&D Canal and Marl Pit Road. A third TID, the US Route 13/Bay Road Corridor TID is under development in Dover. This is the first TID that will be developed in accordance with DelDOT's current regulations and thus far most of the work done to create it has been done with State funds. While some commitment will be necessary from local governments to provide land use forecasts, we anticipate providing most of the funding needed to create TIDs. Yes, State funding is available.

17	D.J. Hughes	Section 2.2.3.1.A&B	<p>The Travel Demand Model (TDM) required by DeIDOT for trip distribution in order to determine the required scope of work needs to be mentioned in these sections. Briefly the regulations should at least note the TDM trip distribution should be requested in conjunction with the scoping meeting request and that the scoping meeting cannot occur until the trip distribution is received. We believe separating the TDM trip distribution request and the Scoping Meeting Request is warranted. After receiving the TDM trip distribution, the developer's engineer can provide the developer with significantly more information for a potential site evaluation that typically occurs (or used to) prior to requesting a TIS Scoping Meeting. The developer and their engineer can discuss options such as the TIS versus Area Wide Study Fee in lieu of and whether auxiliary lanes are required in advance of any meeting with DeIDOT. We believe it can make the DeIDOT Pre-Submittal Meeting and/or TIS Scoping Meeting more efficient and effective for all.</p>	<p>We agree that it would be helpful to include mention of the TDM trip distribution in these sections and also in Section 2.2.3.2, but we do not see it as essential. Accordingly we will not make these changes now.</p> <p>Engineers are welcome to request TDM trip distributions in advance of Scoping Meeting Requests and we will honor those advance requests as time permits.</p>
18	D.J. Hughes	Section 2.2.4.1.H & I	<p>Suggest adding "Existing and" to beginning of sentence. Also, it is suggested that another letter be added noting discussion of a Traffic Signal Justification Study if relevant.</p>	<p>The lettered items in Section 2.2.4.1 outline the contents of the Scoping Meeting Request Form, which is Appendix O in the Manual. We find Section 2.2.4.1 to be sufficient as written.</p> <p>Appendices are not subject to the same public notice requirements as the Manual itself and can be modified readily. We will consider making the recommended changes in Appendix O.</p>

FINAL REGULATIONS

19	D.J. Hughes	Section 2.2.4.2.2 Intersections and Roadway Segments to be Studied	<p>1st paragraph adds Type II subdivision streets to be filled in within the area of influence. There is no need for this and it should be removed. Site entrances are designed using 10-year projections and the next development should not have to re-evaluate a recently constructed site access for an adjacent or nearby development. The only likely result is unnecessary intersections included in the study area or perhaps improvements needed to address existing conditions that were not constructed by the other developer. While residents of a nearby development may be concerned about how they will be impacted, including those intersections would be more appropriate if counted within the 3-intersection limit. Skipping them as part of the three-intersection limit creates unnecessarily large study areas and potentially creates an overburden of improvements for a development to proceed.</p>	<p>We disagree. As Mr. Hughes points out, residents of nearby developments may be concerned about how they would be impacted by a proposed development. Recognition that those concerns may be legitimate is our basis for including these streets. We do not include them in the three-intersection limit because typically we would not expect these streets to carry a significant amount of the traffic to or from the subject development.</p>
20	D.J. Hughes	Section 2.2.4.1.2.2 Intersections and Roadway Segments to be Studied	<p>2nd paragraph states: "Further, to the extent that a local government receives requests from the public through their land use approval process that an intersection or other transportation facility be included in a TIS and asks that DelDOT include that facility in the study, it shall be included..." The scope of study should be based on land use regulation and engineering analysis and not the subjective opinion or emotion of the public, whom may or may not be informed on traffic engineering.</p> <p>We strongly recommend that this language be eliminated. While we understand this most likely came under pressure from a small fraction of the public within the state whom believe they have a right to scope a TIS just as much as the professionals trained to do so,</p>	

20	D.J. Hughes	Section 2.2.4.1.2.2 Intersections and Roadway Segments to be Studied	<p><i>(continued)</i></p> <p>we adamantly disagree. This type of language in a regulation is a slippery slope opening the door wide open for politics to control a scope of work. It has no business within a regulation and there is no need for this regulation. Anyone has the right to pick up the phone, call DeIDOT, and ask DeIDOT to consider something. DeIDOT can take the request under advisement and make a professional decision on whether the request is merited.</p> <p>While DeIDOT previously responded this has not been abused since implemented, DeIDOT has unnecessarily created and almost encouraged the potential for abuse. Don't want the new development next door to start competing with yours or just don't want it at all or want to delay it and drive up costs, wait until the development is far along in the process and then request a TIS scope revision. It could happen per the regulations.</p>	<p>We understand that Mr. Hughes is concerned about the potential for this section to result in late and potentially detrimental changes to the scopes of work for his clients' TIS.</p> <p>However, we find that the requirement that such requests come from the local government, rather directly from the public, provides reasonable assurance against arbitrary additions to the scope of study. Both they and we have an obligation to satisfy applicants' rights to due process. We will meet our obligation. No changes to the Manual are proposed in this regard.</p>
21	D.J. Hughes	Section 2.2.4.2.2.F	<p>Removes State-maintained roads ending in letters from the area of influence except where 50 or more peak site trips use the road. Isn't that the same as other intersections? You only study an intersection if it has 50 or more peak site trips. It is also noted some roads ending in letters carry significant traffic. DeIDOT responded to the comment and I did not follow the explanation. I do not understand the significance of whether a letter is at the end of the 3-digit maintenance number. Seems the amount of existing and proposed traffic is more relevant than the label.</p>	<p>No, it is not the same. To provide an example, beginning at the proposed development, Road 001, carrying 200 peak hour site trips, intersects Road 002 but none of the site trips are expected to turn on or off there. The intersection of Roads 001 and 002 is counted as the first intersection. Continuing along Road 001 to Road 003A, again none of the site trips are expected to turn on or off there. This intersection is not counted toward the three- intersection limit. If it is not signalized and is not requested by the local government, it is not included in the study.</p>

