
Delaware Register of Regulations

Issue Date: November 1, 2013

Volume 17 - Issue 5, Pages 456 - 572



IN THIS ISSUE:

Regulations:
Proposed
Final

Governor's Office:
Appointments

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before October 15, 2013.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

457

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 16	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 17	4:30 p.m.
April 1	March 17	4:30 p.m.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

459

Cumulative Tables.....	461
------------------------	-----

PROPOSED

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY	
201 Delaware Manufactured Home Relocation Trust Fund Regulations.....	466
DELAWARE STATE FIRE PREVENTION COMMISSION	
710 Ambulance Service Regulations.....	469
DEPARTMENT OF EDUCATION	
Office of the Secretary	
910 Delaware Requirements for Issuance of the GED® Test Credential.....	469
Professional Standards Board	
1503 Educator Mentoring.....	472
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Medicaid and Medical Assistance	
Medicaid Expansion under the Affordable Care Act 2014 – Modified Adjustment Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition.....	477
Division of Public Health	
4459B Residential Property Renovation, Repair and Painting.....	485
Division of Social Services	
DSSM 11003.7.5 Income Eligible/Education and Post-Secondary Education (Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation).....	486
DEPARTMENT OF LABOR, Division of Industrial Affairs, Office of Workers' Compensation	
1341 Workers' Compensation Regulations.....	488
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, Division of Water	
7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	488
DEPARTMENT OF STATE, Division of Professional Regulation	
1900 Board of Nursing, Section 9.0, Regulations Pertaining to Mandatory Continuing Education ...	490
2930 Council on Real Estate Appraisers	490
3600 Board of Geologists.....	494

FINAL

DEPARTMENT OF EDUCATION, Office of the Secretary	
275 Charter Schools.....	497
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Medicaid and Medical Assistance	
Attachment 3.1-A Pg. 5 Addendum, Multi-State Purchasing Pool Supplemental Rebate Agreement	501
Medicaid Expansion under the Affordable Care Act 2014 – DSSM 14000, 15000, 16000 & 18000 .	503
Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity ...	519
Division of Public Health	
4305 Trauma System Regulation.....	523
Division of Social Services	
11002.9 Definitions and Explanation of Terms.....	526

TABLE OF CONTENTS

DEPARTMENT OF INSURANCE, Office of the Commissioner

302 Captive Insurance Financial Regulation.....	532
802 Delaware Workplace Safety Regulation.....	533
804 Workers Compensation Ratepayer Advocate.....	534

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1101 Definitions and Administrative Principles.....	536
1104 Particulate Emissions from Fuel Burning Equipment.....	536
1114 Visible Emissions.....	536
1139 Nitrogen Oxides (NOx) Budget Trading Program.....	538
1143 Heavy Duty Diesel Engine Standards.....	540

Division of Fish and Wildlife

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (3.0, 5.0 & 6.0).....	542
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas, Section 12.0.....	543

Division of Waste and Hazardous Substances

1301 Regulations Governing Solid Waste (DRGSW).....	545
---	-----

Division of Water

7503 Oil Gas and Mineral Exploration Regulations.....	547
---	-----

DEPARTMENT OF SAFETY AND HOMELAND SECURITY, Office of Highway Safety

1205 Electronic Red Light Safety Program (ERLSP).....	549
---	-----

DEPARTMENT OF STATE

Division of Professional Regulation

300 Board of Architects.....	550
4100 Board of Home Inspectors.....	551
5200 Board of Examiners of Nursing Home Administrators.....	552

Public Service Commission

1001 Rules of Practice and Procedure of the Delaware Public Service Commission.....	554
---	-----

GOVERNOR'S OFFICE

Appointments and Reappointments.....	558
--------------------------------------	-----

GENERAL NOTICE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan	565
--	-----

CALENDAR OF EVENTS/HEARING NOTICES

Delaware Manufactured Home Relocation Authority, Notice of Public Comment Period.....	568
Delaware State Fire Prevention Commission, Notice of Public Hearing and Comment Period.....	568
Dept. of Education, Notice of Monthly Meeting.....	569
Dept. of Health and Social Svcs., Div. of Medicaid and Medical Assistance; Div. of Public Health; Div. of Social Services, Notices of Public Comment Periods.....	569 - 570
Dept. of Labor, Div. of Industrial Affairs, Notice of Public Hearing and Comment Period.....	570
Dept. of Natural Resources and Environmental Control, Div. of Water, Notice of Public Hearing.....	570
Dept. of State, Div. of Prof. Regulation, Notices of Public Hearings and Comment Periods	571 - 572

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

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

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY	
202 Rent Increase Dispute Resolution Procedures.....	17 DE Reg. 267(Emer.)
DELAWARE RIVER BASIN COMMISSION	
Revised Notice of Proposed Rulemaking and Public Hearing.....	17 DE Reg. 143 (Prop.)
Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH.....	17 DE Reg. 365 (Prop.)
DELAWARE SOLID WASTE AUTHORITY	
501 Regulations of the Delaware Solid Waste Authority.....	17 DE Reg. 313 (Final)
502 Statewide Solid Waste Management Plan.....	17 DE Reg. 314 (Final)
503 Differential Disposal Fee Program, Repealed.....	17 DE Reg. 315 (Rep.)
DEPARTMENT OF AGRICULTURE	
Office of the Secretary	
101 On-Farm Home Processing of Non-Potentially Hazardous Foods.....	17 DE Reg. 25 (Prop.)
	17 DE Reg. 316 (Final)
1201 Nutrient Management Certification Regulations.....	17 DE Reg. 28 (Prop.)
	17 DE Reg. 317 (Final)
Delaware Forest Service	
401 Forest Service Erosion and Sedimentation Regulations.....	17 DE Reg. 145 (Prop.)
Harness Racing Commission	
502 Delaware Standardbred Breeders' Fund Regulations.....	17 DE Reg. 203 (Final)
Pesticides Section	
601 Delaware Pesticide Rules and Regulations.....	17 DE Reg. 146 (Prop.)
DEPARTMENT OF EDUCATION	
Office of the Secretary	
106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 204 (Rep.)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 205 (Final)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 214 (Rep.)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	17 DE Reg. 216 (Final)
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II), Repealed.....	17 DE Reg. 224 (Rep.)
275 Charter Schools.....	17 DE Reg. 275 (Prop.)
501 State Content Standards.....	17 DE Reg. 148 (Prop.)
	17 DE Reg. 423 (Final)
614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion.....	17 DE Reg. 367 (Prop.)
805 The School Health Tuberculosis (TB) Control Program.....	17 DE Reg. 361(Emer.)
851 K to 12 Comprehensive Health Education Program.....	17 DE Reg. 150 (Prop.)
	17 DE Reg. 425 (Final)
917 Accelerated Academic Programs.....	17 DE Reg. 152 (Prop.)

917 Accelerated Academic Programs.....	17 DE Reg. 427(Final)
Professional Standards Board	
1502 Professional Growth Salary Increments.....	17 DE Reg. 65 (Final)
1510 Issuance of Initial License.....	17 DE Reg. 372 (Prop.)
DEPARTMENT OF FINANCE	
Office of the State Lottery	
205 Charitable Video Lottery Rules and Regulations.....	17 DE Reg. 10 (Emer)
206 Internet Lottery Regulations.....	17 DE Reg. 29 (Prop.)
	17 DE Reg. 317 (Final)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Medicaid and Medical Assistance	
1915(c) Home and Community-Based Services Waiver.....	17 DE Reg. 156 (Prop.)
	17 DE Reg. 432 (Final)
Attachment 3.1-A Page 5 Addendum, Multi-State Purchasing Pool Supplemental Rebate Agreement.....	17 DE Reg. 285 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Children's Health Insurance Program (CHIP) MAGI Eligibility.....	17 DE Reg. 392 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Citizenship and Immigration Status.....	17 DE Reg. 389 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Eligibility Process.....	17 DE Reg. 377 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI-Based Eligibility Groups.....	17 DE Reg. 374 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - MAGI Income Methodology.....	17 DE Reg. 380 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Residency.....	17 DE Reg. 386 (Prop.)
Delaware Medicaid Modified Adjusted Gross Income (MAGI) Eligibility and Benefits State Plan Amendments - Single State Agency.....	17 DE Reg. 383 (Prop.)
Diamond State Health Plan Plus 1115 Demonstration Waiver.....	17 DE Reg. 225 (Final)
Medicaid Expansion under the Affordable Care Act of 2014 - DSSM 14000, 15000, 16000 and 18000.....	17 DE Reg. 126(Emer.)
	17 DE Reg. 162 (Prop.)
Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity.....	17 DE Reg. 282 (Prop.)
Title XIX Medicaid State Plan Regarding Medicaid Rehabilitative Services.....	17 DE Reg. 395 (Prop.)
Division of Public Health	
4104 Delaware Conrad State 30 / J-1 Visa Waiver Program.....	17 DE Reg. 233 (Final)
4202 Control of Communicable and Other Disease Conditions.....	17 DE Reg. 320 (Final)
4303 Delaware Early Defibrillation Program.....	17 DE Reg. 165 (Prop.)
	17 DE Reg. 438 (Final)
4305 Trauma System Regulation.....	17 DE Reg. 288 (Prop.)
4408 Facilities that Perform Invasive Medical Procedures.....	17 DE Reg. 397 (Prop.)
4456 Hazardous Chemical Act, Repealed.....	17 DE Reg. 234 (Rep.)
4462 Public Drinking Water Systems.....	17 DE Reg. 30 (Prop.)
	17 DE Reg. 439 (Final)
4470 State of Delaware Medical Marijuana Code.....	17 DE Reg. 405 (Prop.)
Division of Social Services	
Delaware's Temporary Assistance for Needy Families State Plan Amendment	17 DE Reg. 406 (Prop.)
9018.2 Time Limit for Able-bodied Adults.....	17 DE Reg. 66 (Prop.)
11002.9 Definitions and Explanations of Terms.....	17 DE Reg. 289 (Prop.)

Division of Substance Abuse and Mental Health

6002 Credentialing Mental Health Screeners & Payment for Vol. Admissions. 17 DE Reg. 72 (Prop.)

DEPARTMENT OF INSURANCE

Office of the Commissioner

302 Captive Insurance Financial Regulation..... 17 DE Reg. 293 (Prop.)

802 Delaware Workplace Safety Regulation..... 17 DE Reg. 166 (Prop.)

804 Workers Compensation Ratepayer Advocate..... 17 DE Reg. 169 (Prop.)

1003 Credit for Reinsurance..... 17 DE Reg. 235 (Final)

DEPARTMENT OF LABOR

Division of Industrial Affairs

1341 Workers' Compensation Regulations..... 17 DE Reg. 34 (Prop.)

1342 Health Care Practice Guidelines, PARTS A - G..... 17 DE Reg. 322 (Final)

17 DE Reg. 35 (Prop.)

17 DE Reg. 322 (Final)

Division of Unemployment Insurance

1202 Unemployment Insurance Regulations..... 17 DE Reg. 36 (Prop.)

17 DE Reg. 325 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

Amendment to the Inspection and Maintenance (I/M) State Implementation Plan (SIP) concerning Section 11(e) - Program Compliance..... 17 DE Reg. 342 (Gen.)

Dioxide (NO₂) National Ambient Air Quality Standard (NAAQS)..... 17 DE Reg. 96 (Gen.)

1101 Definitions and Administrative Principles 17 DE Reg. 36 (Prop.)

1103 Ambient Air Quality Standards 17 DE Reg. 38 (Prop.)

1104 Particulate Emissions from Fuel Burning Equipment..... 17 DE Reg. 44 (Prop.)

1108 Sulfur Dioxide Emissions From Fuel Burning Equipment..... 17 DE Reg. 79 (Prop.)

1114 Visible Emissions 17 DE Reg. 45 (Prop.)

1125 Requirements for Preconstruction Review, Section 1.9, Definitions 17 DE Reg. 6 (Errata)

17 DE Reg. 408 (Prop.)

17 DE Reg. 326 (Final)

1125 Requirements for Preconstruction Review, Section 1.9, Definitions 17 DE Reg. 328 (Final)

1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Sections 6.0 & 10.0..... 17 DE Reg. 47 (Prop.)

1139 Nitrogen Oxides (NO_x) Budget Trading Program..... 17 DE Reg. 295 (Prop.)

1140 Delaware Low Emission Vehicle Program..... 17 DE Reg. 48 (Prop.)

1143 Heavy Duty Diesel Engine Standards..... 17 DE Reg. 303 (Prop.)

17 DE Reg. 303 (Prop.)

Division of Fish and Wildlife

3200 Horseshoe Crabs..... 17 DE Reg. 49 (Prop.)

17 DE Reg. 441 (Final)

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (3.0, 5.0 & 6.0) Section 12.0..... 17 DE Reg. 50 (Prop.)

17 DE Reg. 172 (Prop.)

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit.... 17 DE Reg. 304 (Prop.)

3545 Invasive Finfish..... 17 DE Reg. 7 (Errata)

3581 Spiny Dogfish..... 17 DE Reg. 236 (Final)

3588 Atlantic Menhaden..... 17 DE Reg. 305 (Prop.)

3900 Wildlife, Sections 2.0, 5.0, 10.0, 14.0 and 16.0..... 17 DE Reg. 174 (Prop.)

17 DE Reg. 238 (Final)

Division of Waste and Hazardous Substances

1301 Regulations Governing Solid Waste (DRGSW)..... 17 DE Reg. 58 (Prop.)

1352 Regulations Governing Aboveground Storage Tanks 17 DE Reg. 59 (Prop.)

Division of Water

7503 Oil Gas and Mineral Exploration Regulations 17 DE Reg. 61 (Prop.)

Division of Watershed Stewardship	
5101 Sediment and Stormwater Regulations.....	17 DE Reg. 240 (Final)
7402 Shellfish Sanitation Regulations.....	17 DE Reg. 53 (Prop.)
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Division of State Police	
5500 Bail Enforcement Agents.....	17 DE Reg. 409 (Prop.)
Office of Highway Safety	
1205 Electronic Red Light Safety Program (ERLSP).....	17 DE Reg. 182 (Prop.)
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES	
Division of Family Services	
105 Residential Child Care Facilities and Day Treatment Programs.....	17 DE Reg. 182 (Prop.)
201 Child Placing Agencies.....	17 DE Reg. 62 (Prop.)
301 Criminal History Record Checks for Child Care Persons.....	17 DE Reg. 331 (Final)
302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons.....	17 DE Reg. 339 (Final)
DEPARTMENT OF STATE	
Division of Professional Regulation	
Uniform Controlled Substances Act Regulations, Section 2.0, Requirements...	17 DE Reg. 186 (Prop.)
300 Board of Architecture.....	17 DE Reg. 188 (Prop.)
1100 Board of Dentistry and Dental Hygiene, Section 12.0 Unprofessional Conduct Defined.....	17 DE Reg. 307 (Prop.)
1900 Board of Nursing, Sect. 6.0 Requirements and Procedures for Licensure Section 10.0 Disciplinary Proceedings.....	17 DE Reg. 85 (Final) 17 DE Reg. 86 (Final)
Section 14.0 Nurse Licensure Compact Rules & Regs.....	17 DE Reg. 83 (Final)
2500 Board of Pharmacy.....	17 DE Reg. 192 (Prop.)
2900 Real Estate Commission.....	17 DE Reg. 242 (Final)
2925 Real Estate Commission Education Committee.....	17 DE Reg. 443 (Final)
2930 Council on Real Estate Appraisers.....	17 DE Reg. 444 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	17 DE Reg. 410 (Prop.)
3300 Board of Veterinary Medicine.....	17 DE Reg. 445 (Final)
3500 Board of Examiners of Psychologists.....	17 DE Reg. 89 (Final) 17 DE Reg. 417 (Prop.)
4100 Board of Home Inspectors.....	17 DE Reg. 243 (Final) 17 DE Reg. 309 (Prop.)
5200 Board of Examiners of Nursing Home Administrators.....	17 DE Reg. 196 (Prop.)
5300 Board of Massage and Bodywork.....	17 DE Reg. 342 (Final)
Office of the State Bank Commissioner	
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	17 DE Reg. 418 (Prop.)
Public Service Commission	
3001 Rules for Certification and Regulation of Electric Suppliers.....	17 DE Reg. 310 (Prop.)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2202 Issuance of Duplicate Drivers' Licenses.....	17 DE Reg. 197 (Prop.)
2214 Waiver of Written Examinations for Certain New Residents.....	17 DE Reg. 197 (Prop.)
2251 Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle.....	17 DE Reg. 197 (Prop.)
2264 Use of Dealer License Plates on Boat Trailers.....	17 DE Reg. 197 (Prop.)
2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices.....	17 DE Reg. 197 (Prop.)
2274 Distribution of Literature Advertising Businesses.....	17 DE Reg. 197 (Prop.)

CUMULATIVE TABLES

465

2275 Requirements for Licensing of Vehicle Dealers.....	17 DE Reg. 197 (Prop.)
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	17 DE Reg. 198 (Prop.)
Division of Transportation Solutions	
2405 Oversize/Overweight Hauling Permit Policy and Procedures.....	17 DE Reg. 202 (Prop.)
EXECUTIVE DEPARTMENT	
Delaware Economic Development Authority	
401 Procedures Regarding Non-State Guaranteed Bonds.....	17 DE Reg. 90 (Final)
403 Administration and Operation of Council on Development Finance	17 DE Reg. 90 (Final)
OFFICE OF MANAGEMENT AND BUDGET	
Division of Facilities Management	
Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	17 DE Reg. 63 (Prop.)
	17 DE Reg. 446 (Final)
2001 Group Health Care Insurance Eligibility and Coverage Rules	17 DE Reg. 91 (Final)
STATE BOARD OF PENSION TRUSTEES	
The Delaware Public Employees' Retirement System	
The Delaware Public Employees Pension System.....	17 DE Reg. 91 (Final)

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.

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITYStatutory Authority: 25 Delaware Code, Section 7012 (25 **Del.C.** §7012)**1 DE Admin. Code 201****PUBLIC NOTICE****201 Delaware Manufactured Home Relocation Trust Fund Regulations**

The Delaware Manufactured Home Relocation Authority (the "Authority") will entertain written comments to proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion.

Pursuant to its statutory authority, at the Authority's meeting on October 10, 2013, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the October 10, 2013 meeting of the Authority and published herein will set the maximum payments available to a landlords and tenants for removal and relocation costs and the maximum payment available to tenants for homes that are determined to be non-relocatable.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

Anyone wishing to submit written comments should submit such comments by December 1, 2013 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

201 Delaware Manufactured Home Relocation Trust Fund Regulations

The Authority is granted authority to establish rules and regulations and establish criteria for the disbursement of benefits available to landlords and tenants under the provisions of 25 **Del.C.** §7011, et. seq. (the "Act"). The regulations set forth below establish criteria for benefits eligibility, pursuant to the statute, application procedures, application review procedures, and payment procedures.