FINAL REGULATIONS

21	D.J. Hughes	Section 2.2.4.2.2.F	<i>(continued)</i>	<p>Continuing along Road 001 to Road 004A, 56 peak hour site trips are expected to turn on or off there. The intersection of Roads 001 and 004A is counted as the second intersection. Continue along both roads to find the third intersection in each direction.</p> <p>Most, though not all, roads that have a letter at the end of the three-digit maintenance number are extremely low in volume and have little potential for traffic growth. Some of them are not even routinely mapped. The intent of this section is to help provide rational study areas, excluding trivial intersections and including ones that matter.</p>
22	D.J. Hughes	Section 2.2.8.5.C.19	<p>Requiring developers to do saturated flow counts could be excessive depending on the locations. We conducted such a count along Delaware Route 24 approaching the beach area and the end of the queue was very fluid and required constant movement by the demand counter. While the counts will allow more proper analysis results, there could be significant additional expense added to a TIS in an oversaturated area. The total queue to be recorded referenced should be specified as the queue at the end of the period. Previously these conditions were typically noted although not properly analyzed. Whether the value of the demand counts is worth the effort, i.e. did we learn anything new, may be determined moving forward.</p>	<p>We agree that the requirement to count arrival volumes for saturated conditions will require more effort, and therefore more expense, for traffic studies where saturated flow occurs. We find the currently proposed wording of this section adequate. As this is a new practice for Delaware, albeit well-established in other jurisdictions, we will see how well it serves the public and we may revise this aspect of our regulations in the future.</p>
23	D.J. Hughes	Section 2.2.8.7 Trip Distribution	<p>DeIDOT taking responsibility for determining site trip distribution is incomplete as written. Why is trip distribution only provided by DeIDOT Travel Demand Model during the weekday p.m. peak hour? DeIDOT previously responded "the weekday p.m. peak hour distribution is used in establishing the study area."</p>	<p>Our previous statement that "the weekday p.m. peak hour trip distribution is used in establishing the study area" is factual in that we do use it in establishing study areas. To do so is correct and wholly consistent with Section 2.2.4.2.2 for residential and office developments in most parts of the State.</p>

23	D.J. Hughes	Section 2.2.8.7 Trip Distribution	<p><i>(continued)</i></p> <p>That is not correct and inconsistent with Section 2.2.4.2.2 Intersection and Roadway Segments to be Studied, which states: "including any intersection or roadway segment that would carry projected site traffic of at least to vehicles per hour (during any peak hour) as determined by DeIDOT using a regional adopted (changing now to "an adopted regional") travel demand model". While it may be reasonable to start with the highest peak hour, varying trip distributions could still result in different Areas of Influences based upon different entering and exiting volumes assigned based on the varying distributions. It seems based upon the regulations it is essential to make sure the weekday a.m. peak hour and Saturday peak hour do not require additional intersections than the weekday p.m. peak hour.</p> <p>While it may be reasonable to assume the same distribution for morning and evening weekday peak hours, the same may not be true for the Saturday peak hour, especially in areas impacted by summer traffic. The DeIDOT Traffic Generation Diagram requires the highest two (2) peak hours be shown. It seems the trip distribution should also be provided for those peak hours as well.</p>	<p>In resort areas and for shopping centers in retail corridors, we acknowledge that a more rigorous approach may be necessary to satisfy Section 2.2.4.2. While we may make further use of the travel demand model in such cases, we do not see a need to detail that in the Manual now.</p>
24	D.J. Hughes	Section 2.2.8.11.3.C Geometric Design, Operational and Circulation Improvements	<p>Item C is recommended for removal. Examining the need for auxiliary lanes at all intersection[s] included within a study is overkill and will likely lead to identification of multiple and burdensome improvements</p>	<p>It is to be expected that Item C will likely lead to the identification of a need for some additional left and right turn lanes. If it did not, it's inclusion in the Manual would serve no purpose. However, Items C and E together are expected to serve an important purpose in identifying needed improvements that otherwise would not be identified in the TIS process.</p>

FINAL REGULATIONS

24	D.J. Hughes	Section 2.2.8.11.3.C Geometric Design, Operational and Circulation Improvements	<i>(continued)</i> (i.e. left-turn lanes on the major street at every intersection in the study area) that cannot feasibly be constructed by a developer. Existing conditions may often indicate a left-turn lane on a major street is warranted irrespective of any development. Those conditions may have existed for a decade or more without being addressed by DeIDOT. If crash data does not indicate there is a problem, the improvement may be unnecessary in practice and only need on paper. If DeIDOT were tasked with evaluating and improving all existing intersections and existing conditions as they are asking developers to do, an endless list of projects and an endless budget shortfall (more so than now) would result.	We believe that Mr. Hughes overstates the effect that these items will have on most land developments, but regardless we will not remove or change these items now.
25	D.J. Hughes	Section 2.2.8.11.3.E Auxiliary Lanes beyond site entrance	The need for this subsection is not understood or known. It is recommended that E. be removed in its entirety. Considering the intersections are off-site intersections, capacity and LOS analysis along with crash data analysis should be sufficient for purposes of determining whether developer improvements are warranted. Evaluating each off-site intersection of auxiliary lanes will lead to burdensome improvements that cannot all be undertaken by a developer. The "need" may be an existing need irrespective of the development that has not been addressed by DeIDOT. The result may be DeIDOT holding developers to a higher standard than DeIDOT holds itself. The development traffic may have an insignificant impact but the developer will be left building improvements DeIDOT chose not to do.	The purpose of Item E is to specify what analyses are needed with regard to the need for auxiliary lanes at off-site intersections. We reject Mr. Hughes position that capacity, LOS and crash analysis should be sufficient. Capacity and LOS analysis of unsignalized major street turns does not adequately reflect the presence or absence of turn lanes. Crash data necessarily accounts only for existing traffic. See response to comment on Section 2.2.8.11.3.C.

26	D.J. Hughes	Section 2.5.2 Agreements – Off-Site Improvement Agreement	Thank you for revising the language similar to as suggested. However, we disagree that whether federal funding is involved is irrelevant. If a federally funded project exists, the developer cost share should be based upon the State Share (typically 10% or 20%) of the construction costs. That has been typical DeIDOT practice as recently as 2014. Federally funded projects are initiated to address existing conditions needs irrespective of future development and that are not the responsibility of private developers to fix. The developer contribution should be based on the State share and DeIDOT should be thankful they are receiving developer funds to help address existing conditions and reduce State costs.	Thank you for your comments. We note that this section does not mention federal funding.
27	D.J. Hughes	Section 2.5.4.5.F	DeIDOT deleted item F, which is great, but forgot [to] delete the example for it. Please delete the example.	Thank you for alerting us to this error. We will delete the example.
28	D.J. Hughes	Section 2.5.4.5.G	Why is this necessary? Corner parcels with restricted access do not receive the benefit of direct access to the highway. This item will essentially eliminate any chance for corner parcels with restricted access on the mainline to contribute to the revolving fund. To encourage more participation in the fund, DeIDOT should remove this item in its entirety or corner parcels will basically no longer have this option and would be better [served] to enter a traditional signal agreement.	<p>This item is necessary to ensure that businesses on corner parcels are assessed an amount of the signal costs reasonably related to the benefit they derive from the signals that serve them.</p> <p>That said, we recognize that this item needs to be modified. Most basically, it states that “parts D and F above apply rather than part G,” but we are now eliminating the part F that was referenced there and the subject item has become “part G.” Perhaps more importantly, it seems that the Mr. Hughes is misreading the intent of this item and that others could do so.</p> <p>To make it more clear we will correct the item to read as follows:</p>

FINAL REGULATIONS

28	D.J. Hughes	Section 2.5.4.5.G	<p><i>(continued)</i></p> <p>Uses with high pass-by traffic like to locate along corners along arterials and typically have at least one restricted access. Sometimes the “minor” street they access is not so minor and carries [a] significant amount of traffic. Delaware Route 14 in Milford, Delaware Route 300 in Smyrna, Delaware Route 12 in Felton, Delaware Route 16 in Ellendale, and Delaware Route 404 are examples just to name a few. There potentially may be signal modifications required as a result of various reasons outside of projected site traffic (i.e. existing conditions) through the intersections and the corner parcel should not be responsible for 100% of the improvements.</p>	<p>Where a development depends on a nearby intersection for access, e.g. a corner parcel, <u>(including parcels that have frontage on two roads that intersect at an existing signal)</u>, that has full access on a minor road and limited or no access on a major road, that intersection shall be treated, for purposes of cost allocation, as a site access, i.e. parts D and F above apply rather than part G through <u>movements on the major road shall be excluded from the calculation shown in part F.</u></p>
29	D.J. Hughes	Section 3.2.6	<p>In a recent meeting at DeIDOT, DeIDOT noted they were no longer in the practice of acquiring ROW reservations. I presume that is at least in part due to the SR 1 Grid Study reservations that did not pan out and created issues. Has the DeIDOT position changed?</p>	<p>Reservations are not currently used as often as they once were, but we will leave the Manual as is.</p>
30	D.J. Hughes	Section 3.4 Letter of No Contention (LONC):	<p>Thank you for removing the 200 ADT trip limit as requested.</p>	<p>Noted.</p>
31	D.J. Hughes	Section 3.5.3.1.B.4	<p>This notes a developer may have to build a local or higher order road through the site or in part. Will there be other compensation or considerations the developer receives for building a new State road? If not, depending on the size of the project and various factors, the requirement could deem a development infeasible.</p>	<p>The list of requirements would be addressed through pre-application meetings and the traffic impact study. Often building new roads or making connections can mitigate the traffic from the development which would be outlined in the TIS.</p>
32	D.J. Hughes	Section 3.5.4.5.B Roadway Crossing by Bicycles and Pedestrians	<p>While the requirement is for crosswalks at all signalized intersections, that is typically a decision made by traffic on a case by case basis. Is that no longer true?</p>	<p>The decision is up to the traffic section; however the applicant should expect crosswalks on all legs of the intersection.</p>

<p>33</p>	<p>D.J. Hughes</p>	<p>Section 3.5.6 Connectivity</p>	<p><i>Please clarify that this requirement only applies to developments with State-maintained streets.</i> The beginning of Section 3.5, 1st sentence, <i>implies the Connectivity regulations apply to all developments seeking access to State-maintained streets. However, I do not believe DeIDOT has that authority in cases such as subdivisions with private streets in Sussex County.</i></p> <p>The development I live in is a good example. In those cases, the authority for requiring connectivity lies with Sussex County and not DeIDOT.</p> <p>The requirement seems to lack flexibility and may not be feasible or even desirable for all projects due to a variety of reasons, especially in areas of rural Sussex County. DeIDOT previously responded noting the hindrance listed, but the hindrances listed do not address the point. The requirement seems to implement an urban grid system that could negatively alter the look and feel of rural developments and does not seem appropriate to be implemented statewide. For example, Sussex County approved the Redden Ridge development. However, it falls short of the connectivity requirement and would require the removal of at least 2 lots and the addition of at least 2 stub streets to meet the connectivity ratio requirement. The development I live in also likely would not meet the requirement, and I am glad about that. While each case is different, the Connectivity requirement will likely lead to cut-through traffic and safety issues that would not exist without the requirement. <i>Low-traffic, low speed community streets could become thoroughfares with increased speeds, drivers not vested in the community, and decreased public safety.</i></p>	<p>For subdivisions with private streets, the connectivity requirements regarding the connectivity ratio will be recommendations. We will make this change.</p> <p>Flexibility is provided in section 3.5.8 Connectivity – Hindrances</p> <p>We will change the language to read:</p> <p>3.5 CONNECTIVITY This section provides connectivity requirements for all development projects having access to state roads or proposing DeIDOT maintained public roads.</p> <p>Private or municipal streets should follow the local land use agency's requirements for connectivity.</p>
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FINAL REGULATIONS