1.0 Criteria for Tenant Benefits

- 1.1 Only "Tenants", as defined under the Act, are entitled to benefits under the Act. A Tenant is defined to mean an owner of a manufactured home who has tenancy of a lot in a manufactured home community. A manufactured home community refers to a parcel of land where two or more lots are rented or offered for rent for the placement of manufactured homes. Notwithstanding anything stated herein to the contrary, a Tenant shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.
- 1.2 A Tenant is entitled to relocation benefits under the Act if the Tenant is required to move due to a change in use or conversion of the land in a manufactured home community. A Tenant is not entitled for compensation for relocation if:
 - 1.2.1 the Landlord (at the Landlord's expense) moves the Tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community; or
 - 1.2.2 the Tenant is vacating the manufactured home community and so informed the Landlord before notice of the change in use was given by the Landlord; or
 - 1.2.3 the Tenant abandons the manufactured home; or
 - 1.2.4 the Tenant has failed to pay the Tenant's share of the Relocation Trust Fund assessment during the course of his or her tenancy.
- 1.3 The maximum relocation payment available to a Tenant is ~~\$4,000.00~~ \$8,000.00 for a single section home or ~~\$8,000.00~~ \$12,000.00 for a multi-section home.
- 1.4 If a Tenant is required to move due to a change in use and complies with the statutory requirements of 25 **Del.C.** §7013, the Tenant is entitled to payment from the Relocation Trust Fund of the lesser of:
 - 1.4.1 the actual relocation expenses of moving the manufactured home and existing appurtenances to a new location within a 25 mile radius of the vacated manufactured home community, or
 - 1.4.2 the maximum benefits available under Section 1.3.
- 1.5 Moving expenses which are eligible for reimbursement include the cost of taking down, moving and setting up the manufactured home in the new location.
- 1.6 In certain circumstances, a manufactured home may be considered non-relocatable. If, based upon the criteria described herein, a Tenant's manufactured home is determined by the Authority to be non-relocatable, the Tenant may qualify for compensation to reimburse the Tenant for the value of the non-relocatable home subject to the limitations set forth in the Act. The maximum payment to a Tenant for a non-relocatable home is \$5,000.00 for a single section home and \$9,000.00 for a multi-section home.
- 1.7 Whether or not a home can or cannot be relocated will be determined by the Authority based upon the following criteria:

PROPOSED REGULATIONS

- 1.7.1 the availability of a replacement home site within a 25 mile radius of the vacated manufactured home community;
 - 1.7.2 the feasibility of physical relocation, including the ability of taking down, moving and setting up the home in a new location without causing significant structural damage to the manufactured home in the process;
 - 1.7.3 the appraised value of the manufactured home in comparison to the projected cost of relocating the manufactured home to a new location.
- 1.8 If the Authority determines that the Tenant's manufactured home cannot be relocated, the Tenant shall obtain, at the Tenant's expense, an appraisal prepared by a certified manufactured home appraiser for purposes of determining the fair market value of the home and any existing appurtenances. The appraisal shall exclude the value of the underlying land. The maximum benefits available to the Tenant under such circumstances shall be determined by the Board for a single section home and a multi-section home following the completion of an actuarial study to be performed under the direction of the Authority. Subject to the maximum limits, the amount of compensation that will be paid to the Tenant will be equal to the fair market value of the home based upon the appraisal.
- 1.9 To be eligible for compensation for a non-relocatable home, in addition to the application provided for in Section 3 hereof, the Tenant must deliver to the Authority a current State of Delaware title to the home, duly endorsed by the owner or owners of record, with valid releases of all liens shown on the title, and a tax release.
- 1.10 In lieu of the foregoing benefits, a Tenant may elect to abandon the manufactured home in the manufactured home community and collect from the Trust Fund, in lieu of any other benefits available under the Act, the sum of \$1,500 for a single section home or \$2,500 for a multi-section home. To qualify for this payment, the Tenant must deliver to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release.

2.0 Criteria for Landlord Benefits

- 2.1 If pursuant to the Act and these regulations, a manufactured home is determined to be non-relocatable or a Tenant abandons the home, upon application by the Landlord duly submitted to the Authority, a Landlord of a manufactured home community is entitled to receive from the Relocation Trust Fund payment in an amount determined by the Authority to be sufficient to remove and/or dispose of the manufactured home. The maximum relocation payment available to a Landlord, including any demolition costs incurred by the Landlord in disposing of a home, is ~~\$500.00~~ \$3,000.00 for a single section home ~~or \$1,000.00 and \$3,000.00~~ for a multi-section home. To qualify for this benefit, the Landlord must submit an application pursuant to the provisions of Section 3. Notwithstanding anything stated herein to the contrary, a Landlord shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.
- 2.2 Upon receipt of the title documents from the Tenant for the manufactured home that is considered to be non-relocatable or abandoned pursuant to the Act, the Authority will relinquish the title to the Landlord to facilitate the removal and/or disposal of the home from the manufactured home community. Within ten (10) calendar days after the removal and/or disposal of the manufactured home by the Landlord, the Landlord shall notify the Authority in writing of the amount of funds received by the Landlord, if any, from any subsequent sale or disposal of the manufactured home, and a copy of all documents relating to the removal and/or disposal shall be provided to the Authority, including documents relating to any expenses incurred by the Landlord in removing and/or disposing of the home.
- 2.3 Within thirty (30) days after receipt of the information and documents required under the Act and these regulations, the Authority shall cause a voucher to be issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the Landlord which amount shall represent the amount determined by the Authority to be sufficient to cover the cost of the removal and/or disposal of the manufactured home, less any profit realized by the Landlord from

the removal and/or disposal of the home, subject to the maximum relocation payment set forth in Section 2.1 hereof.

- 2.4 A Landlord shall not be entitled to any payment from the Trust Fund if the Landlord has failed to pay the Landlord's share of the total Trust Fund assessment during the course of the tenancies relating to the manufactured home community or if the Landlord has failed to remit the Tenant's share of said assessment.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Delaware Manufactured Home Relocation Trust Fund is available at:**

201 Delaware Manufactured Home Relocation Trust Fund Regulations

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 **DE Admin. Code** 710

PUBLIC NOTICE

710 Ambulance Service Regulations

In accordance with procedures set forth in 29 **Del.C.** Ch. 101, the Delaware State Fire Prevention Commission is proposing to adopt changes and updates to current regulation 710 Ambulance Service Regulations.

The Delaware State Fire Prevention Commission will hold a public hearing at which members of the public may present comments on the proposed regulations on December 17, 2013 at 7:00 p.m. in the Delaware State Fire Prevention Chamber at the Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Additionally, members of the public may present written comments on the proposed regulations by submitting such written comments to Ms. Sherry Lambertson, Delaware State Fire Prevention Commission, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments must be received on or before January 2, 2014. Members of the public may receive a copy of the proposed regulations at no charge by United States Mail by writing Ms. Sherry Lambertson at the address of the Delaware State Fire Prevention Commission set forth above.

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

710 Ambulance Service 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** 910

PUBLIC NOTICE

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

910 Delaware Requirements for Issuance of the GED® Test Credential

- A. Type of Regulatory Action Required**
Amendment to Existing Regulation
-

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 910 Delaware General Educational Development (GED) Endorsement. This regulation is being reviewed in order to provide greater access to a secondary credential assessment in Delaware. The new GED® Test to be initiated in January 2014 will only be computer based and will have an increased cost of \$120, up from \$75.00. This revision aligns with the Department's focus of preparing Delawareans to be college and career ready. The use of multiple secondary credential assessments, in addition to the GED®, will permit adults without a high school diploma increased access to attaining a secondary credential for entry into post-secondary institutions, training opportunities and employment. Because the new GED® Test is computerized, the Official Practice Test and the 45 day waiting period between retests are no longer necessary and the elimination will allow for Delawareans access to credential faster and also reduces the administrative burden to the State.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **December 5, 2013** to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is related to a Secondary Credential assessment and to providing a credential to adult students who have not completed the requirements for a traditional high school diploma. The regulation and the secondary credential assessments do not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is related to a secondary credential assessment and to providing a credential to adult students who have not completed the requirements for a traditional high school diploma.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to a secondary credential assessment and providing a credential to adult students who have not completed the requirements for a traditional high school diploma. The regulation and the assessments do not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to secondary credential assessments and providing a credential to adult students who have not completed the requirements for a traditional high school diploma. The regulation and tests do not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation preserves the necessary authority and flexibility of decision making at the local board and school levels.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation maintains the current process for authority and accountability for the secondary credential program.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local school boards for compliance with the regulation.

910 Delaware Requirements for issuance of the ~~GED[®]-test~~ Secondary Credential

The ~~A Delaware GED[®]-test credential~~ secondary credential is given to persons who satisfactorily pass the ~~GED[®]-Test~~ a recognized secondary credential assessment approved by the Delaware Department of Education.

1.0 ~~Eligibility to take the GED[®]-test~~ a secondary credential assessment

- 1.1 For persons 18 years of age or older, an applicant shall:
 - 1.1.2 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and
 - 1.1.2 Certify under his or her signature on the ~~GED[®] secondary credential assessment~~ application form that he or she is not enrolled in a public or non public school program; ~~and~~
 - 1.1.3 ~~Provide a verified copy of the Official GED Practice Test[®] indicating the applicant has passed the Official GED Practice Test[™] with a score of 2450 or better and not less than 470 on each of the 5 sub-test areas.~~
- 1.2 For a person 16 or 17 years of age an applicant shall:
 - 1.2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and
 - 1.2.2 Be a resident of the State of Delaware; and
 - 1.2.3 Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, ~~drivers~~ driver's license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and
 - 1.2.4 Provide verification of withdrawal from the applicant's public or non public school program; and
 - 1.2.5 Provide a transcript from the applicant's public or non public school program; ~~and~~
 - 1.2.6 ~~Provide a verified copy of the Official GED Practice Test[™] indicating the applicant has passed the Official GED Practice Test[™] with a score of 2450 or better and not less than 470 on each of the 5 sub-test areas.~~

2.0 ~~Scores Required for the Delaware GED[®]-test~~ a Delaware secondary Credential

~~An individual shall have a standard score of not less than 410 on each of the five tests with an average standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED[®]-test credential~~ attain the minimum passing standard as approved by the Delaware Department of Education.

3.0 ~~Retesting~~ Assessment Approval Process

~~Forty five days shall lapse prior to retesting and instruction is recommended before retesting.~~

- 3.1 The assessment provider must complete a DOE approved application. The application must include at minimum the following:
 - 3.1.1 provider's qualification and experience;
 - 3.1.2 assessment content and form;
 - 3.1.3 validation and norming processes;
 - 3.1.4 assessment delivery;
 - 3.1.5 technology processes;
 - 3.1.6 security provisions;
 - 3.1.7 accommodations processes;
 - 3.1.8 assessment scoring and reporting processes;

3.1.9 assessment data access requirements;

3.1.10 practice test and supplementary instructional materials;

3.1.11 staff training;

3.1.12 alignment with college and career readiness standards and Delaware accountability system; and

3.1.13 cost and timeframe for implementation.

4.0 Currently Recognized Assessments and Publication

4.1 The GED® Test has been previously approved and is a Department of Education recognized secondary credential assessment.

4.2 DOE will publish annually a list of approved assessments.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1503

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1503 Educator Mentoring

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1503 Educator Mentoring. The regulation applies to the comprehensive induction program, including mentoring and professional development required of educators, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to align title for state-wide program and to establish monitoring and reporting processes by Department to Professional Standards Board.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on the 1st day of December, 2013 to Donna Lee Mitchell, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement indirectly based on professional development requirements for educators by establishing standards and expectations for activities, training and service in mentoring support or assistance provided through a formally organized approved comprehensive induction program or such supplemental mentoring programs as required by regulation or by the educators during their three (3) Initial Licensure period, a Continuing Licensure period or any other mentoring program as required by law to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all educators employed to teach students meet high standards and have acquired the prescribed general knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students. Educators are provided support and assistance by their mentors while participating in this program, helping to ensure that all students receive an equitable education by highly qualified educators.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator mentoring and professional development, helping to ensure students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator mentoring, a requirement of license renewal, and helps to ensure all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers 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 will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. Reports and data generated as a result of this regulation amendment will be generated as a part of roles and responsibilities in this program by educators who are compensated for such duties as listed in 8.0 of this regulation.

7. Will 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, rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education. The changes also centralize all mentoring program approval process and applications with the Department of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will 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 Comprehensive Induction Program and mentoring services are designed to strengthen implementation of these policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation 1503? No. The regulations address educator mentoring and professional development for licensure pursuant to 14 **Del.C.** 1210(c).

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1503 Educator Mentoring

1.0 Content

This regulation shall apply to comprehensive induction programs, including mentoring and professional development activities required of educators, pursuant to 14 **Del.C.** Ch. 12.

2.0 Definitions

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

~~"Approved Mentoring Program"~~ **"Approved Comprehensive Induction Program"** means all mentoring educator induction programs, including mentoring and professional development, approved by either the Department or the Standards Board.

"Contact Hours" means the face-to-face time a Mentor or Lead Mentor spends with his/her Protégé mentee working specifically on mentoring activities.

"Department" means the Delaware Department of Education.

"DPAS" means an approved State educator performance evaluation system pursuant to 14 **Del.C.** Ch. 12, Subchapter VII.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For the purposes of this regulation, "the term

educator” shall also include substitute teachers who are employed on long-term temporary contracts of ninety-one (91) days or longer in duration, with the intent or agreement to use the teaching experience to meet the alternative to the student teaching experience in the Initial License under 14 **Del.C.** §1210. This definition shall be construed to provide mentoring to long term substitute teachers who are currently working towards their Initial License.

“**Employing Authority**” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, or management companies.

“**Experienced Educator**” is an educator who holds a Continuing or Advanced License, ~~or an educator who held a Professional Status Certificate issued prior to August 1, 2003. An educator from another jurisdiction who has completed three (3) or more years of successful teaching may be considered an experienced educator.~~

“**Lead Mentor**” means a teacher, specialist, or administrator who holds a Continuing or Advanced License, has participated in the training approved by the Department for Lead Mentors is employed by an employing authority as a Lead Mentor and performs the duties and responsibilities assigned that position. Educators serving as Lead Mentors must ~~have satisfactory~~ be rated as Highly Effective or Effective in DPAS evaluations, and may not be on a DPAS Improvement Plan.

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“**Mentor**” means an educator who holds a Continuing or Advanced License and has participated in the training for Mentors specified by the Department and the employing authority. Educators serving as Mentors must ~~have satisfactory~~ be rated as Highly Effective or Effective in DPAS evaluations, and may not be on a DPAS Improvement Plan.

“**Mentoring**” means activities, training and service in mentoring support or assistance provided through a formally organized approved mentoring comprehensive induction program or such supplemental mentoring programs as required by regulation or by the educator’s employing authority. Mentoring includes, but is not limited to the mentoring that occurs in the comprehensive induction programs required for educators during their three (3) year Initial Licensure period, a Continuing Licensure period, or any other mentoring program as required by law.

“**New to a Category**” means that an educator has moved from the position of a teacher to the position of either a specialist or an administrator; has moved from the position of an administrator to the position of a teacher or a specialist; or has moved from the position of a specialist to the position of a teacher, an administrator or to a different type of certificated specialist position. Examples include but are not limited to a teacher changing positions to a school nurse, or a teacher changing positions to a principal or assistant principal, or a school nurse changing positions to a school counselor, or a teacher changing positions to a school counselor.

“**New Educator**” means an educator who holds an Initial License.

“**Site Coordinator**” means an individual appointed by an employing authority to oversee an ~~educator~~ mentoring comprehensive induction program.

“**Specialist**” is an educator other than a teacher or administrator and includes, but is not limited to School Counselors, Library Media Specialists, School Psychologists and School Nurses.

“**Standards Board**” means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

“**State Board**” means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 **Mentoring Comprehensive Educator Induction Programs**

- 3.1 The Department shall develop and approve comprehensive educator ~~mentoring~~ induction programs for the following;
 - 3.1.1 ~~All mentoring programs for~~ The teachers’ program shall be aligned with Delaware Teaching Standards (INTASC), Danielson’s (2007) “A Framework for Teaching” and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.

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- 3.1.2 All The mentoring programs for specialists shall be aligned with applicable national specialist standards, Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
- 3.1.3 All ~~mentoring programs for~~ The administrators' program shall be based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards, aligned with Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
- 3.2 An employing authority may develop then implement a distinct ~~educator mentoring~~ comprehensive induction program as specified in Sections 4, 5 or 6;
- 3.2.1 Each ~~mentoring~~ comprehensive induction program shall meet the requirements in the distinct mentoring induction programs as listed in Sections 4, 5 or 6.
- 3.2.2 The employing authority shall submit each distinct ~~mentoring~~ comprehensive induction program plan to the Department Standards Board for review and consideration of approval according to the application procedure and timelines set by the Department.
- 3.2.3 ~~The employing authority's mentoring program must be approved by the Standards Board a minimum of three (3) months prior to implementation.~~
- 3.3 Failure by an educator to successfully complete ~~mentoring~~ the requirements of the applicable comprehensive induction shall result in the denial of the Continuing License or suspension of the license as provided in 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License.
- 3.4 The Department shall also develop the following programs:
- 3.4.1 A ~~mentor~~ training program for Lead Mentors, and
- 3.4.2 A ~~mentor~~ training program for Administrator Lead Mentors
- 4.0 New Educator Mentoring**
- 4.1 In accordance with 14 **Del.C.** §1210(c), all educators who hold an Initial License shall participate in ~~mentoring comprehensive induction program~~ activities approved by the Department ~~or the Standards Board~~. Each new educator shall at a minimum be assigned a Mentor for his or her first year on an active Initial License.
- 4.1.1 The Mentor shall assist the new educator in becoming acclimated to the role, the school or other setting, and the Delaware content standards, the Delaware Professional Teaching Standards, applicable national specialist standards, or the Delaware Administrator Standards.
- 4.1.2 The new educator shall meet with his or her Mentor for at least thirty (30) documented hours, which may include a combination of in school and after school time, during the first year of employment.
- 4.1.3 The assignment of a Mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the educator's performance.
- 4.1.4 The employing authority shall provide continuing support to the new educator during the second and third year of their Initial License.
- 4.2 The new educator shall;
- 4.2.1 Attend such activities as are planned by the Department or employing authority during the three (3) year term of the Initial License, as part of the specified ~~new educator mentoring~~ program and offered by individual employing authorities, and
- 4.2.2 Complete the requirements of the applicable ~~new educator mentoring~~ program, which shall consist of no more than sixty (60) hours in the first year, inclusive of meetings between the Mentor and the new educator, and no more than thirty (30) hours in the second and third years.
- 5.0 Experienced Educators New to the State of Delaware**
- Experienced educators new to the State of Delaware who hold a Continuing or Advanced License shall, within the first year of employment, participate in, and successfully complete, an approved ~~mentoring~~ comprehensive induction program consisting of at least thirty (30) documented hours

targeted to the educator's needs, which focuses on current best practices in curriculum, instruction and assessment aligned to state or national standards.