34	D.J. Hughes	Section 5.2.9 Auxiliary Lanes	<p>The projected 10-year volumes required by DeIDOT conflict with known Delaware and national traffic trends. DeIDOT growth factors for each Traffic Pattern Group (TPG) have shown flat or decreasing traffic volumes since about 2008 yet DeIDOT requires adding 16% traffic on top of existing volumes resulting in ultra conservative design volumes. An annual growth factor of 1.0% is suggested resulting in a more realistic 10-year factor of 10.5%. While DeIDOT previously responded the growth rate is based on historical data, it is highly unlikely the historical data is the same for each traffic pattern group and theoretically as DeIDOT improves multi-modal facilities the vehicular trips should not be increasing at as high rates as in the past.</p>	<p>We will leave the growth rate as is. The theory is based on taking balanced long term historical data vs taking data from individual up/downswings. Time will tell if the last few years are a solid trend or a temporary dip due to the economy is.</p>
35	D.J. Hughes	Section 5.2.9.1 Right-Turn Lane	<p>States a "five foot bike lane shall be provided". <i>Consistent with DeIDOT design practices, "shall" must be changed to "should". DeIDOT routinely designs and constructs four foot bike lanes and the developer should and does have the option as well. Five feet is recommended but only four feet is required.</i> The regulations need to reflect that. It is noted in the text that tables provided in Figures 5.2.9.1.a & b are for info only but the figures themselves do not note that. <i>It is suggested notes be added to each figure referencing the Auxiliary Lane Worksheet required by DeIDOT.</i></p>	<p>We will leave the text as written. Five feet is the standard with four feet being the absolute minimum that could be allowed based on many factors.</p>

36	D.J. Hughes	Section 5.2.9.2 Bypass Lane	<p>Suggest adding a reference to the Auxiliary Lane Worksheet similar to Section 5.2.9.1. It is noted in the text that table provided in Figure 5.2.9.2-a is for info only but the figure does not note that. It is suggested a note be added to the figure referencing the Auxiliary Lane Worksheet required by DeIDOT.</p>	<p>We will add “in accordance with DeIDOT’s Auxiliary Lane Worksheet” to the sentence: An intersection shall first be considered for a bypass lane using the warrants <i>in accordance with DeIDOT’s Auxiliary Lane Worksheet</i> and outlined in Figure 5.2.9.2-a. Bypass lanes shall be designed in accordance with Figure 5.2.9.2-b.</p>
37	D.J. Hughes	Section 5.2.9.3 Left-Turn Lane	<p>Suggest adding a reference to the Auxiliary Lane Worksheet in 1st paragraph similar to Section 5.2.9.1. The minimum thresholds for requiring left-turn lane volumes should be raised to <u>at least 30 vph for all AADT’s.</u> Requiring a left-turn for 5 vph (1 left every 12 minutes during peak times) or even 10 vph (1 left every 6 minutes during peak times) or 20 vph (1 left every 3 minutes during peak times) is simply unnecessary and creates burdensome improvements with little benefit to the traveling public. The Auxiliary Lane Worksheet that implements the parameters often requires left turn lanes when the <i>AASHTO Green Book</i> and the <i>DeIDOT Road Design Manual</i> suggest a left-turn lane is not necessary. That should not happen and the engineer should be allowed to reference official publications used by DeIDOT when the worksheet is in conflict with them. It is also noted the Auxiliary Lane Worksheet does not consider the advancing volumes or the % left turns in the advancing volumes. Both of those are standard parameters when determining left-turn lane warrants that appear to be ignored by the worksheet.</p>	<p>Response: The current DeIDOT Auxiliary Lane Worksheet provides Left-Turn Lane installation recommendations based on the Transportation Research Record (TRR) 1500, Lengths of Left-Turn Lanes at Unsignalized Intersections. This document was developed and calibrated for the particular conditions of the State of Delaware by Dr. Shinya Kikuchi, Dr. Partha Chakroborty, and Mark Luszcz from the University of Delaware.</p> <p>The methodology presented in TRR 1500 has been developed for left-turning vehicle volumes equal or larger than 50 vehicles per hour (vph). Often times left-turning vehicle volumes for low impact developments are less than 50 vph. DeIDOT Auxiliary Lane Worksheet provides direction on how to account for these situations based on a combination of AADT and left-turn volumes by using additional TRB research. The DeIDOT auxiliary lane worksheet uses the opposing volume do determine the left- turn. The ADT information is used to develop the opposing volume.</p>

FINAL REGULATIONS

37	D.J. Hughes	Section 5.2.9.3 Left-Turn Lane	<p><i>(continued)</i></p> <p>While DeIDOT provided a very detailed response to the previous concerns regarding left-turn lane requirements, we still have concerns based on the results we see in some cases. Additionally, <i>it is noted the listed ranges in the response for when a left-turn lane is warranted differ in the December 2014 regulations that are posted. The response provides four AADT ranges and four left-turn volume ranges while the posted proposed regulations on list three. The highest minimum left-turn volume in the response is also 30 vph where the posted regulations list 20 vph. Lastly with respect to the left-turn lane warrants, if DeIDOT is not revising the <u>DeIDOT Road Design Manual</u> per the more current data, why the need to revise the <u>Development Coordination Manual</u>? It seems they both should be revised simultaneously if DeIDOT is not comfortable with the existing manuals. Have revisions been initiated to the DeIDOT Road Design Manual based upon the same reasoning? If not, why not and when will that occur?</i></p>	<p>The recommendations for low left-turn volumes (less than 50 vph) presented in the Auxiliary Lane Worksheet are based on the NCHRP Report 745 “Left Turn Accommodations at Unsignalized Intersections” which was published in 2013. The NCHRP Report 745 was selected because it is the most recent and comprehensive report that studied left-turn lane warrants at unsignalized intersections. It also takes into account safety, operational efficiency, and construction costs. Current warrants used by many jurisdictions, including the DeIDOT Road Design Manual, are based on former models introduced in research by Harmelink, during the mid-1960s.</p> <p>Note: The previous version of the DeIDOT Road Design Manual is from 2004. The left turn table in that manual was based on the Harmelink methodology, 1967, which is consistent with the AASHTO “A Policy on Geometric Design of Highways and Streets”, Chapter 7. It accounts for the speed, the advancing and opposing volumes, as well as the percentage of left-turn traffic. Overall, the DeIDOT Roadway Design Manual falls short when the left-turn vehicle volumes are low.</p> <p>It should be noted that the DeIDOT spreadsheet gives more flexibility than the NCHRP Report 745 when dealing with low left turn volumes. Based on the results from the methodologies reviewed, we recommend the following change for range of ADT's and Left-turn volumes for sections S.2.9.3.C:</p> <p>C.1. No left-turn lanes for AADT under 1,500 vpd.</p>
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37	D.J. Hughes	Section 5.2.9.3 Left-Turn Lane	<i>(continued)</i>	<p>5. Left-turn lanes warranted for the following combinations: AADT: $\geq 1,500$ to $< 2,000$ vpd & Left-turn volume: 30 -50 vph AADT: $\geq 2,000$ to $< 4,000$ vpd & Left-turn volume: 20 -50 vph AADT: $\geq 4,000$ to $< 6,000$ vpd & Left-turn volume: 10 -50 vph AADT: $\geq 6,000$ & Left-turn volume: 5 -50 vph</p> <p>C.6. For any special cases with very low opposing volumes, DeIDOT's Subdivision Engineer may waive the requirement of a left turn lane. We will bring up your comments in the next revision of the Road Design Manual.</p>
38	D.J. Hughes	Appendix B	<p>Appendix B is not included online with the revisions but it is assumed it has not changed. We have commented on numerous occasions about what we feel confident is the misapplication of Appendix B in direct conflict with the legislation and resulting regulations that were passed as part of a valid public process. <i>While we understand the standard response has been orders from the Secretary, there is now a new Secretary whom may take a different position on the apparent previous circumvention and disregard for the required State process and State code.</i> We ask that DeIDOT verify whether Appendix B is appropriate and consistent with State code as currently included.</p> <p>What I found appears clear and straight forward as to what happened. The proposed Section 507 that was later revised as part of the required public process was included in the approved <i>Subdivision Manual</i> at the time instead of the final approved version that became effective on November 1, 2006.</p>	<p>As stated previously, it is the Secretary's discretion to use Section 507 and they currently do not choose to use it for entrances.</p>

38	D.J. Hughes	Appendix B	<p><i>(continued)</i></p> <p>Both are attached and labeled clearly. Unless I am missing something or some action was taken after November 1, 2006 revising the Delaware Code, Appendix B needs to be replaced with the final version in Delaware Code not the proposed version. Otherwise, the process appears to have been circumvented.</p> <p>It does not appear there is really anything else to look into besides verifying relevant code unless somebody wants to try to change the code, which would require another public process. That would not seem to make sense since it is clear that for whatever reason, DeIDOT revised the initially drafted code and specifically removed the exclusion of site entrance improvements for a development and specifically added language clearly stating improvements at the entrance to a development are eligible. Yet, DeIDOT continues to publicly state site access points are not eligible. We appreciate a response on this matter.</p>	
39	Sarah Keifer, Kent County Planning Dept.	Section 3.5.4.2	<p>Sidewalks and Shared-Use Paths and Sidewalks provides that DeIDOT can require a fee in lieu of construction of a sidewalk or shared use path. Kent County also has requirements for frontage sidewalks. It would be helpful if DeIDOT would agree to not grant construction waivers in favor of a fee without the concurrence of the local government.</p>	<p>We agree that we would not grant construction waivers in favor of a fee without the concurrence of the local government. If the local government required the facility to be built then then the applicant would not have to pay the fee.</p>

<p>40</p>	<p>Sarah Keifer, Kent County Planning Dept.</p>	<p>Section 3.4 introduction</p>	<p>It appears that DeIDOT is still requiring that all plans, including site plans, be recorded. As we've discussed, the County does not require recordation of site plans. Because it is not unusual for site plans to change in the field, forcing re-recordation with each change becomes a burden on the property owner. I suspect it would serve DeIDOT just as well to require the recordation of right-of-way or easement plans separately.</p>	<p>As outlined in Section 3.4, this requirement for Commercial sites is part of obtaining DeIDOT's approval and helps create adequate ROW where lacking. Site Plan recordation (inclusive of ROW dedications and PE's) ensures that the site plan elements are configured correctly with respect to the revised ROW and Easements. This benefit is not achieved when a blank ROW or Easement plan is recorded separately. To achieve this same outcome, the blank ROW or Easement plan would need to be recorded in advance of any Site Plan being created or approved, to ensure that the Boundary used in the site layout matched the ultimate requirements that DeIDOT's regulations have provided.</p> <p>Section 3 Introduction: "The developer shall submit the required information to DeIDOT for review and approval prior to DeIDOT issuing its letter of "No Objection to Recordation" to the local land use agency. The Plan shall be in the format required by the local land use agency supplemented with DeIDOT's requirements as outlined in this chapter. DeIDOT shall require recordation of the Plan regardless of the local land use agency recordation requirement."</p>
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FINAL REGULATIONS

41	Kim Wilson, ACEC		<p>Based upon our review, it does not appear that revisions associated with clarification of the record plan process as it relates to commercial development has been adequately addressed. ACEC suggested that this topic be addressed at the onset of the manual revision process. However, it was suggested by DeIDOT that this would be addressed prior to final adoption. ACEC representatives met with DeIDOT in February of 2014 to discuss concerns associated with the current language. In that meeting, agreement was reached that DeIDOT would revise the language associated with commercial development related to the recordation process. Based upon review of the current language, the agreed changes have not been implemented. As a result, ACEC does not support adoption of the proposed Development Coordination Manual.</p>	<p>See the above response to Comment #40. We are committed to continue to discuss this and will work towards a process that meets all of our goals.</p>
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***Please Note:** Due to the size of the final regulation it is not being published here. The following links to the several parts of the final regulation are provided below:

[Preface](#)

[Chapter 1 Access Standards](#)

[Chapter 2 Traffic Analysis and Improvements](#)

[Chapter 3 Record Plan Design](#)

[Chapter 4 Construction Plans](#)

[Chapter 5 Design Elements](#)

[Chapter 6 Construction Administration](#)

[Chapter 7 Residential Access](#)

[Chapter 8 Miscellaneous Access Guidelines](#)

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 2 Delaware Code, Section 1309; 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404

(2 **Del.C.** §1309, 17 **Del.C.** §§132, 137 & 149; 29 **Del.C.** §8404)

REGULATORY IMPLEMENTING ORDER

2406 Policies and Procedures for Acquisition of Certain Real Property Interests

1. Summary of the Evidence and Information Submitted

In 2011, the Delaware Department of Transportation sought to adopt regulations to ensure that its policies and procedures for the acquisition of real property are transparent, consistent, cost effective, and fair.