6.0 Experienced Educators New to a Category

- 6.1 Experienced educators who are new to a category shall within the first year of employment be assigned a Mentor, and participate in and complete an approved ~~mentoring~~ comprehensive induction program consisting of at least thirty (30) documented hours addressing educator's specific needs, which focuses on current best practices in curriculum, instruction, assessment or a specialist's or an administrator's position within the district or charter school and is aligned to State and national standards.
- 6.1.1 The assignment of a Mentor beyond the first year of employment is at the discretion of the employing authority, based upon a review of the teacher's, specialist's or administrator's performance.

7.0 Duties and Responsibilities of Mentors

- 7.1 Lead Mentors shall:
- 7.1.1 Complete the annual approval process as defined by the Department.
- 7.1.42 ~~Lead Mentors shall~~ Work a minimum of forty-five (45) documented hours per school year ~~in the on~~ Department-specified or ~~Department-~~approved Lead Mentor activities. Lead Mentor activities may include, but are not limited to, a combination of in school and after school time per year in the program in a leadership position, planning mentor training, providing mentor training to aspiring Mentors, assisting Mentors with specific issues, and other responsibilities as directed by the site coordinator.
- 7.1.23 Teacher and Specialist Lead Mentors shall satisfactorily complete training in mentoring and coaching development approved by the Department for Lead Mentors. A minimum of one (1) Lead Mentor per district shall be trained in Danielson's (2007) "A Framework for Teaching" or the applicable Department approved specific specialist mentoring program.
- 7.1.34 Administrator Lead Mentors shall satisfactorily complete training in mentoring and coaching development approved by the Department and based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards and aligned with Danielson's (2007) "A Framework for Teaching".
- 7.2 Educator Mentors shall:
- 7.2.1 Complete the annual approval process as defined by the Department, and
- 7.2.42 Facilitate thirty (30) documented contact hours, which may include a combination of in school and after school time, with their ~~protégées~~ mentees annually which are designed to help the new teacher or specialist acquire additional skills and knowledge appropriate to their specific positions, and
- 7.2.23 Submit contact log documentation accounting for all mentoring activities provided during the specified time period to their coordinator by January 15 and May 15. This documentation shall be forwarded to the Department by May 30.
- 7.2.34 Teacher and Specialist Mentors must shall:
- 7.2.34.1 Satisfactorily complete training in mentoring and coaching development aligned with Danielson's (2007) "A Framework for Teaching" or the appropriate Department approved specific specialist mentoring program provided by the Lead Mentors, and
- 7.2.34.2 Attend structured meetings concerning the ~~mentoring~~ comprehensive induction program as directed by the district.
- 7.2.45 Administrator Mentors shall:
- 7.2.45.1 Satisfactorily complete training in mentoring and coaching development based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards and aligned with Danielson's (2007) "A Framework for Teaching" and DPAS, and
- 7.2.45.2 Satisfactorily complete training in DPAS, and

7.2.45.3 Attend a minimum of three (3) structured meetings with protégées mentees;

8.0 Payment of Salary Supplement

Mentors and Lead Mentors who are paid in accordance with the provisions of 14 **Del.C.** §1305 shall be paid an extra responsibility salary supplement annually, upon documentation of satisfactory fulfillment of duties and responsibilities, in accordance with the schedule adopted annually by the Standards Board, with concurrence of the State Board.

9.0 Reporting

The Department shall require and collect data used to evaluate the Comprehensive Induction Program and shall provide quarterly reports to the Professional Standards Board. These data will include at a minimum, an assessment of the implementation of the Comprehensive Induction Program and Mentors' and Mentees' compliance and delivery.

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 Expansion under the Affordable Care Act 2014 – Modified Adjustment Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition

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 proposing to amend the Division of Social Services Manual (DSSM) regarding the Modified Adjusted Gross Income (MAGI) methodology provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) under the Affordable Care Act, specifically, *Reasonable Classifications of Individuals under Age 21 and MAGI Household Composition*.

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

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Division of Medicaid and Medical Assistance (DMMA) is proposing to amend rules in Division of Social Services Manual (DSSM) regarding the Modified Adjusted Gross Income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program), specifically, *Reasonable Classifications of Individuals under Age 21 and MAGI Household Composition*. The Patient Protection and Affordable Care Act of 2010 mandates significant changes in how eligibility is determined for medical assistance programs for children, parent/caretaker relatives and pregnant women beginning January 1, 2014.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*

- 42 CFR 431 Subpart G, *Section 1115 Demonstrations (Family Planning)*
- 42 CFR 435.222, *Optional eligibility for reasonable classifications of individuals under age 21*
- 42 CFR 435.603, *Application of modified adjusted gross income (MAGI)*
- 42 CFR 435.912, *Timely determination of eligibility*
- 42 CFR 435.916, *Periodic renewal of Medicaid eligibility*
- 42 CFR 457.315, *Application of modified adjusted gross income and household definition*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans.

The ACA includes many provisions related to eligibility determinations for both Medicaid and the Children's Health Insurance Program (CHIP). To provide coordinated guidance on the eligibility determination process, the Centers for Medicare and Medicaid Services (CMS) published a final/interim final rule "Medicaid Program: Eligibility Changes under the Affordable Care Act of 2010" incorporating significant changes on March 23, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf>. Additional guidance on the eligibility determination process was issued by CMS in a final rule "Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment" on July 15, 2013 at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-15/pdf/2013-16271.pdf>.

Summary of Proposal

In accordance with recent CMS guidance, the Division of Medicaid and Medical Assistance (DMMA) needs to craft amendments to some existing rules and delete and repeal some rules in order to implement the federal regulations under PPACA.

Description of Rule Changes

These amendments to the eligibility rules reflect programmatic changes affecting Delaware Medicaid programs as required by the federal Affordable Care Act (ACA). This regulatory action proposes to codify policy and procedural changes to the Medicaid program and Children's Health Insurance Program (CHIP) related to *MAGI reasonable classifications of individuals under age 21 and MAGI household composition* to be consistent with the ACA.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM): DSSM 14000, DSSM 15000 and DSSM 16000.

DSSM 14000, DSSM 15000 and DSSM 16000

Specific Changes, Revisions, and Additions to Eligibility Rules

The proposed changes affect the following general eligibility rules in section 14000, eligibility group rules in section 15000 and in section 16000, MAGI financial methodologies rules of the Division of Social Services Manual (DSSM).

Proposed for adoption are the following specific rule changes in sections 14000, 15000 and 16000 identified and detailed below. The rule name is *italicized* and substantive changes noted.

Section	Description of Revisions to DSSM 14000, 15000 and 16000
14100.5.1	This rule, <i>Timely Determination of Eligibility</i> , is revised to clarify the time standards for a determination of eligibility when an application is submitted via the Federally Facilitated Marketplace (FFM). The timeliness standard begins on the date the application is transferred from the FFM to the agency.

PROPOSED REGULATIONS

14100.6	This rule is renamed <i>Annual Renewal of Eligibility</i> with new content to describe the streamlined renewal process in accordance with the requirements under the Affordable Care Act. The agency will redetermine eligibility without requiring information from the individual if able to do so based on electronic data sources. When the agency cannot renew eligibility using electronic data sources, a pre-populated renewal form will be sent to the individual. If the individual loses eligibility for failure to respond to the renewal form, eligibility can be reconsidered without a new application if the individual responds within four months after the date of termination.
14800	This rule, <i>Verifications of Factors of Eligibility</i> , is revised to clarify the post-enrollment verification process and time frames.
15510	This rule, <i>Foster Children Group</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> effective January 1, 2014. This is required because financial eligibility under the optional <i>Foster Children Group</i> has a lower income limit than financial eligibility under the mandatory <i>Children Group</i> .
15510.1	This rule, <i>Foster Children Group General Eligibility Requirements</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15510.2	This rule, <i>Technical Eligibility</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15510.3	This rule, <i>Financial Eligibility</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15510.4	This rule, <i>Effective Date of Coverage</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15540	This rule, <i>Infants Awaiting Adoption Group</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> effective January 1, 2014. This is required because financial eligibility under the optional <i>Infants Awaiting Adoption Group</i> has a lower income limit than financial eligibility under the mandatory <i>Children Group</i> .
15540.1	This rule, <i>Infants Awaiting Adoption Group General Eligibility Requirements</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.2	This rule, <i>Technical Eligibility</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.3	This rule, <i>Financial Eligibility</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.4	This rule, <i>Effective Date of Coverage</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.5	This rule, <i>Termination of Eligibility</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15700	This rule, <i>Family Planning Group</i> , becomes obsolete and is deleted and repealed. Women with household income that does not exceed 133% of the federal poverty level (FPL) will be eligible under <i>15400 Adult Group</i> effective January 1, 2014, with full Medicaid benefits. Women with household income that exceeds 133% FPL will be terminated from Medicaid effective January 1, 2014, and referred to the Federally Facilitated Marketplace (FFM) to obtain health care coverage. Women will receive advance notice of termination from Medicaid that allows adequate time to obtain health care coverage via the FFM.
15700.1	This rule, <i>Family Planning Group General Eligibility Requirements</i> , becomes obsolete and is deleted and repealed.
15700.2	This rule, <i>Technical Eligibility</i> , becomes obsolete and is deleted and repealed.

15700.3	This rule, <i>Financial Eligibility</i> , becomes obsolete and is deleted and repealed.
15700.4	This rule, <i>Benefits</i> , becomes obsolete and is deleted and repealed.
15700.5	This rule, <i>Termination of Eligibility</i> , becomes obsolete and is deleted and repealed.
16100	This rule, <i>Definitions</i> , is revised to add a definition of spouse.
16400.4	This rule, <i>Rule for Married Couples</i> , is revised to clarify when married couples are included in the modified adjusted gross income household together.

CMS has stated that it will issue additional regulatory and subregulatory guidance on related policy and operational issues. Eligibility rules and State plan amendments (SPAs) will be further amended to implement other ACA provisions. DMMA will continue to work with CMS to identify and formulate these rules and SPAs.

Fiscal Impact

The proposed regulation imposes no increase in costs on the General Fund.

DMMA PROPOSED REGULATION #13-41 REVISIONS:

14100.5.1 Timely Determination of Eligibility

The following Federal standards have been established for determining eligibility and informing applicants of the decision:

- a. Ninety days (90) for applicants who apply for Medicaid on the basis of disability. This includes long term care and the Children's Community Alternative Disability Program.
- b. Forty-five (45) days for all other applicants.

The standards cover the period from the date of application with the agency or the date the application is submitted transferred via the Federally Facilitated Marketplace (FFM) to the date the agency notifies the applicant of its decision.

The standards must be met except in unusual circumstances, such as:

- a. A decision cannot be made because the applicant, his representative or his physician delays or fails to take a required action.
- b. There is an administrative or other emergency beyond the Division's control.

The time standards must not be used as a waiting period before determining eligibility or as a reason for denying eligibility (because a decision has not been reached within the required time standards). Decisions on applications should be made as quickly as possible, but if the final determination does not fall within the prescribed limits, the record must have documentation of the reasons for delay.

14100.6 ~~Redetermination Of Eligibility~~ Annual Renewal of Eligibility

~~Eligibility for continued Medicaid coverage must be redetermined at least annually. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. Failure to complete and return a DSS application form will result in termination of eligibility. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached. Eligibility must be promptly redetermined when information is received about changes in a recipient's circumstances that may affect his eligibility. Some changes in circumstances can be anticipated. A redetermination of eligibility must be made at the appropriate time based on those changes. Examples are: Social Security changes, receipt of child support, return to work, etc.~~

~~Medicaid coverage should not terminate without a specific determination of ineligibility. The individual may be eligible under another category of Medicaid. For example, when an individual loses eligibility because of termination from cash assistance, such as SSI, we must make a separate determination of Medicaid eligibility. Medicaid must continue until the individual is found to be ineligible.~~

~~Medical assistance will be terminated when DSS is notified by the recipient that he or she no longer wants~~

coverage.

The eligibility of Medicaid beneficiaries must be renewed once every twelve (12) months and no more frequently than once every twelve (12) months. The agency will redetermine eligibility without requiring information from the individual if able to do so based on reliable information contained in the individual's record or other more current information available to the agency. Information available to the agency includes but is not limited to information accessed through the electronic data sources described in DSSM 14800 - Verifications of Factors of Eligibility.

If the agency is able to renew eligibility based on the available information, the agency will notify the individual of:

- the eligibility determination and the information used for the determination; and
- the individual's responsibility to inform the agency if any of the information contained in the agency's notice is inaccurate. The individual may report this information via the agency's Application for Social Service and Internet Screening Tool (ASSIST) self-service Internet web site, by telephone, via mail, in person with reasonable accommodations for those with disabilities as defined by the Americans with Disabilities Act (ADA), and through other commonly available electronic means.

If the agency cannot renew eligibility as described above, the agency will provide the individual with a pre-populated renewal form. The pre-populated renewal form will contain information available to the agency about factors of eligibility. The renewal form will also include basic screening questions necessary to indicate potential eligibility on a basis other than modified adjusted gross income (MAGI).

The individual will be given thirty (30) days from the date of the renewal form to respond. The individual must provide any additional information requested and sign and return the renewal form. The request for additional information from the individual will be limited to only the information needed to renew eligibility. The individual may return the additional information and the renewal form through any of the submission modes described above.

If the individual does not respond to the renewal form and provide the additional information requested and eligibility is terminated on that basis, eligibility can be reconsidered if the individual responds within four months after the date of termination. The individual is not required to submit a new application. Coverage will extend back to the date of termination provided the individual is found eligible.

The agency will consider all categories of eligibility prior to a termination of eligibility as described in DSSM 14100.5 - Determination of Eligibility.

(Break In Continuity of Sections)

14800 Verifications of Factors of Eligibility

Attestation will be accepted for most factors of eligibility at application, renewal, and for a change in circumstances. Attestation will be accepted by the individual; an adult who is in the applicant's household; an authorized representative; or if the individual is a minor or incapacitated someone acting responsibly for the individual. Certain factors of eligibility will be verified post-enrollment, post-renewal, and after a redetermination of eligibility due to a change in circumstances.

Verification will be obtained electronically using the Federal Data Services Hub (FDSH) and other electronic data sources. The FDSH is a service that enables access to multiple data bases via a single electronic transaction. Data will be available from the Social Security Administration (SSA), Department of Homeland Security (DHS), Internal Revenue Service (IRS), and Equifax Workforce Solutions (also known as TALX). TALX is a contracted service that verifies earned income as reported by employers. The agency will not be obtaining IRS data.

Other electronic data sources include the following:

- State Wage Information Collection Agency (SWICA)
- State Unemployment Compensation
- General Assistance Program
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Child Care Subsidy Program
- Office of Vital Statistics
- Department of Motor Vehicles
- Office of Child Support Enforcement

- Public Assistance Reporting Information System (PARIS).

Attestation will be accepted without post-enrollment verification for the following factors of eligibility:

- residency
- date of birth
- household composition
- household relationships
- application for other benefits
- pregnancy – unless other available information, such as a medical claim, is not reasonably compatible with such attestation.

Attestation will be accepted with post-enrollment verification for the following factors of eligibility:

- income
- Medicare.

Attestation will not be accepted and must be verified via the FDSH for the following factors of eligibility:

- citizenship and identity
- immigration status
- Social Security number (SSN).

If citizenship and immigration status cannot be verified via the FDSH, the individual will be provided with a 90-day reasonable opportunity period to submit other documentation and may be found eligible during that time period. The reasonable opportunity period will be extended beyond 90 days if the individual is making a good faith effort to obtain the documentation.

Verification of SSN will be in accordance with DSS Sections 14105-14105.1.

Individuals will not be required to provide additional information or documentation unless the information cannot be obtained electronically or is not reasonably compatible with the attested information.

Reasonably compatible means that the information provided by an electronic data source is generally consistent with the information reported by the applicant or beneficiary. Income verification obtained through an electronic data source shall be considered reasonably compatible when:

- attestation of income and the electronic verification are at or below the income standard;
- attestation of income and the electronic verification are above the income standard; and
- attestation of income is at or below the income standard and the electronic verification is above the income standard and the difference between the two (2) is ten percent (10%) or less.

When the difference between the attestation of income and the electronic verification is more than a ten percent (10%) reasonable explanation will be sought from the applicant or beneficiary. A reasonable explanation may include, but is not limited to, a loss of employment or reduced hours of employment.

Post-enrollment verification will be completed in accordance with the agency's verification plan approved by the Centers for Medicare & Medicaid Services (CMS). Post-enrollment verification of income and Medicare will be completed within thirty (30) days of the date of enrollment. When additional information is needed to complete the eligibility determination, the agency will request such additional information from the individual. The individual will be provided thirty (30) days to respond to the request for additional information. If the additional information requested is not provided, eligibility will be terminated.

Exceptions to the verification requirements will be permitted on a case-by-case basis when documentation does not exist or is not reasonably available, such as for individuals who are homeless or have experienced domestic violence or a natural disaster. The exception does not apply to the verification requirements for citizenship and immigration status.

(Break In Continuity of Sections)

REPEALED RULES:

~~15510 Foster Children Group~~

~~This section describes the eligibility requirements for the Foster Children Group. This group includes children other~~

than under Title IV-E of the Social Security Act.

15510.1 Foster Children Group General Eligibility Requirements

The child must meet the general eligibility requirements described in Section 14000. An application must be made on the child's behalf by an employee of Delaware Department of Services for Children, Youth, and Their Families (DSCYF).

15510.2 Technical Eligibility

Age: The child must be under age 21.

Placement: The child must be placed in a foster home or private institution approved by DSCYF. If the child is in a medical institution awaiting placement, the child must be in legal or voluntary custody of DSCYF. Voluntary custody is given with a Consent to Place document signed by the parent or guardian.

Payment by a Public Agency: A public agency must be making payments to the home or facility on the child's behalf. A payment is any continuous payment such as board payments, subsidies, clothing, or incidental payments.

15510.3 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000.

Household income must not exceed 112% of the Federal Poverty Level (FPL).

Resources must not exceed the Delaware Temporary Assistance for Needy Families (TANF) resource limit.

15510.4 Effective Date of Coverage

The effective date of coverage is the date of placement or the date the Consent to Place document is signed by the parent or guardian.

15540 Infants Awaiting Adoption Group

This section describes the eligibility requirements for the Infants Awaiting Adoption Group.

15540.1 Infants Awaiting Adoption Group General Eligibility Requirements

An infant must meet the general eligibility requirements described in Section 14000. An application must be made on the child's behalf by an employee of the adoption agency.

15540.2 Technical Eligibility

Age: The infant must be under age 1.

Consent to Adoptive Placement: The adoption agency must provide a Consent to Place the Infant for Adoption document signed by the mother of the infant.

15540.3 Financial Eligibility

Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000.

Household income must not exceed 112% of the Federal Poverty Level (FPL).

Resources must not exceed the Delaware Temporary Assistance for Needy Families (TANF) resource limit.

15540.4 Effective Date of Coverage

Medicaid coverage begins on the date of birth if the Consent to Place the Infant for Adoption document is signed within five days of the date of birth or if the mother was receiving Medicaid on the date of birth. If the consent document is not signed within five days of the date of birth, Medicaid coverage will begin on either the date the consent document was signed or the date of placement with the agency.

15540.5 Termination of Eligibility

Eligibility under this group is terminated when the infant is placed with the prospective adoptive parents even if the adoption is not final.