The Department has broad statutory authority to acquire property in connection with state highway projects. However, an "Advanced Acquisition Committee" must review certain acquisitions of real property. The Department adopted past policies governing such acquisitions; nonetheless, these existing policies only applied to purchases of "fee simple" interests, and did not expressly apply to reservation agreements. In addition, while the Committee has the statutory authority to determine whether certain acquisitions are consistent with state planning goals, it does not have the power to determine the merits of such transactions.

The 2011 regulations were intended to implement specific recommendations for advanced acquisitions set forth in the Report of the Governor's Chief of Staff to Governor Markell dated January 7, 2011 (the "Report"). Specifically, the regulations would (1) require that the Committee review not only advanced acquisitions, but reservation agreements as well; (2) provide a process for the Committee to review the merits of reservation agreements; (3) require the Department to obtain independent appraisal for advanced acquisitions and reservations; (4) require that advanced acquisitions and reservations be reviewed by legal counsel; (5) require that the terms of advanced acquisitions and reservations be reflected in an agreement signed by the Department and the property owner; and (6) set out the process for the Committee to conduct its consistency review of certain real property acquisitions proposed by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

These draft regulations appeared in the Delaware *Register of Regulations* on February 1, 2011, at 14 **DE Reg.** 800, and the written comment period ended March 5, 2011. No comments were received.

Nonetheless, these regulations were not adopted. Instead, additional proposed regulatory changes were discussed with the Advanced Acquisition Committee during 2011, as well as among Department staff. No further action toward adoption took place thereafter, however.

The Department determined to go forward with draft regulations regarding the Committee and its oversight of this aspect of the Department's responsibilities. The new draft regulations incorporated and amended the prior draft regulations published in 14 **DE Reg.** 800, taking into account changes in the Department's management structure since that time, and adding new provisions to reflect past discussions among the Administration, the Department, and the Committee. Among other alterations, these revised proposed regulations deal with certain special property acquisitions that are not necessarily tied to a particular project location, as is usually the case for properties it acquires for most highway-related projects. This draft incorporated these additional provisions.

In addition, the Delaware Transportation Authority, established under 2 **Del.C.** Ch. 13 and 14, occasionally acquires certain other real property interests for certain transportation facilities, pursuant to 2 **Del.C.** §1309(5). The Department's Right-of-way Section conducts this acquisition work on behalf of the Authority. The Authority otherwise carries out its operational authorities through the use of certain corporate entities, such as the Delaware Transit Corporation, which acquires, owns, and operates transit maintenance facilities and other properties. Under §1309(5), the Authority may acquire these properties without approval from any other public body. However, with this draft the Department considered the adoption of a review and comment procedure to be conducted by the Committee, for certain real property transactions conducted pursuant to the Authority's separate legal powers.

The Department published the Notice for comments on the updated draft regulations in 18 **DE Reg.** 456 (12/01/2014). No further comments were received during the comment period that ended December 31, 2014.

2. Findings of Fact

The Secretary finds that it is appropriate to amend the existing regulations as proposed.

3. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt the Policies and Procedures for Acquisition of Certain Real Property Interests as set forth in 18 **DE Reg.** 456 (12/01/2014).

4. Text and Citation

The text of 2 **DE Admin. Code** 2406 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 DAY OF , 2015.

Jennifer L. Cohan, Secretary
Department of Transportation

***Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 456 (18 DE Reg. 456). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2406 Policies and Procedures for Acquisition of Certain Real Property Interests

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 137 and 145; 29 Delaware Code, Section
8404
(17 **Del.C.** §§137 & 145; 29 **Del.C.** §8404)

REGULATORY IMPLEMENTING ORDER

2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests

1. Summary of the Evidence and Information Submitted

The Delaware Department of Transportation sought public comment regarding an alternative dispute resolution procedure to assist in reaching or finally determine the amount of compensation to be paid for the acquisition of real property, when the Department has filed a condemnation action for that acquisition, in the manner otherwise prescribed by 10 **Del.C.** Chapter 61.

In some instances, the parties involved may find it useful to engage in either a binding or non-binding review of their respective property valuations, using a panel of qualified appraisers for the purpose. The protocols for this alternative dispute resolution mechanism were outlined in the draft regulations, which were published at 18 **DE Reg.** 545 (01/01/2015).

The Department took written comments on the proposed Regulation for this Alternative Dispute Resolution Protocol for Acquisition of Certain Real Property Interests from January 1, 2015 through January 31, 2015.

The only comments received came from Richard Abbott, Esquire.

His comments are reproduced herein, with the Department's responses for each comment appearing immediately thereafter.

[Abbott] 1.0 - Why limit ADR to certain projects, rather than making it available across the board on all takings? Since it must be agreed to by both sides, DelDOT automatically has the ability to internally require Chief Engineer approval as a prerequisite to agreeing to any ADR.

Response: The limitations on use of this option came from the Department's discussions with the Federal Highway Administration (FHWA).

[Abbott] 2.2 - I would also allow ADR after a party has agreed to a voluntary Right of Entry, not just an Order of Possession, so that no Court filing is necessary just to go to ADR. In fact, DelDOT may be better able to procure a

ROE from an owner if it also agrees to ADR at that time. Both sides benefit from possibly avoiding the cost of litigation if the ADR process resolve the Just Compensation issue.

Response: The agreement takes place prior to the Order of Possession, but should not impact a Right of Entry request.