(Break In Continuity of Sections)

REPEALED RULES:**~~15700 Family Planning Group~~**

~~This section describes the eligibility requirements for the Family Planning Group established in accordance with Delaware's Section 1115 of the Social Security Act Demonstration Waiver. Family Planning is an extended eligibility period of up to 24 months of family planning only coverage for a woman who becomes ineligible for full Medicaid coverage.~~

~~15700.1 Family Planning Group General Eligibility Requirements~~

~~The woman must meet the general eligibility requirements in Section 14000. Exception: An application for the first 12 months of eligibility is not required.~~

~~15700.2 Technical Eligibility~~

~~Age: The woman must be age 15 or older and under age 50.~~

~~Prior Receipt of Medicaid: The woman must have been receiving full coverage Medicaid and lost eligibility for non-fraudulent reasons. A conviction for fraud must be made by a court of competent jurisdiction.~~

~~Uninsured: The woman must not have other health insurance coverage that provides family planning services.~~

~~15700.3 Financial Eligibility~~

~~Financial eligibility is determined using the modified adjusted gross income (MAGI) methodologies described in Section 16000.~~

~~Household income must not exceed 200% of the Federal Poverty Level (FPL).~~

~~15700.4 Benefits~~

~~This group provides coverage for family planning and related services only. The covered and non-covered services are listed in the Delaware Medical Assistance Program Provider General Policy Manual.~~

~~15700.5 Termination of Eligibility~~

~~Eligibility under this group is terminated at the end of the 24 month period.~~

(Break in Continuity of Sections)**16100 Definitions**

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

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

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

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

"Household income" means the sum of the MAGI-based income of every individual included in the individual's household.

Exceptions:

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

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

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

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

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

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

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

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

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

“Tax dependent” means an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Service Code for a taxable year.

16400.4 Rule for Married Couples

~~For married couples living together, each spouse will be included in the household of the other spouse regardless of whether they expect to file a joint tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse.~~

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

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t(1) (16 Del.C., §122(3)t(1))

PUBLIC NOTICE

4459B Residential Property Renovation, Repair and Painting

The Department of Health and Social Services (DHSS), Division of Public Health, Health Systems Protection, is proposing new State of Delaware Regulations to implement recent legislation (Senate Bill 139 w/ SA 3) authorizing DHSS to establish regulations for the training and certification of Renovators and Dust Wipe Technicians, and for the accreditation of training providers. The proposed regulations expand current lead-based paint hazard control activities to include routine repair and renovations, a major source of lead exposure for children. Renovators and Dust Wipe Technicians are required to meet minimum training qualifications and obtain licenses. Firms providing training programs are required to be accredited and meet minimum course requirements. The proposed regulations establish lead-safe work standards and ensure residents are informed of lead-based paint hazards before work begins.

Copies of the proposed regulations are available for review in the November 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at (302) 744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, December 2, 2013 at:

Deborah Harvey
Division of Public Health
417 Federal Street

Dover, DE 19901

Email: Deborah.Harvey@state.de.us

Phone: (302) 744-4700

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

4459B Residential Property Renovation, Repair and Painting

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

**11003.7.5 Income Eligible/Education and Post-Secondary Education
Child Care Subsidy Program**

**Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility
Participation**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation*.

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

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

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation*.

Statutory Authority

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

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 Child Care Subsidy Program is available to eligible families while the parents/caretakers attend education programs. Amended **DSSM 11003.7.5**, ~~*Income Eligible/Education and Post-Secondary Education*~~ *Determining High School/GED Eligibility* and **NEW DSSM 11003.7.5**, ~~*Determining Post-Secondary Eligibility and Participation*~~ are proposed to clarify eligibility determinations for subsidized child care services for parents/caretakers who attend high school or GED program or post-secondary education program. The proposed rule change simplifies the language that DSS expects the course of instruction will lead to employment by removing the examples and further clarifies that parents/caretakers who already have a Bachelor's degree or higher are not eligible for subsidized child care services.

The applicable federal citation is also added to each policy section.

DSS PROPOSED REGULATION #13-38

REVISION:

~~11003.7.5 Income Eligible/Education and Post-Secondary Education~~

~~Parents/caretakers who participate in education and post-secondary education can receive income-eligible Child Care for the duration of their participation as long as:~~

- ~~A. their participation will lead to completion of high school, a high school equivalent or a GED; or~~
- ~~B. their participation in post-secondary education was part of a DSS TANF Employment and Training program; or~~
- ~~C. their participation in post-secondary education began while participating in the DSS Food Stamp Employment and Training (FS E and T) program; and~~
- ~~D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.~~

~~DSS will not authorize child care services for parents/caretakers who already have one-four year college degree or are in a graduate program.~~

AMENDED:

11003.7.5 Determining High School/GED Eligibility and Participation

45 CFR 98.20

This policy applies to applicants and recipients seeking a high school diploma or GED.

1. DSS Requires Parents/Caretakers Meet Certain Eligibility Criterion

Parents/Caretakers who attend high school or GED program can receive Child Care for the duration of their participation.

A. If parents/caretakers are:

- Attending high school or high school equivalency and have not previously received a high school diploma or GED.**
- Meeting all other financial and technical requirements. (See DSSM 11003.9- Financial Requirements and DSSM 11003-Determining Technical Eligibility for Child Care)**

NEW:

11003.7.5.1 Determining Post-Secondary Eligibility and Participation

45 CFR 98.20

This policy applies to applicants and recipients who meet Child Care income eligibility requirements.

1. DSS Requires Parents/Caretakers Seeking A Degree Meet Certain Criterion.

Parents/Caretakers who are enrolled in higher education or training programs that lead to a degree or certification/licensure can receive Child Care for the duration of the education program.

A. The parents/caretakers must be participating:

PROPOSED REGULATIONS

- In a DSS TANF Employment and Training (TANF E & T) Program; or
- In the DSS Food Supplement Program Employment and Training (FS E & T) and;
- B. DSS expects the course of instruction will lead to employment.
- C. Parents/Caretakers who already have a Bachelor's degree or higher are not eligible.

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS Office of Workers' Compensation

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

PUBLIC NOTICE

1341 Workers' Compensation Regulations

The Secretary of Labor, in accordance with 19 **Del.C.** §2322B, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals 1) revise fees for hot/cold packs (CPT 97010); and 2) make Medispan the sole AWP source for pharmacy fees.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on December 2, 2013, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware, 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be 20 days after the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

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

1341 Workers' Compensation Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER Surface Water Discharges Section

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 7101

REGISTER NOTICE SAN #2008-29

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

1. TITLE OF THE REGULATIONS:

Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

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

Substantial revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (On-site regulations) are proposed to incorporate the Guidance and Regulations Governing the Land Treatment of Wastes spray irrigation regulatory language. The on-site regulations have been revised to address large system site investigations, hydrogeological investigations, design considerations, operation and maintenance practices, updating of individual on-site wastewater treatment and disposal system design criteria, establishment of new licensees and inspection protocols, and to establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this regulation.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 60, Environmental Control

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

Upon the effective date of revised regulations, the Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds, effective November 11, 2008, Sections 6.0, 7.0 and 8.0, may be affected.

6. NOTICE OF PUBLIC COMMENT:

In order to thoroughly address the comments and concerns received from two previously held hearings in this matter (May 2012 and November 2012) a third public hearing for the proposed amendments will be held on November 21, 2013 beginning at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Jack Hayes, DNREC - Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901 and must be received by the Department no later than December 6, 2013.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Department of Natural Resources and Environmental Control
20653 DuPont Blvd, Unit 5
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Water, Groundwater Discharges Section website: <http://www.wr.dnrec.delaware.gov/Information/GWDInfo/Pages/GWDS%20Design%20Install%20Operate%20Info%20For%20Proposed%20Wastewater%20Treatment%20Regulations.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Jack Hayes, DNREC Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901, (302) 739-9948, John.Hayes@state.de.us.

7. PREPARED BY:

Jack Hayes / (302) 739-9948, October 23, 2013, John.Hayes@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:**

7101 Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

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

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 9.2.1.1.1 and 9.2.2.3.1 to add the requirement that at least three contact hours of the requisite continuing education needed for renewal or reinstatement must be in the area of substance abuse.

The Board will hold a public hearing on the proposed regulation change on January 8, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 3, 2013 pursuant to 29 **Del.C.** §10118(a).

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

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 10113(b)(4) (24 **Del.C.** §10113(b)(4))
24 **DE Admin. Code** 2930

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise its rules and regulations. The majority of the proposed revisions to the rules are changes of an administrative nature. The Board will hold a public hearing on the proposed rule change on January 21, 2014 at 9:30 AM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 6, 2014.

2930 Council on Real Estate Appraisers

(Break in Continuity of Sections)

2.0 Appraiser Licensing and Certification

(Break in Continuity Within Section)

- 2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited. Every licensee renewing during the permissible late period after the expiration of the license or certificate will be included in the audit.

(Break in Continuity Within Section)

2.5.6 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

- Influences on real estate value
- Legal consideration of appraisal
- Types of value
- Real estate markets and analysis
- Valuation process
- Property description
- Highest and best use
- Appraisal math & statistics
- Sales comparison approach
- Site value
- Cost approach
- Income approach
 - Estimation of income and expenses
 - Operating statement ratios
 - Direct capitalization
 - Cash flow estimates
 - Measures of cash flow
 - Discounted cash flow analysis
 - Gross rent multiplier analysis
- Valuation of partial interests
- Appraisal standards and ethics
- Narrative report writing
- Appraisal Statistical concepts
- Ad valorem taxation
- Arbitration
- Development cost estimating
- Ethics and standards of professional practice
- Land use planning, zoning and taxation
- Management, leasing, brokerage, timesharing
- Property development
- Real estate appraisal (valuations/evaluations)
- Real estate financing and investment
- Real estate law
- Real estate litigation
- Real estate appraisal related computer applications
- Real estate securities and syndication
- Real property exchange
- Delaware law and regulations
- Topics on green buildings
- Seller concessions
- Developing opinions of real property value in appraisals (including personal property and/or business value)

(Break in Continuity Within Section)

2.5.11 Beginning November 1, 2009, and thereafter, at least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor. If a licensee is licensed for at least 6 months but fewer than 12 months of licensure, at least 7 hours per licensure period must be taken in a traditional classroom setting with an instructor.

2.5.12 Courses must be approved by the Council to qualify as continuing education. Either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

PROPOSED REGULATIONS

2.5.13 A written, proctored examination is required for all qualifying education distance course offerings. The term written refers to an examination that might be written on paper or administered electronically on a computer workstation or other device.

2.5.14 Appraisers may not receive credit for completion of the same continuing education course offering within an appraiser's continuing education cycle.

(Break in Continuity of Sections)

4.0 General Appraisal Practice

(Break in Continuity Within Section)

4.2 Responsibilities of Supervisors of State Licensed Trainees

(Break in Continuity Within Section)

4.2.5 Effective January 1, 2014, a State-certified Supervisory Appraiser shall have been state certified for a minimum of three (3) years prior to being eligible to become a Supervisory Appraiser.

(Break in Continuity of Sections)

10.0 Assessors

(Break in Continuity Within Section)

10.3 Application process.

(Break in Continuity Within Section)

~~10.3.3 *Disapproved applications.* An applicant whose application has been disapproved by the Board will be notified in writing of the reasons for the disapproval and will have 1 year from the date of disapproval to correct the deficiencies or to file a request for reconsideration. A request for reconsideration shall give the reason for the applicant's request, shall be accompanied by documentary materials not previously submitted which the applicant wishes the Board to consider and may include a request for an informal interview with the Board. If a request for reconsideration is denied or an applicant is unable to correct the deficiencies which resulted in disapproval of the application within 1 year from the date of disapproval, a new application, along with the required fee, shall be submitted to the Board. An applicant's new application will be reviewed on the basis of statutes and regulations in effect at the time that the new application is received by the Board.~~

10.4 Scope of practice. Assessors and revaluation company personnel who receive certification as an assessor may perform appraisals of real property only in limited circumstances, that is, for tax assessment/governmental purposes.

10.5 Qualifications for certification as an assessor.

10.5.1 To be considered for certification as an assessor, an assessor shall meet the following requirements. The assessor shall:

10.5.1.1 Have a high school diploma or its equivalent, or 2 years of assessing experience; and

10.5.1.2 Be 18 years of age or older; and

10.5.1.3 Have successfully completed a minimum of 90 ~~classroom~~ qualifying education hours of courses of study in subjects covering the appraisal assessing profession, including coverage of the topics in Section 10.6 (relating to required courses of study).

10.5.2 An applicant for certification as an assessor who has demonstrated compliance with the requirements of Section 10.5.1 and Section 10.6 will be granted a certificate by the Board.

~~10.5.3 Each certificate holder will be issued a wall certificate indicating initial certification and a registration packet, including a biennial renewal certificate and a wallet size certification card, both of which show the expiration date of the certificate.~~

10.5.4 Applicants who hold a certified residential or certified general appraiser license from the Board do not need a certification as an assessor, but may practice assessing in this state.

(Break in Continuity Within Section)

- 10.7 Continuing education requirement.
- 10.7.1 Except as provided in 10.7.2, a licensed assessor shall complete 14 classroom hours of continuing education-including at least 7 hours on USPAP and at least 3 hours on the law, rules, and regulations of the Council-during each biennial renewal period as a condition of renewal of certification for the next biennial renewal period. Seven hours may be completed via on-line, video or remote instruction; and seven hours must be completed in class a traditional classroom setting, with an instructor during every biennial renewal period.
- 10.7.2 ~~A licensed assessor whose initial certification becomes effective between January 1 and June 30 of a biennial renewal year will not be required to furnish proof of continuing education as a condition of biennial renewal of certification in that biennial renewal year. No continuing education is required for fewer than 12 months of licensure.~~
- 10.7.3 Proof of continuing education is satisfied with an attestation by the licensed assessor that he or she has satisfied the requirements of these rules.
- 10.7.3.1 Attestation ~~may~~ must be completed electronically if since the renewal is accomplished online. ~~In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- 10.7.3.2 Licensed assessors selected for random audit will be required to supplement the attestation with attendance verification pursuant to Section 10.7.4.
- 10.7.4 Random audits will be performed by the Council to ensure compliance with the CE requirements. At least 25% of the licensed assessors shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensed assessors to be audited.
- 10.7.4.1 The Council will notify licensed assessors within sixty (60) days after ~~January 31~~ renewal that they have been selected for audit.
- 10.7.4.2 Licensed assessors selected for random audit shall be required to submit verification within ~~ten (10)~~ thirty (30) days of ~~receipt~~ the date of notification of selection for audit.
- 10.7.4.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements, which may include, but is not limited to, the following information:
- 10.7.4.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;
- 10.7.4.3.2 Date of CE course;
- 10.7.4.3.3 Instructor of CE course;
- 10.7.4.3.4 Sponsor of CE course;
- 10.7.4.3.5 Title of CE course; and
- 10.7.4.3.6 Number of hours of CE course.
- 10.7.5 The Council shall review all documentation submitted by assessors pursuant to the continuing education audit. If the Council determines that the assessor has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the assessor has not met the continuing education requirements, the assessor shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. ~~The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements.~~ Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 **Del.C.** §4014(a)(5) and the assessor may be subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §4016.
- 10.8 Continuing education subject matter.

(Break in Continuity Within Section)

- ~~10.8.7 Hardship. An applicant for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family~~

PROPOSED REGULATIONS

~~responsibilities. The Council may grant an extension, not to exceed two years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Council reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Council prior to the expiration of the license.~~

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Delaware Council on Real Estate Appraisers is available at:**

2930 Council on Real Estate Appraisers

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 **Del.C.** §3606(a)(1))
24 **DE Admin. Code** 3600

PUBLIC NOTICE

3600 Board of Geologists

The Delaware Board of Geologists, pursuant to 24 **Del.C.** §3606(a)(1), proposes to revise its regulations. The proposed additions to the regulations seek to add rules regarding inactive status of a geology license and the requirements to reactive a license from inactive status. Additionally, the rules amend the use of the term expiration to termination to create continuity within the geology regulations as well as within the Division of Professional Regulation.

The Board will hold a public hearing on the proposed rule change on December 13, 2013 at 10:00 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Geologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

3600 Board of Geologists

(Break in Continuity of Sections)

5.0 Issuance and Renewal of License

- 5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her license expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **Del.C.** Ch. 36.
- 5.2 Renewal may be effected by:
 - 5.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;
 - 5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
 - 5.2.3 attesting on the renewal application to the completing of continuing education as required by Rule 6.0;
 - 5.2.4 payment of fees as determined by the Division of Professional Regulation.
- 5.3 Failure of a licensee to renew his/her license shall cause his/her license to lapse. A geologist whose license has lapsed may renew his/her license within three (3) months after the license expiration date upon fulfilling items 5.2.1 - 5.2.4 above, after providing a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has been lapsed, and paying the renewal fee and

a late fee which shall be 50% of the renewal fee as determined by the Division of Professional Regulation.

- 5.3.1 ~~Late or~~ Lapsed license renewals shall be audited for satisfactory completion of the continuing education requirements.
- 5.3.2 No geologist shall practice geology in the State of Delaware during the period of time that his/her license is lapsed.
- 5.4 Failure of a licensee to renew his/her lapsed license within the three (3) month period in item 5.3 above shall cause his/her license to ~~expire~~ terminate.
 - 5.4.1 A geologist whose license has ~~expired~~ terminated may re-apply under the same conditions that govern applicants for new licensure under 24 **Del.C.** Ch. 36, and must provide a notarized letter certifying that he/she ~~has not practiced~~ did not practice geology in Delaware ~~while his/her license has been expired~~ after the license expiration date.
 - 5.4.2 Reapplication for ~~expired~~ terminated licenses shall be audited for satisfactory completion of the ~~continuing education requirements described below:~~ 24 CEUs completed within 24 months prior to reapplication and will automatically be audited.
 - 5.4.2.1 ~~Expired status for one (1) year or less: 12 CE hours and will automatically be audited.~~
 - 5.4.2.2 ~~Expired status for more than one (1) year: 24 CE hours and will automatically be audited.~~
 - ~~5.5.4.3~~ No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has ~~expired~~ terminated.
- 5.5 Inactive Status: A licensee may be placed on inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board.
 - 5.5.1 To apply for reactivation of an inactive license, a licensee shall:
 - 5.5.1.1 Submit a letter requesting reactivation;
 - 5.5.1.2 Submit a reactivation fee;
 - 5.5.1.3 Submit proof of completion of 24 CEUs, completed within 24 months prior to reactivation and will automatically be audited.
 - 5.5.2 Licensees who do not apply for reactivation by the end of the five year inactive period will be converted to a terminated status.
 - 5.5.3 A geologist whose license has terminated may re-apply under the same conditions that govern applicants for new licensure under 24 **Del.C.** Ch. 36, and must provide a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has been inactive.
 - 5.5.4 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has been inactive.

6.0 Continuing Education

(Break in Continuity Within Section)

- 6.14 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. ~~The written request for extension must accompany the renewal application. The written request for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.~~ The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEUs. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.

(Break in Continuity of Sections)

7.0 ASBOG Examination

- 7.1 An applicant wishing to sit for any portion for the ASBOG examination required for a license as a Geologist shall make application in writing, on forms provided by the Board.
- 7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 **Del.C.** §3608(a)(1). To apply, the applicant must fill out the request to sit for the fundamentals application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.
- 7.1.2 An applicant wishing to sit for the ASBOG Practice of Geology (PG) Exam must have acquired five (5) years of professional work experience as defined in Rule 1.0 and must submit a full application for licensure to the Board for review. Approval to sit for the PG Exam will be dependæent upon the applicant providing sufficient evidence, satisfactory, to the Board that he/she meets the qualifications for licensure set forth in 24 **Del.C.** §3608.
- 7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.
- 7.3 An applicant's approval to sit for either part of the ASBOG exam shall be valid for a period not to exceed two years.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Geologists is available at:**

3600 Board of Geologists

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 EDUCATION OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

275 Charter Schools

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** 275 Charter Schools. The amendments reflect revisions in the process for Performance Reviews, renewal and new application process, annual reports as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 3, 2013, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). Amendments were made in response to the comments provided by the GACEC and SCPD, and by comments made by the State Board of Education during the discussion in September's board meeting. In addition, clarifications were made after subsequent review by the Department. The following is a summary of the comments and corresponding amendments:

1. Comments from the GACEC and SCPD suggested a revision to 3.6 since this section no longer aligns with current Code. This change was made.
2. Comments from the GACEC and SCPD found a grammar issue in 7.0. This change was made.
3. Clarifications were made to 4.2.1.4 as a request from the State Board of Education.
4. Clarifications were made in 9.9.7 to align with 9.9.5.

Two additional comments were received from the GACEC and SCPD. The first was related to the definition of

"audit" and then its subsequent use in section 7.0. The Department considered the comment, but is not making the change during this update. Another comment was related to the definition of the "Annual Report." After review, the Department believes the definition is adequate as it contemplates meeting the statutory definition now and if subsequent changes to statute are made.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools in order to reflect revisions in the process for Performance Reviews, renewal and new application process, annual reports as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 275 Charter Schools attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 Charter Schools 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** 275 Charter Schools amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 275 Charter Schools 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 October 17, 2013. 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 17th day of October 2013.

Department of Education

Mark T. Murphy., Secretary of Education

Approved this 17th day of October 2013

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

275 Charter Schools

(Break in Continuity of Sections)

3.0 Application Process

- 3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the first day of school of the second school year thereafter, unless otherwise agreed upon by the

~~authorizer and the applicant to allow the applicant to serve students who would otherwise be displaced because of the closure of an existing charter school in accordance with 14 Del.C. §511 (g) (1),(2).~~

- 3.2 All applications, whether for an original charter, a modification of a charter or the renewal of a charter, shall be made on forms approved by the Department.
- 3.3 An original and ~~ten (10)~~ five (5) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered; an electronic copy shall also be submitted at the same time either as an attachment to an e-mail message or by electronic portable storage. The electronic copy shall be identical in all respects to the original application. Incomplete applications, or applications received after the deadline, will not be considered.
- 3.4 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.
- 3.5 An application is not complete unless all of the following requirements are met:
 - 3.5.1 ~~All questions on applicable sections in the application form are answered appropriately completed.~~
 - 3.5.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received by the deadline provided by the Charter School Office.
- [3.6 ~~No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications; except for an application submitted by a Highly successful charter operator for the purpose of operating a charter school at a site of and serving students currently attending a charter school whose charter has been revoked, has not been renewed, or whose charter is on formal review and whose Board of Directors has agreed to abandon their charter.]~~**
- 3.[76] Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.
- 3.[87] The State Board of Education may designate one or more of its members to sit as nonvoting members of the Accountability Committee.
- 3.[98] In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the Charter Contract, the Performance Framework Review (not applicable for new applications), ~~the preliminary and final reports~~ of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal, major modification, or formal review of a charter, the record shall also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school's Charter Contract and Performance Agreement, renewal report, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.
- 3.[409] Applicants and Charter Holders shall make the financial disclosures relating to ownership and financial interest as required by 14 Del.C. §511(eg). A charter school founder or member of a charter school board has a "financial interest" in the charter school if that person receives compensation in excess of \$5,000.00 from the charter school in any calendar year. Compensation means money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by a charter school founder or member of a charter school board. "Ownership" shall have the meaning commonly ascribed to it as appropriate in context.

4.0 Standards and Criteria for Granting Charter

(Break in Continuity Within Section)

4.2 Performance Requirements**4.2.1 Minimum Requirements**

(Break in Continuity Within Section)

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

(Break in Continuity of Sections)

7.0 Financial Audit

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

(Break in Continuity of Sections)

9.0 Modifications of Charters

(Break in Continuity Within Section)

9.9 Minor modifications.

(Break in Continuity Within Section)

- 9.9.7 Decisions for minor modifications to a charter may be decided by the Secretary~~[-with the concurrence of the State Board of Education,]~~ within 30 working days from the date the application was filed, unless the timeline is waived by mutual agreement of the Secretary and the applicant, or in any case where the Secretary, in the sole discretion of the Secretary, deems that it would be beneficial to either refer the matter to the Accountability Committee or to seek advice from the State Board prior to deciding the matter.

***Please note that no additional changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 275 (17 DE Reg. 275). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

275 Charter Schools

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

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

ORDER

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

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to modify the *Multi-State Purchasing Pool Supplemental Rebate Agreement* for pharmaceutical products. 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 September 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2013 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 Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to amend the Title XIX Medicaid State Plan to modify the *Multi-State Purchasing Pool Supplemental Rebate Agreement* for pharmaceutical products.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act. Specifically, Section 2501, *Prescription Drug Rebates*
- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, *Authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Medicaid Supplemental Drug Rebate Agreements

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

agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers.

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

Summary of Proposal

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

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

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

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

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

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

Draft of Proposed State Supplemental Rebate Agreement

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

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

Fiscal Impact Statement

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

maintaining the timely payment of the quarterly invoices.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The Councils have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposal to amend the Medicaid State Plan to modify the Multi-State Purchasing Pool Supplemental Rebate Agreement for pharmaceutical products. The proposed regulation was published as 17 DE Reg. 285 in the September 1, 2013 issue of the *Register of Regulations*.

The bulk of the regulation consists of a 17-page set of revised text covering the technical implementation of the rebate program. The text is ostensibly based on a standard CMS template.

GACEC and SCPD endorse the proposed regulation.

Agency Response: DMMA thanks both Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Title XIX Medicaid State Plan regarding Medicaid reimbursement for prescription drugs, specifically, modification of the *Multi-State Purchasing Pool Supplemental Rebate Agreement*, is adopted and shall be final effective November 10, 2013.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 285 (17 DE Reg. 285). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 DE Admin. Code 14000, 15000, 16000 & 18000

ORDER

Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology

14000 Common Eligibility Information

15000 Parent/Caretaker Relative Group

16000 Federal Poverty Level Related Programs

18000 Delaware Healthy Children Program

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 implementation of the Modified Adjusted Gross Income (MAGI) methodology provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) under the Affordable Care Act. 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 August 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the

public concerning the proposed regulations to be produced by August 31, 2013 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 the Division of Medicaid and Medical Assistance (DMMA) is proposing to amend rules in Division of Social Services Manual (DSSM) to implement the Modified Adjusted Gross Income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program). The Patient Protection and Affordable Care Act of 2010 mandates significant changes in how eligibility is determined for medical assistance programs for children, parent/caretaker relatives and pregnant women beginning January 1, 2014.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations (Family Planning)*
- 42 CFR 435.4, *Definitions and use of terms*
- 42 CFR 435.110, *Parents and other caretaker relatives*
- 42 CFR 435.112, *Families with Medicaid eligibility extended because of increased earnings or hours of employment*
- 42 CFR 435.115, *Families with Medicaid eligibility extended because of increased collection of spousal support*
- 42 CFR 435.116, *Pregnant women*
- 42 CFR 435.117, *Deemed newborn children*
- 42 CFR 435.118, *Infants and children under age 19*
- 42 CFR 435.119, *Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL*
- 42 CFR 435.145, *Children with adoption assistance, foster care, or guardianship care under title IV-E*
- 42 CFR 435.150, *Former foster care children*
- 42 CFR 435.170, *Pregnant women eligible for extended or continuous eligibility*
- 42 CFR 435.172, *Continuous eligibility for hospitalized children*
- 42 CFR 435.213, *Optional eligibility for individuals needing treatment for breast or cervical cancer*
- 42 CFR 435.222, *Optional eligibility for reasonable classifications of individuals under age 21*
- 42 CFR 435.227, *Optional eligibility for individuals under age 21 who are under State adoption assistance agreements*
- 42 CFR 435.403, *State residence*
- 42 CFR 435.603, *Application of modified adjusted gross income (MAGI)*
- 42 CFR 435.907, *Application*
- 42 CFR 435.908, *Assistance with application and renewal*
- 42 CFR 435.910, *Use of Social Security number*
- 42 CFR 435.911, *Determination of eligibility*
- 42 CFR 435.912, *Timely determination of eligibility*
- 42 CFR 435.923, *Authorized Representatives*
- 42 CFR 435.940, *Basis and scope*
- 42 CFR 435.945, *General requirements*
- 42 CFR 435.948, *Verifying financial information*
- 42 CFR 435.949, *Verification of information through an electronic service*
- 42 CFR 435.952, *Use of information and requests of additional information from individuals*
- 42 CFR 435.956, *Verification of other non-financial information*
- 42 CFR 435.1200, *Medicaid agency responsibilities for a coordinated eligibility and enrollment process with other insurance affordability programs*
- 42 CFR 457.10, *Definitions and use of terms*
- 42 CFR 457.80, *Current State child health insurance coverage and coordination*
- 42 CFR 457.110, *Enrollment assistance and information requirements*

- 42 CFR 457.300, *Basis, scope, and applicability*
- 42 CFR 457.301, *Definitions and use of terms*
- 42 CFR 457.310, *Targeted low-income child*
- 42 CFR 457.315, *Application of modified adjusted gross income and household definition*
- 42 CFR 457.320, *Other eligibility standards*
- 42 CFR 457.330, *Application*
- 42 CFR 457.340, *Application for and enrollment in CHIP*
- 42 CFR 457.348, *Determinations of Children's Health Insurance Program eligibility by other insurance affordability programs*
- 42 CFR 457.350, *Eligibility screening and enrollment in other insurance affordability programs*
- 42 CFR 457.370, *Alignment with Exchange initial open enrollment period*
- 42 CFR 457.380, *Eligibility verification*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans and makes numerous improvements to both Medicaid and the Children's Health Insurance Program (CHIP).

The Affordable Care Act (ACA) includes many provisions designed to expand and streamline Medicaid eligibility. The ACA offers the option to extend coverage to non-disabled, non-elderly citizens with income under 133 percent of the Federal Poverty Level (FPL); adopts new methodologies for determining and renewing eligibility; and requires establishment of a streamlined process to allow state Medicaid programs to coordinate seamlessly with other insurance affordability programs and affordable health insurance exchanges. These provisions are intended to change the Medicaid eligibility determination and renewal processes for most Medicaid applicants and beneficiaries from one based on a welfare model to one that utilizes information technology to provide the insurance coverage option that fits each individual's current circumstances and needs.

To provide coordinated guidance on the eligibility determination process for insurance affordability programs and health plan coverage through an exchange, the Centers for Medicare and Medicaid Services (CMS) published the proposed rule "Medicaid Program: Eligibility Changes Under the Affordable Care Act of 2010" on August 17, 2011, in conjunction with the Department of Health and Human Services' (HHS) proposed rule on exchange eligibility determinations and the Internal Revenue Services' "Health insurance premium tax credit" proposed rule. CMS issued a final/interim final rule incorporating significant changes on March 23, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf>.

The March rule's intent is to align Medicaid and CHIP eligibility determinations for parents/caretaker relatives, other adults, pregnant women, and children with determinations for health plan coverage by the exchanges and determinations for advance payments of premium tax credits and cost-sharing subsidies by the IRS. The rule modifies the Code of Federal Regulations to enable an entity to determine eligibility for all insurance affordability programs using a single streamlined application, IRS income rules, and a shared electronic verification service.

The most significant actions of the March 2012 rule on Medicaid eligibility changes as of January 1, 2014 include:

Creates eligibility groups for adults ages 19 through 64 who are not otherwise eligible for Medicaid as a parent/caretaker relative of a dependent child, pregnant woman, disabled individual, or Medicare beneficiary.

Establishes a minimum eligibility level of 133 percent of the FPL (effectively 138 percent of the FPL when a 5 percent disregard is taking into account) for individuals in these categories.

Prohibits states from considering assets in determining eligibility for individuals in these categories.

Requires that states use the IRS' methodology for determining Modified Adjusted Gross Income (MAGI), with certain exceptions, to determine household composition, family size, and income eligibility, thereby eliminating most income deductions and disregards.

Provides increased federal financial participation for "newly eligible" adults who would not have been covered under the state's policies and procedures in effect as of December 2009.

Mandates that all states use a standard, streamlined application form developed by HHS for all insurance affordability programs, or an approved alternative that is no more burdensome, and accept it via an internet Web site and other electronic means, telephone, mail, and in person. (States may use a multi-benefit program application in addition to the standard application form.)

Mandates that states make available Web sites in accessible, plain language with information regarding application for and receipt of Medicaid and other insurance affordability program benefits.

Requires states to rely to the extent possible upon electronic data, including a shared electronic service (or federal data hub) established by HHS, to verify financial and non-financial information.

Establishes that Medicaid agencies must accept and transfer via secure electronic interface eligibility information, including eligibility determinations, from other insurance affordability programs.

Permits entities other than the Medicaid or welfare agency, including nongovernmental exchange entities, to determine eligibility.

In 2014, the following groups will not have any changes in eligibility for Medicaid and will remain eligible for Medicaid and will qualify based on current income and resource standards used today: Aged, Blind or Disabled individuals; Foster Care children; and SSI cash recipients.

Summary of Proposal

Delaware supports the goals of the Affordable Care Act (ACA) to enhance access to affordable coverage, improve service delivery and control program cost growth.

Description of Rule Changes

These amendments to the eligibility rules reflect programmatic changes affecting Delaware Medicaid programs as required by the federal Affordable Care Act (ACA). This regulatory action proposes to codify policy and procedural changes to the Medicaid program and Children's Health Insurance Program (CHIP) related to eligibility, enrollment, renewals, public availability of program information, and coordination across Medicaid programs to be consistent with the ACA.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM): DSSM 14000, DSSM 15000, DSSM 16000, and DSSM 18000.

DSSM 14000

Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 14000

The proposed changes affect the following general eligibility rules in section 14000 of the Division of Social Services Manual (DSSM).

14000 ~~Common Eligibility Information~~ General Eligibility Requirements

14100 General Application Information

14100.1 ~~Application Filing Date~~ Authorized Representative

14100.2 Protected Filing Date

14100.3 ~~Face-to-Face~~ Interview Requirement for Some Programs Eligibility Groups

14100.4 Disposition of Applications

14100.5 ~~Timely~~ Determination of Eligibility

14100.8 Coordination of Eligibility and Enrollment with Other Insurance Availability Programs

14100.8.1 Transfer from Other Insurance Affordability Programs to the State Agency

14100.8.2 Evaluation of Eligibility for Other Insurance Affordability Programs

14100.8.3 Individuals Undergoing a Medicaid Eligibility Determination on a Basis Other than MAGI

14105 Social Security Number

14105.1 ~~Exception for Infants to~~ Furnish a Social Security Number

- 14110 State Residency
- ~~14110.1~~~~14110.1 Capable of Indicating Intent to Reside in Delaware~~ and ~~14110.2~~~~Incapable of Indicating Intent to Reside in Delaware~~ Definitions
- ~~14110.2~~~~14110.3 Placement by State in an Out-of-State Institution~~
- ~~14110.3~~~~14110.4 Actions which do not Constitute State Placement~~
- ~~14110.4~~~~14110.5 Lack of Appropriate Facility~~
- ~~14110.5~~~~14110.6 Criteria Specific to Individuals under Age 21~~
- ~~14110.6~~~~14110.7 Criteria Specific to Individuals Age 21 and Over~~
- ~~14110.7~~~~14110.8 Specific Prohibitions and Exceptions~~ and ~~14110.8.1~~~~Prohibitions~~ Specific Prohibitions for Denial or Termination of Eligibility
- ~~14110.8~~~~14110.8.2 Exceptions to General Residency Rules~~
- 14800 Verifications of Factors of Eligibility
- 14810 Continuously Eligible Newborns RESERVED
- 14820 Reporting Changes in Circumstances

SECTION 14000 – General Eligibility Requirements: DMMA proposes to reformat, renumber, rename and reorganize its general eligibility rules. Proposed for adoption are the following specific rule changes in Section 14000 identified and detailed below. The rule name is *italicized* and substantive changes noted.

Section	Description of Changes for DSSM 14000
14000	The name and content of this section details <i>General Eligibility Requirements</i> .
14100	The content of this rule, which details <i>General Application Information</i> , is revised to describe the single streamlined application process to ensure a coordinated eligibility and enrollment system for all insurance affordability programs in accordance with the requirements under the Affordable Care Act. The application processes must be accessible for all individuals and maximize the submission options for individuals being evaluated for eligibility under a modified adjusted gross income (MAGI) category and a non-MAGI category.
14100.1	This content of this rule is moved to 14100. This section is renamed <i>Authorized Representative</i> with new content. This rule details the minimum requirements for authorized representative acting on behalf of individual applicants.
14100.2	The content of this rule, which details the requirements of the <i>Protected Filing Date</i> , is revised to delete language about the receipt of an application in a Division of Social Services (DSS) office or in the mail. The submission modes for an application are described in section 14100, General Application Information. The examples are deleted as they are procedural depictions.
14100.3	Language in this rule, <i>Interview Requirement for Some Eligibility Groups</i> , referring to face-to-face requirement is being updated to add the prohibition of an in-person interview requirement for individuals whose eligibility is based on the financial methodology, modified adjusted gross income (MAGI). The rule is also revised to rephrase the in-person interview requirement for some Long Term Care eligibility determinations.
14100.4	The content of this rule, which details the <i>Disposition of Applications</i> , is revised to delete language about the verification process. The verification process is described in section 14800, Verifications of Factors of Eligibility. New content is added to comply with the requirement for the reinstatement of a withdrawn application in cases where the individual submits an application via the Federally Facilitated Marketplace (FFM).