[Abbott] 3.1 - I would leave the ADR option open longer than 45 days after entry of the Order of Possession. If DeIDOT or the property owner believe ADR is being requested too late in the process, then all that party has to do is say no to ADR (since it must be mutually agreed to).

Response: The Department agrees to leave the option open for up to 90 days. One risk is that the appraisals and/or other information becomes stale. The intent is to reduce costs to both parties.

[Abbott] 3.3 - Terms DAG and Assistant Director need to be clarified. The terms "DeIDOT legal counsel" and "the DeIDOT Assistant Director of Planning" would be more clear to a layperson.

Response: Agreed. The wording will change to Deputy Attorney General and DeIDOT Chief of Right of Way.

[Abbott] 3.5 - I think it is a bad idea to allow either party to cancel ADR at any time. Once the trigger is pulled, there should be no bailing out.

Response: For the time being, the Department prefers to keep to the original draft language on this issue, until it sees how the process works out in actual cases.

[Abbott] 3.6 through 3.13 - I think a non-binding ADR should be permitted to be conducted by a single appraiser if both parties agree. In Kent and Sussex Counties it would be difficult to get 3 commercial appraisers from the County the property is situated in, as there simply are not that many such appraisers who could or would agree to serve (in my view).

Response: For the time being, the Department prefers to keep to the original draft language on this issue, until it sees how the process works out in actual cases.

[Abbott] 3.7 - The two appraisers selected by the parties should pick the third panel member, who should also be an appraiser. The section as written creates a potential "wild card" situation, where a voluntary trade organization names the likely deciding member of the review panel, who may be a commercial realtor rather than an appraiser.

Response: For the time being, the Department prefers to keep to the original draft language on this issue, until it sees how the process works out in actual cases.

[Abbott] 3.11 - This private meeting with no presentation by the parties is not a good approach in my view; property owners should be able to present their position verbally and in person to the panel members, whether the ADR is binding or non-binding. Owners want to have an opportunity to be heard by the decision maker(s). A secret process would not likely lead to confidence in the outcome if either side is not happy with the value conclusion.

Response: The intent of the Regulation was to shorten the process. There has been discussion about allowing both sides to present a short summary, and an owners' statement could be permitted. However, the consultation among the appraisers should be private, in order to encourage full debate and discussion. The Regulation will be amended to permit an opening statement by both sides and a statement by the owner. There would be no discovery, testimony, or cross-examinations.

[Abbott] I applaud DeIDOT for exploring ADR for Just Compensation purposes. And the fact that DeIDOT would pay for the cost of review panel members makes it very fair to property owners.

Response: Thank you for your comment.

[Abbott] I am concerned about how the process would work in practice, as I would expect that DeIDOT will pick an appraiser for the panel it thinks is favorable to it and the owner would pick one perceived to be favorable to him or her. This means the Chief of the review panel would likely cast the deciding vote toward the lower DeIDOT pick's number or the higher property owner pick's number. The process is fraught with unknowns and risk, which would make it difficult to recommend on a binding basis.

Response: For the time being, the Department prefers to observe how the process works out in actual cases. It remains committed to assuring that property owners' rights continue to be respected by the State in its property acquisition activities.

2. Findings of Fact

The Secretary finds that it is appropriate to amend the existing regulations as proposed, with the exceptions of the non-substantive changes shown in the attached Exhibit A.

3. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt the **Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests**.

4. Text and Citation

The text of 2 DE Admin. Code 2407 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 2nd DAY OF FEBRUARY, 2015.

Jennifer L. Cohan, Secretary
Department of Transportation

2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property
(Break in Continuity of Sections)

3.0 Steps

3.1 Upon the entering of an Order for Possession by the Courts, either party (DeIDOT or the owner, or their respective representatives) may request an ADR review. This request must be in writing and may be submitted any time after the initiation of negotiations, but no later than within [4590] days of the Order for Possession.

3.2 A response to the ADR request must be sent to the requesting party within 15 days of receipt of the request. Non-response by the party receiving the request within the 15 day period shall be construed as a refusal to the request for an ADR review.

3.3 All ADR requests or responses to a request made to DeIDOT, or activities/determinations performed by DeIDOT as part of the review process must have approval of the ~~[Assistant Director DeIDOT Chief of Right of Way]~~ with concurrence from a ~~[DAG Deputy Attorney General]~~. In cases with Just Compensation in excess of \$500,000, approval of the Secretary is also required.

(Break in Continuity Within Section)

3.11 The members of the ADR review panel shall meet in private to discuss the merits of each party's appraisal and documentation. [Prior to this discussion, both sides may make a short opening statement, and the owner may make an owner's statement.] There will not be any testimony or input required from either party for the review unless requested by the ADR review panel. Copies of any testimony or input required of the parties shall be made available to the opposing party.

(Break in Continuity Within Section)

*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 545 (18 DE Reg. 545). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 16 Delaware Code, Chapter 78 (16 Del.C. Ch. 78)

19 DE Admin. Code 4103

ORDER

4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program

AND NOW, this 12th day of February, 2015, Ann Shepard Visalli, as Director of the Delaware Office of Management and Budget, in accordance with 29 **Del.C.** §§6303A & 6307A, for the reasons stated below enters this ORDER adopting the amended Regulation Governing the State of Delaware Asbestos Certification and Training Program. (the "Regulation").

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Director of the Delaware Office of Management and Budget is adopting the final amended regulation governing the State of Delaware Asbestos Certification and Training Program.

On January 1, 2015 (Volume 18, Issue 7), the Delaware Office of Management and Budget published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed amended regulations be delivered to the Office of Management and Budget by February 4, 2015, after which time the Office of Management and Budget would review information, factual evidence and public comment to the said proposed amended regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding the proposed REGULATION GOVERNING THE STATE OF DELAWARE ASBESTOS CERTIFICATION AND TRAINING PROGRAM were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. The public comment period was open from January 1, 2015 through February 4, 2015. No comments were received on the proposed amended regulation during the public comment period and no changes have been made to the proposed amended regulation.