FINAL REGULATIONS

14100.5	This rule is renamed <i>Determination of Eligibility</i> with new content and moves the existing content to revised section 14100.5.1, Timely Determination of Eligibility. The new content details the requirement to make a modified adjusted gross income (MAGI) based eligibility determination for each applicant and beneficiary.
14100.5.1	This rule, <i>Timely Determination of Eligibility</i> , is renumbered with new content to include time standards for a determination of eligibility when an application is submitted via the Federally Facilitated Marketplace (FFM).
14100.8	The number and content of this rule, <i>Coordination of Eligibility and Enrollment with Other Insurance Affordability Programs</i> , is new and addresses the requirement for a coordinated eligibility and enrollment system for insurance affordability programs in accordance with the Affordable Care Act. The content of this rule provides definitions for “coordinated content”, “electronic account” files, “insurance affordability program”, and “secure electronic interface”.
14100.8.1	The number and content of this rule, <i>Transfer from Other Insurance Affordability Programs to State Agency</i> , is new and addresses the requirement to accept the electronic account for an individual who has been assessed by the Federally Facilitated Marketplace (FFM) as potentially eligible for Medicaid; to promptly complete a determination of eligibility without requiring another application; and, to notify the FFM of the individual’s eligibility or ineligibility.
14100.8.2	The number and content of this rule, <i>Evaluation of Eligibility for Other Insurance Affordability Programs</i> , is new and addresses the requirement to assess eligibility for another insurance affordability program for individuals determined to be ineligible for Medicaid; to transfer the individual’s electronic account to the Federally Facilitated Marketplace (FFM) as appropriate; to notify the individual of the electronic transfer.
14100.8.3	The number and content of this rule, <i>Individuals Undergoing a Medical Eligibility Determination on a Basis other than MAGI</i> , is new and addresses the requirement to assess an individual’s eligibility for another insurance affordability program and to transfer an individual’s electronic account to the Federally Facilitated Marketplace (FFM) while the individual is undergoing a Medicaid eligibility determination on a basis other than modified adjusted gross income (MAGI).
14105	The content of this rule, <i>Social Security Number</i> , which details social security number requirements, is revised to comply with the requirement to verify the Social Security number of an applicant with the Social Security Administration via the Federal Data Services Hub (FDSH) in accordance with the Affordable Care Act.
14105.1	The name and content of this rule, <i>Exceptions to SSN</i> , details the following exceptions to the social security number (SSN) requirements: the individual: is not eligible to receive a SSN; does not have a SSN and may only be issued a SSN for a valid non-work reason; or, refuses to obtain a SSN because of well-established religious objections; or is an infant under age one.
14110	This rule, <i>State Residency</i> , is revised to rephrase the requirement that an individual must be a Delaware resident.
14110.1	The content of 14110.1 and 14110.2, which details the criteria for being capable/incapable of indicating intent to reside in Delaware, is combined into one rule and is renamed and renumbered accordingly as 14110.1, <i>Definitions</i> . Definitions are provided for “incapable of indicating intent to reside in Delaware” and “institution”.
14110.2	This rule, previously numbered 14110.3, addresses <i>Placement by State in an Out-of-State Institution</i> , is renumbered as 14110.2.
14110.3	This rule, previously numbered 14110.4, details <i>Actions which do not Constitute State Placement</i> , is renumbered as 14110.3.
14110.4	This rule, previously numbered 14110.5, explains <i>Lack of Appropriate Facility</i> and is renumbered 14110.4.

14110.5	This rule (previously numbered 14110.6), which details eligibility criteria specific to <i>Individuals Under Age 21</i> , is renumbered 14110.5 to reflect the above-referenced numbering changes. The content is revised to strike the references to the SSI and AFDC programs and the cross-reference to 45 CFR 233.40(a); to strike the note about an institution which is now included in 14110.1; to align the residency rules for individuals who are emancipated or married with the residency rules for adults; and, to combine and consolidate the residency rules for un-emancipated individuals under age 21.
14110.6	This rule (previously numbered 14110.7), which details eligibility criteria specific to <i>Individuals Age 21 and Over</i> , is renumbered to reflect the above-referenced numbering changes. The content is revised to base the residency for a non-institutionalized adult upon where the individual is living and has intent to reside. The content for an institutionalized individual who became incapable of indicating intent before age 21 and an institutionalized individual who became of indicating intent at or after age 21 are not being changed. The content is revised to base the residency of any other institutionalized individual on the state where the individual is living.
14110.7	This rule, which addresses criteria specific to prohibitions, is renumbered to reflect the above-referenced numbering changes and renamed <i>Specific Prohibitions for Denial or Termination of Eligibility</i> . This rule combines content located in previous sections 14110.8 and 1410.8.1.
14110.8	This rule, which addresses criteria specific exceptions to the general residency policy, is renumbered to reflect the above-referenced numbering changes and renamed to <i>Exception to General Residency Rules</i> .
14800	This rule, which addresses verifications, is renamed <i>Verification of Factors of Eligibility</i> with new content. The content is revised to accept attestation of most of the information needed to determine eligibility and accept such attestation by the individual, an adult in the individual's household, an authorized representative, or someone acting responsibly for a minor or an incapacitated individual.
14810	This rule, <i>Continuously Eligible Newborns</i> , is deleted and its contents moved to new section 15210. The content of this rule regarding "retroactive coverage" is deleted here and described in current section 14920, Retroactive Coverage. The number 14810 remains in place as "RESERVED".
14820	The name and content of this rule, which addresses <i>Changes in Circumstances</i> , is revised to require the agency to accept the reporting of changes via the agency's self-service web site, by telephone, via mail, in person, and through other commonly available electronic means, and to add language about the existing procedures to redetermine eligibility promptly when information about a change in circumstances is received.

DSSM 15000

Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 15000

Historically, Medicaid eligibility is based on several factors, including linkage to a specific coverage group and income eligibility, including allowable deductions. The State currently provides coverage to uninsured adults at 100% FPL under the 1115 Demonstration Waiver.

Delaware is taking the option to expand eligibility to adults at 133% of the Federal Poverty Level (FPL).

The proposed changes affect the eligibility rules in section 15000 of the Division of Social Services Manual (DSSM). The rules in DSSM 15000 are stricken in their entirety to consolidate several existing and mandatory groups and place related rules near each other in the organizational scheme to avoid duplication of content. Every effort has been made to ensure that the content and meaning of the rules remain the same. This section is also amended to add a new mandatory eligibility group, former foster care children aged 18 or older and under age 26; and, as an optional expansion, the low-income adult group, aged 19 or older and under age 65.

Modified Adjusted Gross Income (MAGI) and household income are defined in section 36B(d)(2)(A) and (B) of the Internal Revenue Code (IRC). The MAGI-based financial methodology under the Medicaid statute includes certain unique income counting and household composition rules reflected in the Centers for Medicare and Medicaid Services (CMS) regulations at 42 CFR 435.603 and discussed in section III.B. of the preamble to the eligibility final rule published in the Federal Register on March 23, 2012, (77 FR 17144, pages 17150-59; available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf>.)

This proposed section includes the new net income limits for eligibility groups that are subject to the modified adjusted gross income (MAGI) methodology described in Section 16000, *Financial Methodologies - Application of Modified Adjusted Gross Income (MAGI)*. Provisions under the ACA require states to convert current net income limits to MAGI-equivalent income limits.

The following eligibility groups are subject to MAGI-based methodology:

Section	Eligibility Group
15000	Parent/Caretaker Relative Group
15200	Pregnant Woman Group
15300	Children Group
15400	Adult Group
15510	Foster Children Group
15540	Infants Awaiting Adoption Group
15700	Family Planning Group
18000	Delaware Healthy Children Program

The current rules in DSSM 15000 become obsolete with adoption of these proposed changes and as such are not listed in table form here. These rules can be found at: <http://regulations.delaware.gov/AdminCode/>

To accurately reflect the revised content of revised section 15000, ~~AFDC TANF Related Programs~~ is renamed Family and Community Medicaid Eligibility Groups.

SECTION 15000 - Family and Community Medicaid Eligibility Groups: The following table presents the assignment of new numbers and shorter names for each rule, section, and subsection in the renamed section 15000, Family and Community Medicaid Eligibility Groups. The rule name is *italicized* and substantive changes noted.

Section	Description of Revised DSSM 15000
15000	This section describes the eligibility requirements for family and community Medicaid eligibility groups.
15100	This rule describes the <i>Parent/Caretaker Relative Group</i> , formerly section 15120, Low Income Families with Children Under Section 1931.
15100.1	This rule, <i>Definitions</i> , provides definitions for the following words and terms: “caretaker relative” and “dependent child”.
15100.2	This rule describes <i>Parent/Caretaker Relative General Eligibility Requirements</i> .
15100.3	This rule describes Parent/Caretaker Relative <i>Technical Eligibility</i> requirements.
15100.4	This rule describes Parent/Caretaker Relative <i>Financial Eligibility</i> requirements using MAGI-based financial methodologies.
15110	This rule describes the <i>Transitional Group</i> eligibility requirements. In the second paragraph, language referring to the “twelve-month extension period”, which is based on federal authorization/ federal funding, is added.
15110.1	This rule describes the <i>Transitional Group General Eligibility Requirements</i>
15110.2	This rule describes the <i>Three out of Six Months Requirement</i> for the Transitional Group.
15110.3	This rule describes eligibility criteria based on <i>Increase in Earned Income or Hours of Employment</i> .
15110.4	This rule describes the <i>Child Living in the Home</i> (as defined in section 15100.1) criteria.
15110.5	This rule describes the criteria for household <i>Composition of a Transitional Group Family Unit</i> .
15110.6	This rule describes the criteria <i>First Month of Transitional Group Eligibility</i> .
15110.7	This rule describes <i>Transitional Group Eligibility during First Six-Month Period</i> .

15110.8	This rule describes <i>Transitional Group Eligibility during Second Six-Month Period</i> .
15110.8.1	This rule, <i>Child Living in the Home</i> , describes the requirement that a dependent child must be living in the home during the second six-month period.
15110.8.2	This rule, <i>Employment of Caretaker Relative</i> , describes “good cause” exceptions to the requirement that a parent/caretaker relative must be employed.
15110.8.3	This rule describes the <i>Limit on Gross Monthly Earned Income</i> .
15110.9	This rule describes the criteria for <i>Twelve-Month Period of Transitional Group Eligibility</i> .
15110.10	This new rule describes the criteria for <i>Four-Month Period of Transitional Group Eligibility</i> .
15120	This rule describes the eligibility requirements for the <i>Prospective Group</i> . Language in this rule referring to child support extension is being eliminated because income from child support is not counted under MAGI-based financial methodologies.
15120.1	This rule describes <i>Prospective Group General Eligibility Requirements</i> .
15120.2	This rule describes <i>Three out of Six Months Requirement</i> for the Prospective Group.
15120.3	This rule describes the <i>Collection of Spousal Support</i> requirement for the Prospective Group.
15120.4	This rule, <i>Child Living in the Home</i> , describes the requirement that a dependent child must be living in the home, as defined in 15100.1.
15120.5	This rule, <i>First Month of Prospective Group Eligibility</i> , describes when prospective group eligibility begins.
15120.6	This rule describes the criteria for household <i>Composition of Prospective Group Family Unit</i> .
15200	This rule describes the eligibility requirements for the <i>Pregnant Woman Group</i> .
15200.1	This new rule, <i>Definitions</i> , provides a definition for “pregnant woman” which mirrors the definition of pregnant woman in the Affordable Care Act.
15200.2	This rule describes <i>Pregnant Woman Group General Eligibility Requirements</i> .
15200.3	This rule describes Pregnant Woman Group <i>Technical Eligibility</i> requirements.
15200.4	This rule describes Pregnant Woman Group <i>Financial Eligibility</i> requirements using MAGI-based financial methodologies.
15200.5	This rule describes <i>Continuous Eligibility</i> throughout the pregnancy and the postpartum period.
15200.6	This rule describes the <i>Postpartum Period</i> which includes a change from 90-days of postpartum coverage to 60-days of postpartum coverage. NOTE: The authorization for 90-day postpartum coverage was in the 1115 Demonstration Waiver.
15210	This rule describes the eligibility requirements for the <i>Deemed Newborn Group</i> .
15210.1	This rule describes <i>Deemed Newborn Group General Eligibility Requirements</i> .
15210.2	This rule describes Deemed Newborn Group <i>Financial Eligibility</i> requirements.
15300	This rule describes the eligibility requirements for the <i>Children Group</i> .
15300.1	This rule describes <i>Children Group General Eligibility Requirements</i> .
15300.2	This rule describes Children Group <i>Technical Eligibility</i> requirements.
15300.3	This rule describes Children Group <i>Financial Eligibility</i> requirements using MAGI-based financial methodologies.
15300.4	This rule describes <i>Mandatory Continuation of Eligibility for Children</i> .

15400	This new rule describes eligibility requirements for the low-income <i>Adult Group</i> . NOTE: The uninsured adults at 100% of the Federal Poverty Level (FPL) are moving from the 1115 Demonstration Waiver to the Medicaid state plan as the new 133% FPL adult group.
15400.1	This new rule, <i>Definitions</i> , provides a definition for the following term: “minimum essential coverage”.
15400.2	This new rule describes <i>Adult Group General Eligibility Requirements</i> .
15400.3	This new rule describes <i>Technical Eligibility</i> for the Adult Group.
15400.4	This new rule describes <i>Financial Eligibility</i> requirements for the Adult Group using MAGI-based financial methodologies.
15500	This rule describes eligibility requirements for the <i>Title IV-E Foster Children Group</i> .
15500.1	This rule describes <i>Title IV-E Foster Children Group General Eligibility Requirements</i> .
15500.2	This rule describes <i>Technical Eligibility</i> requirements for the Title IV-E Foster Children Group.
15500.3	This rule explains that the <i>Eligibility Determination</i> for the Title IV-E Foster Children Group is the responsibility of the Delaware Department of Services for Children, Youth, and their Families (DSCYF).
15510	This rule describes eligibility requirements for the <i>Foster Children Group</i> .
15510.1	This rule describes <i>Foster Children Group General Eligibility Requirements</i> .
15510.2	This rule describes <i>Technical Eligibility</i> requirements for the Foster Children Group.
15510.3	This rule describes the <i>Financial Eligibility</i> requirements for the Foster Children Group using MAGI-based financial methodologies.
15510.4	This rule describes the <i>Effective Date of Coverage</i> for the Foster Children Group.
15520	This rule describes the eligibility requirements for the <i>Adoption Assistance Group</i> .
15520.1	This rule describes the <i>Adoption Assistance Group General Eligibility Requirements</i> .
15520.2	This rule describes the <i>Technical Eligibility</i> requirements for the Adoption Assistance Group.
15520.3	This rule explains that <i>Eligibility Determination</i> for the Title IV-E Foster Children Group is the responsibility of the Delaware Department of Services for Children, Youth, and their Families (DSCYF).
15530	This rule describes the eligibility requirements for the <i>Adoption Subsidy Group</i> .
15530.1	This rule describes the <i>Adoption Subsidy Group General Eligibility Requirements</i> .
15530.2	This rule describes the <i>Technical Eligibility</i> requirements for the Adoption Subsidy Group.
15530.0	This rule, <i>Financial Eligibility</i> , explains that there is no income or resource test for the Adoption Subsidy Group.
15540	This rule describes eligibility requirements for the <i>Infants Awaiting Adoption Group</i> .
15540.1	This rule describes <i>Infants Awaiting Adoption Group General Eligibility Requirements</i> .
15540.2	This rule describes the <i>Technical Eligibility</i> requirements for the Infants Awaiting Adoption Group.
15540.3	This rule describes <i>Financial Eligibility</i> for the Infants Awaiting Adoption Group using MAGI-based financial methodologies.
15540.4	This rule describes the <i>Effective Date of Coverage</i> for the Infants Awaiting Adoption Group.
15540.5	This rule explains that <i>Termination of Eligibility</i> for Infants Awaiting Adoption Group occurs when the infant is placed with the prospective adoptive parents even if the adoption is not final.

15550	This new rule describes the eligibility requirements for the <i>Former Foster Children Group</i> .
15550.1	This new rule describes the <i>Former Foster Children Group General Eligibility Requirements</i> .
15550.2	This new rule describes the <i>Technical Eligibility</i> requirements for the Former Foster Children Group.
15550.3	This new rule, <i>Financial Eligibility</i> , explains that there is no income or resource test for the Former Foster Children Group.
15600	This rule describes the eligibility requirements for the <i>Breast and Cervical Cancer Group</i> .
15600.1	This rule, <i>Definitions</i> , provides a definition for the following <i>Breast and Cervical Cancer Group</i> term: "comprehensive health insurance".
15600.2	This rule describes the <i>Breast and Cervical Cancer Group General Eligibility Requirements</i> .
15600.3	This rule describes the <i>Technical Eligibility</i> requirements for the Breast and Cervical Cancer Group.
15600.4	This rule, <i>Financial Eligibility</i> , explains that there is no income or resource test for the Breast and Cervical Cancer Group.
15600.5	This rule describes the <i>Presumptive Eligibility</i> criteria for the Breast and Cervical Cancer Group.
15600.6	This rule describes the <i>Eligibility Period</i> for the Breast and Cervical Cancer Group.
15600.7	This rule, <i>Benefits</i> , explains that a woman eligible under the Breast and Cervical Cancer Group is entitled to full Medicaid coverage and that coverage is not limited to breast and cervical cancer.
15600.8	This rule describes <i>Termination of Eligibility</i> under the Breast and Cervical Cancer Group.
15700	This rule describes the eligibility requirements for the <i>Family Planning Group</i> .
15700.1	This rule describes the <i>Family Planning Group General Eligibility Requirements</i> .
15700.2	This rule describes the <i>Technical Eligibility</i> requirements for the Family Planning Group.
15700.3	This new rule describes the <i>Financial Eligibility</i> for the Family Planning Group using MAGI-based financial methodologies.
15700.4	This rule, <i>Benefits</i> , explains that Medicaid coverage is limited to family planning and related services only.
15700.5	This rule explains that <i>Termination of Eligibility</i> occurs at the end of the 24-month period.

DSSM 16000

Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 16000

The proposed changes affect the eligibility rules in section 16000 of the Division of Social Services Manual (DSSM). The rules in DSSM 16000 are stricken in their entirety to implement the Modified Adjusted Gross Income (MAGI) financial eligibility methodologies. As mandated by the Affordable Care Act (ACA), these new rules provide that eligibility for most children, pregnant women, parents and caretaker relatives, the new low-income adult group, aged 19 or older and under age 65 and, the Delaware Healthy Children Program are determined using MAGI-based financial methodologies. Please note that although authorized under the 1115 Demonstration Waiver, MAGI-based financial methodologies will be used to determine eligibility for the family planning group.

These rule amendments implement a streamlined eligibility determination process required for all insurance affordability programs and the requirement to verify information to establish income using federal and state data matching sources providing real-time Medicaid eligibility decisions.

To accurately reflect the revised content of section 16000, ~~Federal Poverty Level Related Programs~~ is renamed Financial Methodologies – Application of Modified Adjusted Gross Income (MAGI).

The following table presents the current rules in the Federal Poverty Level Related Program section that are obsolete, have been moved or are eliminated. They are identified by their current numbers. The rule name is *italicized* and substantive changes noted.

FINAL REGULATIONS

Section	Current Rules in DSSM 16000
16100	This section, <i>Pregnant Women, Infants and Children</i> , is moved to 15200.
16100.1, 16100.1.1, 16100.1.2, 16100.1.3, 16100.1.4	This rule, <i>Presumptive Eligibility for Pregnant Women</i> , and its subsections, <i>Application Procedures</i> , <i>Initial Eligibility Determination</i> , <i>Final Eligibility Determination and Limitations</i> , are being eliminated because attestation will be accepted for verification of pregnancy and income. Managed care enrollment will occur earlier with better birth outcomes.
16100.1.5	This section, <i>Continuously Eligibility for Newborns</i> , is moved to 15210.
16110	This section, <i>Adult Expansion Population</i> , is redefined and becomes the new eligibility group, <i>Adult Group</i> . See section 15400.
16120	This section, <i>General Assistance (GA) Recipients</i> , becomes the new eligibility group, <i>Adult Group</i> , and is moved to 15400.
16200	This rule, <i>Application Process</i> , is deleted because its content is covered by revised rule 14100.
16200.1	This rule, <i>Protected Filing Date</i> , is deleted because its content is covered by revised rule 14100.2.
16210	This rule, <i>Limitations on Retroactive Coverage</i> , is deleted because its content is covered by current rule 14920.
16220	The content of this rule, <i>Technical Eligibility</i> , is deleted and becomes obsolete as requirements for "technical eligibility" are covered in each eligibility group rule in section 15000.
16220.1	The content of this rule, <i>Waiver of Social Security Number Requirement for Infants</i> , is deleted as this requirement is covered in section 14105.1.
16220.2	The content of this rule, <i>Age Requirement</i> , is deleted as this requirement is covered in each eligibility group rule in section 15000.
16220.2.1	This rule, <i>Adult</i> , is deleted because its content is covered in 15400.3.
16220.2.2	The content of this rule, <i>Minor</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.2.3	The content of this rule, <i>Emancipated Minor</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.3	This rule, <i>Pregnancy</i> , is deleted because its content is covered by revised rule 15200.3.
16220.4	This rule, <i>Uninsured Requirement of Adult Expansion Population</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.4.1	This rule, <i>Definition of Comprehensive Health Insurance</i> , is deleted and becomes obsolete with adoption of these rule changes.
16220.5	This rule, <i>Enrollment in Managed Care – Special Requirement for Adult Expansion Population</i> , is deleted and becomes obsolete with adoption of these rule changes.
16230, 16230.1, 16230.1.2, 16230.1.3, 16230.1.4, 16230.2, 16230.3	These rules, <i>Financial Eligibility</i> , <i>Earned Income</i> , <i>Wages</i> , <i>Self-Employment Income</i> , <i>Roomer/Boarder Income</i> , <i>Deductions from Earned Income</i> , <i>Unearned Income</i> and <i>Excluded Income</i> are deleted and become obsolete with the adoption of MAGI-based financial methodologies.

16240, 16240.1, 16240.2, 16240.3	These rules, <i>Composition of Budget Units, Individuals to Include, Individuals to Exclude</i> and <i>Individuals in Separate Budget Units</i> are deleted and become obsolete with the adoption of MAGI-based financial methodologies.
16250	This rule, <i>Eligibility Determination</i> , is deleted and becomes obsolete as requirements for “determining eligibility” are covered in section 14100.5 and in each eligibility group rule in section 15000.
16260	This rule, <i>Effective Date of Coverage for Adult Expansion Population</i> , is deleted and becomes obsolete with adoption of these rule changes.
16270	This rule, <i>Continuous Eligibility of Pregnant Women</i> , is deleted because its content is covered by revised rule 15200.5.
16270.1	This rule, <i>Postpartum</i> , is deleted because its content is covered by revised rule 15200.6.
16280	This rule, <i>Deemed Eligibility of Newborns</i> , is deleted because its content is covered by revised rule 15210.
16280.1	This rule, <i>Continuous Eligibility of Newborns</i> , is deleted because its content is covered by revised rule 15210.2.
16290	This rule, <i>Mandatory Continuation of Coverage for Children</i> , is deleted because its content is covered by revised rules 15300, 15300.2, 15300.3 and 15300.4.
16300	This rule, <i>Redetermination of Eligibility</i> , is deleted because its content is covered by rule 14100.5.
16310	This rule, <i>Termination of Eligibility</i> , is deleted because its content is covered by revised rule 14100.5.
16310.1	This rule, <i>Pregnant Women</i> , is deleted because its content is covered by revised rules 15200.6 and 15700.2.
16310.2	This rule, <i>Children</i> , is deleted because its content is covered by revised rules 15300, 15300.2, 15300.3 and 15300.4.
16310.3	This rule, <i>Adults</i> , is deleted and becomes obsolete with adoption of these rule changes.
16500	This rule, <i>Family Planning</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.1	This rule, <i>Eligibility Requirements</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.2	This rule, <i>Procedures for Determining Eligibility</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.3	This rule, <i>Redetermination of Eligibility</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.4	This rule, <i>Benefits</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.
16500.5	This rule, <i>Termination of Eligibility</i> , is deleted because its content is covered by revised rules 15700, 15700.1, 15700.2, 15700.3, 15700.4 and 15700.5.

SECTION 16000 – Financial Methodologies – Application of Modified Adjusted Gross Income (MAGI)

The Affordable Care Act will expand Medicaid eligibility and consolidate existing eligibility categories and will change how financial eligibility is determined for Medicaid. As of January 1, 2014, financial eligibility will be based on modified adjusted gross income (MAGI) methods, as defined in the Internal Revenue Code. The move to MAGI-based methodology will result in some changes from current Medicaid rules related to calculating family size and

household income and will largely align Medicaid financial eligibility determinations with the standards used to determine eligibility for advance payments of premium tax credits and cost-sharing reduction through the Federally Facilitated Marketplace (FFM).

Medicaid financial eligibility for most categories will be based on the MAGI definition of household income. Certain categories are exempt from the use of MAGI-based methodology and will continue to have financial eligibility determined based on existing Medicaid rules. Eligibility determinations for categories subject to MAGI-based methodology will no longer be based on the existing deductions from income. The existing deductions from income are replaced with a standard 5% income disregard. An amount equivalent to 5% of the Federal Poverty Level (FPL) for the applicable family size is deducted from household income.

The rules for the revised content of section 16000 are identified and detailed below with their new rule number. The rule name is *italicized* and substantive changes noted.

Section	Description of Revised DSSM 16000
16000	This section implements 1902(e)(14) of the Social Security Act and describes the financial methodology, modified adjusted gross income (MAGI).
16100	This rule, <i>Definitions</i> , provides definitions for the following words and terms used in the context of MAGI-based methodology: “child”, “family size”, “Federal Poverty Level”, “household income”, “modified adjusted gross income (MAGI)”, “parent”, “sibling”, and “tax dependent”.
16200	This rule describes the <i>Application of MAGI income and household size</i> .
16300	This rule describes <i>MAGI-based Determination of Eligibility</i> .
16400	This rule describes <i>Household Composition</i> .
16400.1	This rule describes the <i>Basic rule for taxpayer not claimed as a tax dependent</i> .
16400.2	This rule describes the <i>Basic rule for tax dependents</i> .
16400.3	<i>Rule for individuals who neither file a tax return nor are claimed as a tax dependent</i> is described in this section.
16400.4	<i>Rule for married couples</i> is described in this section.
16500	This rule describes <i>MAGI-based Income</i> .
16500.1	This rule, <i>Counted Income</i> , describes the income calculated to determine MAGI.
16500.2	This rule, <i>Excluded Income</i> , describes the exceptions to counted income.
16500.3	This rule, <i>Deductions</i> , describes deductions from income allowed in determining MAGI-based income.
16600	This rule, <i>Income Disregard</i> , describes the five-percent disregard in determining MAGI eligibility.
16700	This rule, <i>Budget Period</i> , explains that the budget period is based on current monthly household income and family size.
16800	This rule, <i>Eligibility Determination</i> , explains that household income must not exceed the income standard for the applicable eligibility group to the individual.

DSSM 18000

Specific Changes, Revisions, and Additions to Eligibility Rules in DSSM 18000

The proposed changes affect the eligibility rules in section 18000 of the Division of Social Services Manual (DSSM). The ACA revises the household composition and income evaluation methodologies related to Children’s Health Insurance Program (CHIP) eligibility determinations, as well as determinations for advanced premium tax credits. The rules in DSSM 18000 are stricken in their entirety and revised, reformatted, renumbered and reorganized to implement the Modified Adjusted Gross Income (MAGI) financial methodologies.

The following table presents the current rules in the Delaware Healthy Children Program section that are

obsolete, have been moved or are eliminated. They are identified by their current numbers. The rule name is *italicized* and substantive changes noted.

Section	Current Rules in DSSM 18000
18000	The content of this introductory section has been renumbered, renamed and edited to improve clarity.
18100	This rule, <i>General Eligibility Requirements</i> , is deleted and its content moved to revised section 18200.
18100.1	This rule, <i>Alien Status</i> , is deleted and its content is covered by revised rule 18200.
18100.2	This rule, <i>Limitations on Retroactive Coverage</i> , is eliminated and its content moved to 18200.
18200	This rule, <i>Technical Eligibility</i> , is deleted and its content moved to revised section 18300.
18200.1	This rule, <i>Age Requirement</i> , is deleted and its content moved to revised section 18300.
18200.2	This rule, <i>Uninsured Requirement</i> , is deleted and its content moved to revised section 18300. Language about "comprehensive health insurance within the six months preceding the month of application" is deleted.
18200.2.1	This rule, <i>Definition of Comprehensive Health Insurance</i> , is deleted and its content moved to revised section 18100.
18200.2.2	This rule, <i>Good Cause for Loss of Health Insurance</i> , is deleted because the six-month waiting period for loss of health insurance is being eliminated.
18200.3	This content of this rule, <i>Children of Public Agency Employees</i> , is deleted and becomes obsolete with adoption of these rule changes. See revised section 18300.
18200.4	This rule, <i>Residents of Institutions</i> , is deleted and its content is covered by revised rule 18300.
18200.4.1	This rule, <i>Patient in an Institution for Mental Disease</i> , is deleted and its content is covered by revised rule 18100.
18200.4.2	This rule, <i>Inmate of a Public Institution</i> , is deleted and its content is covered by revised rule 18100.
18300	This rule, <i>Composition of Budget Unit</i> , is deleted and its content is covered by revised 18400.
18400	This rule, <i>Financial Eligibility</i> , is deleted and its content is covered by revised rule 18400.
18500	This rule, <i>Eligibility Determination</i> , is deleted and its content is covered by revised rule 18400.
18600	This rule, <i>Managed Care Enrollment Requirements</i> , is deleted and its content is covered by revised rule 18600.
18700	This rule, <i>Premium Requirements</i> , is deleted and its content is covered by revised rule 18700.
18700.1	This rule, <i>Initial Premium</i> , is deleted and its content is covered by revised rule 18700.
18700.2	This rule, <i>Premiums to Continue Coverage</i> , is deleted and its content is covered by revised rule 18700.
18700.3	This rule, <i>Advance Payment of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18700.4	This rule, <i>Refund of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18700.5	This rule, <i>Cancellation of Coverage for Nonpayment of Premiums</i> , is deleted and its content is covered by revised rule 18700.
18700.6	This rule, <i>Good Cause for Nonpayment of Premiums</i> , is deleted and its content is covered by revised rule 18700.

18800, 18800.1, 18800.2	The name and number of this rule, <i>Continuous Eligibility</i> , remains in place. The content is revised to combine the content of current section 18800.1, <i>Termination of Eligibility</i> , and current section 18800.2, <i>Changes in Family Income</i> .
18800.3	This rule, <i>Continuously Eligible Newborns</i> , is deleted because its content is covered by revised rule 15210.2.
18800.4	This rule, <i>Redetermination of Eligibility</i> , is deleted because its content is covered by existing rule 14100.6. NOTE: DSSM 14100.6, Redetermination of Eligibility and DSSM 14100.7, Fair Hearings will be revised in future rulemakings.

The rules for the revised content of section 18000 are identified and detailed in the table below with their new rule number. The rule name is *italicized* and substantive changes noted.

SECTION 18000 – Delaware Healthy Children Program

Section	Description of Revised DSSM 18000
18000	This updated section describes the statutory authority for Delaware's CHIP program, the Delaware Healthy Children Program.
18100	This rule, <i>Definitions</i> , provides definitions for the following words and terms: "comprehensive health insurance", "inmate of a public institution" and "institution for mental disease".
18200	This rule, <i>General Eligibility Requirements</i> , explains that an individual must meet the general eligibility requirements described in revised section 14000.
18300	This rule describes <i>Technical Eligibility</i> requirements for the Delaware Health Children Program.
18400	This rule describes <i>Financial Eligibility</i> requirements for the Delaware Health Children Program.
18500	The requirements for <i>Protection of Former Medicaid Children</i> are described in this new section.
18600	This rule describes <i>Managed Care Enrollment Requirements</i> .
18700	This rule describes <i>Premium Requirements</i> .
18800	This rule describes <i>Continuous Eligibility</i> .

DMMA intends to request authority to begin use of these rules beginning [~~October 1, 2013~~ **January 1, 2014**].

While the March 23, 2012 rule reflects final policies, CMS has stated that it will issue additional regulatory and subregulatory guidance on related policy and operational issues.

Eligibility rules and State plan amendments (SPAs) will be further amended to implement other ACA provisions. DMMA will work with CMS to identify and formulate these rules and SPAs.

This proposed regulation was also published concurrently under "Emergency Regulations" in 17 DE Reg. 126 – 142 (August 1, 2013).

Fiscal Impact Statement

Change to Federal Expenditures	State Fiscal Year 2014	State Fiscal Year 2015
Former CHIP Kids	\$ 124,986	\$ 254,855
ACA Expansion	\$ 11,924,412	\$ 26,689,670
Transitional	\$ 187,657	\$ 566,356

Former Foster Children	\$ -	\$ -
Total	\$ 12,237,055	\$ 27,510,882

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments regarding these rule changes.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding implementation of the Modified Adjusted Gross Income (MAGI) methodology provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) under the Affordable Care Act is adopted and shall be final effective November 10, 2013.

Rita M. Landgraf, Secretary, DHSS

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

Medicaid Expansion under the Affordable Care Act 2014 – Implementation of Modified Adjustment Gross Income (MAGI) Methodology

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Medicaid Provider Screening Requirements and Enrollment Fee and Program Integrity

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing provisions in the Delaware Medical Assistance Program (DMAP) Manual specifically, the General Policy Provider Manual regarding *Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity*. 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 September 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act. Specifically, Section 6401, *Provider Screening and Other Enrollment Requirements Under Medicare, Medicaid, and CHIP*; and Section 6501, *Termination of Provider Participation Under Medicaid If Terminated Under Medicare or Other State Plan*
- 42 CFR Part 455 Subpart E

Background**Section 6401**

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

Section 6501

Section 6501 of the Affordable Care Act (ACA) amends section 1902(a)(39) of the Social Security Act (the Act) and requires State Medicaid agencies to terminate the participation of any individual or entity if such individual or entity is terminated under Medicare or any other State Medicaid plan. In final implementing regulations at 42 CFR §455.101, CMS generally defined "termination" as occurring when a State Medicaid program, CHIP, or the Medicare program has taken action to revoke a Medicaid or CHIP provider's or Medicare provider or supplier's billing privileges and the provider has exhausted all applicable appeal rights or the timeline for appeal has expired. CMS also indicated in final implementing regulations at 42 CFR §455.101, that the requirement to terminate under section 6501 of the ACA only applies in cases where providers, suppliers or eligible professionals have been terminated or had their billing privileges revoked "for cause." Section 6501 builds upon section 6401(b)(2) which requires that CMS establish a process to make provider termination information available to State Medicaid programs.

Summary of Proposal

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

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

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

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

Fiscal Impact Statement

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

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

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

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 Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to adopt regulations implementing §§6401 and 6501 of the Affordable Care Act. In a nutshell, CMS adopted regulations in 2011 which: 1) require states to adopt certain screening and enrollment standards for Medicaid providers; 2) collect an enrollment fee for institutional providers; 3) authorize a temporary Medicaid provider enrollment moratorium when directed by CMS; 4) terminate provider participation in Medicaid and CHIP if another state has terminated the provider's participation on or after January 1, 2011; and 5) adopt provider screening standards at enrollment, reenrollment and revalidation. The proposed regulation was published as 17 DE Reg. 282 in the September 1, 2013 issue of the *Register of Regulations*. Given time constraints, we have not conducted an exhaustive comparison of the proposed regulation to extensive federal statutory, regulatory, and subregulatory ACA standards. However, we did identify two (2) areas of concern.

First, §§1.39.2.4 and 1.39.2.5 authorize providers terminated from program participation to invoke full appeal rights compiled in the General Policy Provider Manual. In contrast, the attached CMS Bulletin (CPI-B 11-05) contains the following limitation on provider appeal rights:

...When subsequent States terminate based on that initial termination, the scope of their appeals should only review whether the provider was, in fact, terminated by the initiating program. The subsequent appeals process should not review the underlying reasons for the initiating termination. The appeal process in subsequent States does not provide a new forum in which to litigate the basis of termination by another State Medicaid program, Medicare, or CHIP.

DMMA may wish to incorporate this limitation into §1.39.2.5.

Agency Response: DMMA appreciates your comment and has considered your recommendation. The change to proposed §1.39.2.5 to incorporate this limitation is indicated by bracketed, bold type on the final order regulation.

Second, §1.39.2.4 recites that DMMA will check federal databases monthly and "will terminate providers and disclosed entities or individuals who do not meet ACA screening guidelines." This is a "no-exceptions" standard. In contrast, the attached CMS Bulletin (CPI-B 11-05) clarifies that termination is not the invariable result of identification of termination of a provider by another state:

- Q. Are there any exceptions to the requirement to terminate a provider that was terminated by Medicare or another State Medicaid program or CHIP?
- A. Yes. The statute provides for the same limitations on termination that apply to exclusion under §§1128(c)(3)(B) and 1128(d)(3)(B) of the Social Security Act. Thus, a State may request a waiver of the requirement to terminate a particular provider's participation. State agencies may submit such waiver requests to their respective CMS Regional Offices.

DMMA may wish to consider the following amendment to the last sentence in §1.39.2.4:

DMA will terminate providers and disclosed entities or individuals who do not meet ACA screening guidelines unless DMA, in its sole discretion, solicits and secures a waiver from CMS.

Agency Response: DMMA appreciates your comment and has considered your recommendation. The change to proposed §1.39.2.4 regarding exceptions to the requirement to terminate a provider is indicated by bracketed, bold type on the final order regulation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Medical Assistance Program (DMAP) Manual specifically, the General Policy Provider Manual regarding *Medicaid Provider Screening Requirements and Provider Enrollment Fee and Program Integrity* is adopted and shall be final effective November

10, 2013.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #13-42

REVISION:

1.39.2 Provider Screening and Enrollment

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

1.39.2.1 Provider Enrollment Fee

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

1.39.2.2 Provider Screening and Enrollment Requirements

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

1.39.2.2.1 Provider Risk Categories

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

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

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

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

- Ambulance providers
- Community Mental Health Centers
- CORF - Comprehensive Outpatient Rehabilitation Facilities

- Revalidating Durable Medical Equipment (DME) suppliers
- Revalidating Home Health Agencies (HHA)
- Hospice organizations
- Laboratories - independently owned

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

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

1.39.2.2.2 Ordering, Referring and Prescribing Providers (ORPs)

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

1.39.2.3 Temporary Provider Enrollment Moratoria

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

1.39.2.4 Provider Termination

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

1.39.2.5 Provider Appeal Rights

~~Providers may appeal denial and termination decisions as a result of ACA provider screening and enrollment requirements.~~ Denial and termination decisions following provider screening and enrollment procedures are appealable; however, the scope of the appeal is limited to whether the provider was terminated by Medicare or the initiating state Medicaid or CHIP program. The appeal does not provide an opportunity for the provider to contest the basis of the termination by Medicare or other state's Medicaid or CHIP program.] Refer to Section 6.0 Appendix A in the General Policy Provider Manual for information regarding provider appeals.