FINDINGS OF FACT AND CONCLUSIONS

1. The Delaware Office of Management and Budget has established rules and procedures to safeguard the public by requiring that renovations or demolitions which disturb asbestos be conducted only by contractors, supervisors, and workers certified by the Office of Management and Budget's Division of Facilities Management.
2. The Regulation reflects these rules and procedures and comprehensively updates language contained therein for federal requirements and state business practices.
3. The Director of the Delaware Office of Management and Budget has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §§6303A & 6307A.

DECISION AND ORDER CONCERNING THE REGULATION

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Ann Shepard Visalli, Director, Delaware Office of Management and Budget

***Please note that no changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 547 (18 DE Reg. 547). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Tuesday, March 10, 2015** beginning at 1:30 p.m. A business meeting will be held on the following day, **Wednesday, March 11, 2015** beginning at 1:00 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 or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at (609) 883-9500 extension 203.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MANAGEMENT SERVICES
PUBLIC NOTICE
BIRTH TO THREE EARLY INTERVENTION SYSTEM

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

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

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

A public hearing will be held:

March 2, 2015 at 10:00 am Conference Room, Second Floor,
 18 North Walnut Street, Milford, Delaware 19963

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

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

Susan Campbell
 Birth to Three Early Intervention System

1901 N Dupont Hwy
New Castle, DE 19720
Email: susan.campbell@state.de.us
Fax: 302-255-4407

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

DE Part C Public Participation Policies:

DE Statewide System of Early Intervention Services:

DE Transition Operations Agreement:

Eligibility Policy:

General Education Provisions Act (GEPA):

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**

Medicaid 1915 Home and Community-Based Services Waiver Programs -Statewide Transition Plan

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is making available for public review and comment Delaware Medicaid's *Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning, Policy Development and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 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.

**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 Rule 2.0 Suspensions, Revocations, and Appeals – to explain the process an individual may go through when their commission has had action against them. If you wish to view this amendment/adoption, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by March 31, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on May 1, 2015, at 10:00 a.m., Room 112, Tatnall Building, 150 Martin L. King, Jr. Boulevard, South, Dover, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
100 Board of Accountancy

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules pertaining to successful completion of the AICPA self-study program "Professional Ethics for CPAs" are proposed to be amended to require completion of the course within 10 years of the date of application for licensure.

A public hearing will be held on April 23, 2015 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until May 8, 2015 in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
1800 BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION
EXAMINERS
PUBLIC NOTICE
1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Pursuant to 24 **Del.C.** §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules are amended to adopt the most recent versions of the International Mechanical and International Fuel Gas Codes.

A public hearing will be held on April 14, 2015 at 8:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be April 29, 2015 which is 15 days following the public hearing.

PUBLIC SERVICE COMMISSION
4002 Regulations Governing Payphone Service Providers in Delaware (Docket 12)

IN THE MATTER OF THE INVESTIGATION AND
ADOPTION OF RULES TO GOVERN PAY PHONE
SERVICES WITHIN THE STATE OF DELAWARE
(OPENED OCTOBER 9, 1984; REOPENED JUNE
7, 1997; REOPENED JANUARY 29, 2002 AND
REOPENED FEBRUARY 5, 2015)

PSC REGULATION DOCKET NO. 12

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S "REGULATION GOVERNING PAYPHONE SERVICE PROVIDERS IN DELAWARE"

TO: ALL TELECOMMUNICATIONS CARRIERS, ALL CONSUMERS, AND OTHER INTERESTED PERSONS

In 2002, the Public Service Commission ("PSC ") adopted "Regulation Governing Payphone Service Providers in Delaware" to govern its regulatory oversight of payphone service providers operating within Delaware.

By PSC Order No. 8705 (Feb. 5, 2015), the PSC now proposes to eliminate these Regulations. The proposed change is a result of new legislation (H.B.96) which was effective on July 15, 2013 and the increasing and near total replacement of payphones with mobile phones.

The text of the current Regulations and the red-lined version are attached to PSC Order No. 8705. That Order and the exhibits are reproduced in the March 2015 edition of the Delaware *Register of Regulations*. The Order and exhibits can also be reviewed on-line at the PSC's website at www.state.de.us/delpsc. You can also obtain a paper copy of the Order at the PSC's Dover office. Those paper copies will cost \$0.25 per page.

You can file written comments, suggestions, briefs, compilations of data, or other materials concerning this proposed amendment. Such material (10 copies or file online to our Delafile system) must be submitted to the Commission on or before Thursday April 2, 2015. Send the material to the Commission's Dover office at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckt. No. 12

In addition, the PSC will conduct a public hearing on these proposed changes on Wednesday, April 15, 2015, beginning at 10:00 AM. The hearing will take place at the Commission Hearing Room located at 861 Silver Lake Blvd, First Floor, Dover, Delaware. You can submit additional materials then.

If you are handicapped and might need assistance or aids in participating in this matter, please contact the PSC to discuss the needed assistance or aids. You can contact the PSC with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You can also send inquiries by Internet e-mail addressed to psc@state.de.us.

DEPARTMENT OF TRANSPORTATION
DIVISION OF MAINTENANCE AND OPERATIONS
PUBLIC NOTICE
2310 Outdoor Advertising

The Department of Transportation has developed a general revision of its Outdoor Advertising regulations.

The last such general revision took place many years ago. The development of digital advertising media and other changes in both Federal and State law regarding outdoor advertising caused the Department to engage in this process.

Among other changes, the regulations would refer to the National Highway System, instead of the prior references to the Interstate and Primary System. It adds and updates several definitions, such as decorative subdivision entrance signs and historical markers, and makes other changes to deal with variable message signs.

The Department will take written comments on the proposed Outdoor Advertising Regulations for this from March 1, 2015 through March 31, 2015. The proposed Regulations appear below.

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

Jeff Leonard
Outdoor Advertising and Roadside Control Manager
Division of Maintenance and Operations
Delaware Department of Transportation
250 Bear-Christiana Road
Bear, DE 19701
(302) 326-4585 (telephone)
(302) 739-2895 (fax)
jeff.leonard@state.de.us