DIVISION OF PUBLIC HEALTH

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

16 DE Admin. Code 4305

ORDER

4305 Trauma System

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Trauma System Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 97, Section 9706 (g)(2).

On September 1, 2013 (Volume 17, Issue 3), DHSS published in the Delaware *Register of Regulations* its

notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 3, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

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

Entities offering written comments include:

- State Council for Persons with Disabilities, Kyle Hodges, Director
- Governor's Advisory Council for Exceptional Citizens, Terri A. Hancharick, Chairperson

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

State Council for Persons with Disabilities (SCPD):

Governor's Advisory Council for Exceptional Citizens (GACEC):

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) have reviewed the Department of Health and Social Services/Division of Public Health's (DPH) proposal to adopt many discrete amendments to its 16-page set of regulations covering Delaware's trauma system. Some of the key features are as follows: 1) general alignment with American College of Surgeons' trauma standards (§5.1); 2) authorization to exceed the American College of Surgeons' standards (§5.1.1); 3) incorporation of DPH pre-hospital trauma triage guidance in lieu of listing specific guidance in the regulation (§6.1); 4) authorization of some discretion (given time and distance considerations) to transfer patients with significant head trauma or spinal cord injury to a Level 1 or Level 2 Trauma Center without an available neurosurgeon (§6.2); 5) adoption of more liberal standards for referral to burn centers (§6.4); and 6) adoption of new criteria, effective January 1, 2014, for patient inclusion in the hospital trauma registry (§7.7). The proposed regulation was published as 17 DE Reg. 288 in the September 1, 2013 issue of the *Register of Regulations*. SCPD has the following observations.

First, §5.2.2.4 recites as follows:

Desirable

5.2.2.4. Emergency Medicine department physicians, orthopedic surgeons, and neurosurgeons taking trauma call must be Board certified or eligible.

(NOTE: Non-boarded physicians in these specialty areas who have active privileges at a designated Trauma System facility at the time of promulgation of these revisions will be grandfathered)

Assuming "promulgation of these revisions" refers to an earlier version of the regulation, it would be clearer to simply insert a date. Individuals reading the regulation will otherwise have to guess at the effective date of the provision. Moreover, it is conceptually "odd" to have a "desirable", non-essential "grandfather" provision. In effect, covered facilities are encouraged, but not required, to employ only a Board Certified or eligible physician unless the physician is grandfathered.

Agency Response: The Agency appreciates and acknowledges these comments. We will add the date of promulgation of the original regulations, 2001, to clarify this Note. 5.2.2.4 is Essential in the current regulations and is not proposed to be changed. Desirable refers to 5.2.2.3 directly above 5.2.2.4, and the classification as Essential follows 5.2.2.4.

Second, §5.2.4 consists of an outline/list of "essential" participating hospital criteria. It would benefit from an introductory narrative. For example, the introduction could simply recite as follows: "Trauma System Participating Hospitals must have the following in place:"

Agency Response: The Agency appreciates and acknowledges these comments. The terms Essential and Desirable are taken from the format of the American College of Surgeons Committee on Trauma's document "Resources for Optimal Care of the Injured Patient" which Delaware utilizes for all Levels 1, 2, and 3 Trauma

Center standards and site visits. This section was formatted to be in alignment with the national document.

Third, in §7.7.1.1, the former standards contemplated patient inclusion in the hospital Trauma Registry based on “admission”. The new standards literally only authorize inclusion of patients in the Registry based on a “transfer”. It may be preferable to include patients in the Registry who are directly admitted to a trauma center without being “transferred” from another facility.

Agency Response: The Agency appreciates and acknowledges these comments. 7.7.1.1.1 states *admission to the hospital*. The transfer criteria are items 7.7.1.1.2 and 7.7.1.1.3.

The public comment period was open from September 1, 2013 through October 3, 2013.

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

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Trauma System Regulations are adopted and shall become effective November 11, 2013, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

4305 Trauma System

(Break in Continuity of Sections)

5.0 State of Delaware Trauma Center Standards

(Break in Continuity Within Section)

5.2 The modifications to the current American College of Surgeons Standards in effect for Delaware Trauma System facilities are:

Regional Trauma Center	Community	Participating
Level 1 Level 2	Trauma Center	Hospital

5.2.1 Clinical Capabilities

5.2.1.1 Trauma surgeons, ~~neurosurgeons, and orthopedic surgeons~~ must be dedicated to one hospital when on call (taking call at only one institution at a time) or there must be a physician on back-up call at each institution he/she is covering.

Essential

5.2.2 Clinical Qualifications

(Break in Continuity Within Section)

(NOTE: Non-boarded physicians in these specialty areas who have active privileges at a designated Trauma System facility at the time of promulgation of these revisions [in 2001] will be grandfathered.)

6.0 State of Delaware Triage, Transport and Transfer Protocols

Prehospital Trauma Triage Scheme Implementation Guidelines Due to the dynamic nature of identification and evolution of best practices in prehospital care, the prehospital trauma triage guidance will be found solely in the current State of Delaware, Department of Health and Social Services, Division of Public Health, Office of Emergency Medical Services, Statewide Standard Treatment Protocols, Guidelines, Policies, and Paramedic Standing Orders and Statewide Standard Treatment Protocols and Basic Life Support Standing Orders. The Trauma System Committee will [be] ask[ed]

for input by the State EMS Medical Director through the Trauma System Manager during every Standing Orders revision process.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 288 (17 DE Reg. 288). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4305 Trauma System

DIVISION OF SOCIAL SERVICES

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

ORDER

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

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, Definitions and Explanation of Terms. 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 September 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced September 30, 2013 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 Definitions and Explanation of Terms in the context of the Child Care Subsidy Program, specifically, the definition of Relative.

Statutory Authority

45 CFR Part 98, Child Care and Development Fund

Background

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

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

Summary of Proposed Changes

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

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

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.

The summary of proposed changes states that the current definition is vague and leads eligibility determination workers to the Delaware Temporary Assistance for Needy Families (TANF) policy definitions. The proposed rule change is intended to ensure that eligible relatives provide authorized child care services. The proposed regulation was published as 17 DE Reg. 289 in the September 1, 2013 issue of the *Register of Regulations*. SCPD has the following observations.

First, the new reference to "step-relatives" could be interpreted in different ways:

- A. All step-relatives (even step-cousins and step-parents) qualify as a "relative"; or
- B. Only step-grandparents, great-grandparents, aunts, uncles and siblings qualify.

This is confusing.

Second, the definition omits persons related by adoption. Compare 45 C.F.R. §98.2 (definition of "eligible child care provider"), which reads, in pertinent part, as follows:

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;...

See also analogous references to "natural, legal, adoptive, step" relatives in 16 DE Admin. Code §11003.9.3 and definition of parent in §11002.9 covering "natural, adoptive, and step" relatives.

Third, based on the above excerpt from 45 C.F.R. §98.2 (definition of "eligible child care provider"), SCPD surmises that a "relative" must be an adult. The definition in the proposed regulation only requires a sibling to be an adult. An aunt or uncle could be under 18 years of age in the State regulation.

Based on the above observations, DSS could consider the following alternative:

Relative: An adult who is by marriage, blood relationship, or court decree, the grandparent, great grandparent, sibling, aunt or uncle of the child receiving care.

Fourth, the Division may wish to consider amending its definition of "parent" and adding a definition of "in loco parentis" in a future proposed regulation. Consider the following:

The federal definition of "parent" (45 C.F.R. §98.2) includes a "legal guardian" and "other person standing in loco parentis":

Parent means a parent by blood, marriage, or adoption and also means a legal guardian, or other person standing in loco parentis.

In contrast, the DSS definition of "parent" in §11002.9 omits guardians and other persons standing in loco parentis:

Parent: The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

Moreover, another federal regulation requires the State to specifically adopt a definition of "in loco parentis". See 45 C.F.R. §98.16(f)(9).

Agency Response: DSS appreciates your recent comments regarding the proposed revision of the relative care definition in the Division of Social Services (child care policy) Manual.

The proposed definition of "Relative" is revised as follows: An adult who is by marriage, blood relationship, or court decree, the grandparent, great grandparent, sibling, aunt or uncle of the child receiving care.

You recommend that in a future policy change DSS consider amending the definition of parent to include in loco parentis. The division will consider this for a future change.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the September 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Definitions and Explanation of Terms in the context of the Child Care Subsidy Program, specifically, the definition of Relative is adopted and shall be final effective November 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER #13-43

11002.9 Definitions and Explanation of Terms

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

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

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

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

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

FINAL REGULATIONS

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

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

ORDER

302 Captive Insurance Financial Regulation

Proposed Regulation 302 relating to Captive Insurance Financial Regulation was published in the Delaware *Register of Regulations* on September 1, 2013. The comment period remained open until September 30, 2013. There was no public hearing on proposed amended Regulation 302. Public notice of the proposed amended Regulation 302 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No public comments were received on the proposed amended Regulation 302.

With no additional amendments being suggested, no changes have been made to the proposed amended Regulation 302.

FINDINGS OF FACT

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

1. 18 **Del.C.** §6915 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 302 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 6915, and of 29 **Del.C.** Ch. 101, and the record in this docket, I hereby adopt proposed Regulation 302 as amended 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 amended Regulation 302 last appeared in the *Register of Regulations* Vol. 17, Issue 3, pages 293-294.

IT IS SO ORDERED this 15th day of October, 2013.

Karen Weldin Stewart, CIR-ML, Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 293 (17 DE Reg. 293). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

302 Captive Insurance Financial Regulation

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 2533 and 29 Delaware Code, Chapter 101
(18 Del.C. §§311 and 2533 and 29 Del.C. Ch. 101)
18 DE Admin. Code 802

ORDER

802 Delaware Workplace Safety Regulation

Regulation 802 relating to Delaware Workplace Safety was published in the Delaware *Register of Regulations* on August 1, 2013. The comment period remained open until August 30, 2013. There was no public hearing on proposed amended Regulation 802. Public notice of the proposed amended Regulation 802 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposal from:

"Don and Ruth Poore of Workplace Safety, Inc."

The collective comments were reviewed and considered, with no changes being made to the proposal.

FINDINGS OF FACT

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

1. 18 Del.C. §2533 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 the proposed amendments to Regulation 802 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 2533, and of 29 Del.C. Ch. 101, and the record in this docket, I hereby adopt the proposed amendments to Regulation 802 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 amended Regulation 802 last appeared in the *Register of Regulations* Vol. 17, Issue 2, pages 166-168.

IT IS SO ORDERED this 15TH day of October, 2013.

Karen Weldin Stewart, CIR-ML, Insurance Commissioner

*Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 166 (17 DE Reg. 166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

802 Delaware Workplace Safety Regulation

FINAL REGULATIONS

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 2610 and 29 Delaware Code, Chapter 101
(18 Del.C. §§311 and 2610 and 29 Del.C. Ch. 101)

ORDER

804 Workers Compensation Ratepayer Advocate

Proposed Regulation 804 relating to Workers Compensation Ratepayer Advocate was published in the Delaware *Register of Regulations* on August 1, 2013. The comment period remained open until August 30, 2013. There was no public hearing on proposed Regulation 804. Public notice of the proposed Regulation 804 in the *Register of Regulations* was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comments were received on the proposed Regulation 804 from the Delaware Compensation Rating Bureau, Inc. (DCRB). The collective comments were reviewed and considered, with minor changes being made to the proposed Regulation 804.

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 2610 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 Regulation 804, with suggested amendments, 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 2610, and of 29 Del.C. Ch. 101, and the record in this docket, I hereby adopt proposed Regulation 804 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 804 last appeared in the *Register of Regulations* Vol. 17, Issue 2, pages 169-171.

IT IS SO ORDERED this 15th day of October, 2013
Karen Weldin Stewart, CIR-ML, Insurance Commissioner

804 Workers Compensation Ratepayer Advocate

(Break in Continuity of Sections)

6.0 Representation Of The Ratepayers By The Ratepayer Advocate

- 6.1 The Ratepayer Advocate shall represent the interests of Delaware workers compensation rate-payers during the Commissioner's consideration of the application.
- 6.2 The Ratepayer Advocate shall select an actuary to work with him or her in review of the filing and to testify in any rate-setting proceeding. The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a

calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis ("Report"). The Ratepayer Advocate shall provide a complete copy of the Report to the Commissioner, the Advisory Organization and any other party upon receipt of the Report from the actuary.

6.2.1 The cost of this actuary shall be borne by the Advisory Organization. [The actuary shall be entitled to charge a reasonable hourly rate acceptable to the Commissioner and the Attorney General, and to be reimbursed for reasonable expenses.] The actuary shall submit a statement or statements for fees and expenses to the Commissioner, who shall forward each statement to the Advisory Organization for payment.

6.3 Applications by the Advisory Organization relating to rates or prospective loss costs shall be subject to the case decision provisions of Title 29, Chapter 101, Subchapter III, of the Delaware Code, and the Ratepayer Advocate shall be considered a party to the case.

6.4 ~~[The Advisory Organization shall provide to the Commissioner and the Ratepayer Advocate such documents and information as they may reasonably request in order to allow them to properly participate in review of the filing and in any hearing thereon. The Advisory Organization shall provide such information to the Commissioner and the Ratepayer Advocate within seven days of any request. The Advisory Organization shall provide such information in electronic format or by providing a link to information available on the internet, unless doing so would cause the Advisory Organization to incur undue expense.]~~ Following the commencement of a case concerning an application by a workers compensation advisory organization relating to rates or prospective loss costs, the Department and the Ratepayer Advocate may request from the Advisory Organization, in writing, such documents and information as they may reasonably require in order to allow them to properly participate in review of the filing and in any hearing thereon. Unless the Advisory Organization, within seven days of its receipt of the request, objects in writing to the production of such documents and information, or responds in writing that it is not able to produce the documents and information within seven days of its receipt of the request, the Advisory Organization shall provide such information to the Department and the Ratepayer Advocate within seven days of its receipt of the request. The Advisory Organization shall provide such information in electronic format or by providing a link to information available on the internet, unless doing so would cause the Advisory Organization to incur undue expense. If the Advisory Organization objects to the production of such documents and information, or responds that it is not able to produce the documents or information within seven days of its receipt to any such request, the Department or the Ratepayer Advocate may request that the Hearing Officer, if one has been appointed, or otherwise the Commissioner, issue subpoenas for witnesses and other sources of evidence, in accordance with 29 Del.C. Chapter 101.]

6.5 If the ~~Commissioner~~ Department, the Ratepayer Advocate] or any other party retains an actuary who prepares a written report regarding the filing, the ~~Commissioner~~ Department, the Ratepayer Advocate] or other party[, upon receipt of the written report from the actuary,] shall provide a complete copy ~~[of the written report upon receipt from the actuary thereof]~~ to all other parties.

6.6 Pursuant to HB 175, Section 8 (enacted June 27, 2013) (the "Act"), the Advisory Organization "shall, within 90 days after June 27, 2013 [i.e.no later than September 25, 2013], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act or Senate Bill 238 of the 146th General Assembly, as well as any regulatory changes proposed by the Health Care Advisory Panel within 60 days of the enactment of this Act. Any order issued by the Department of Insurance relating to said filing shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section." In furtherance of this directive, and to assist the Commissioner in formulating the findings required by the Act, any report prepared by an actuary retained by the Department of Insurance or the Ratepayer Advocate "shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section."

FINAL REGULATIONS

- 6.7 The parties may enter into agreements to protect confidential, [private] or proprietary information. [In the event of any dispute between the parties concerning whether any information requested or subpoenaed is of a confidential, private or proprietary nature, the party from whom the information has been requested may request that the Hearing Officer, if one has been appointed, or otherwise the Commissioner, issue an order protecting the information from disclosure.]
- ~~6.8 Any disputes regarding requests for information shall be presented to the Hearing Officer, if one has been appointed, or otherwise to the Commissioner, for resolution.]~~
- 6.[98] The Hearing Officer, if one has been appointed, or otherwise the Commissioner, may conduct such pre-hearing or other meetings and make such rulings as appropriate to simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, and aid in the prompt disposition of the matter. [Nothing in this Section 6.8 nor elsewhere in this Regulation 804 is intended to be inconsistent with the provisions and requirements of 18 Del.C. Chapter 26 or 29 Del.C. Chapter 101.]
- 6.[409] The parties on their own initiative may submit pre-filed testimony for some or all witnesses. The parties shall submit pre-filed testimony if directed to do so by the Hearing Officer, if one has been appointed, or by the Commissioner.
- 6.[410] Nothing in these regulations shall preclude the parties from resolving any matter by voluntary agreement.

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 169 (17 DE Reg. 169). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

804 Workers Compensation Ratepayer Advocate

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1101

Secretary's Order No.: 2013-A-0039

**7 DE Admin. Code 1101 (Definitions and Administrative Principles);
7 DE Admin. Code 1104 (Particulate Emissions from Fuel Burning Equipment);
and 7 DE Admin. Code 1114 (Visible Emissions)**

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 1101 (Definitions and Administrative Principles); 7 DE Admin. Code 1104 (Particulate Emissions from Fuel Burning Equipment); and 7 DE Admin. Code 1114 (Visible Emissions), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to

improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, three sections of Delaware's existing air regulations were identified as needing revision at this time:

(1) **7 DE Admin. Code** 1101, Definitions and Administrative Principles:

In 2008, Delaware's air regulations were recoded and established in **7 DE Admin. Code** 1100. The regulatory language in 1101 was inadvertently not updated, and continues to reference the prior "Regulations Governing the Control of Air Pollution". The outdated references could lead citizens and industry searching for documents that no longer exist, or potentially to an incorrect regulatory interpretation. Thus, revisions to this existing air regulation are being proposed to correct the outdated references.

(2) **7 DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment:

Revisions are being proposed by the Department to this existing air regulation to clarify that the exemptions found in Sections 1.2 and 1.4 of this regulation are for the capacity of the unit, and not the operating rate. The revised regulation will, once promulgated, be submitted to the U.S. Environmental Protection Agency ("EPA") as a revision to Delaware's State Implementation Plan ("SIP").

(3) **7 DE Admin. Code** 1114, Visible Emissions:

Revisions are being proposed by the Department to this existing air regulation to delete the alternate opacity standard in Section 2.3. This alternate standard was established for a petroleum refinery unit prior to the installation of modern pollution control equipment in 2006. The installation of the pre-scrubber on the catalytic cracking unit in 2006 makes this alternate opacity standard obsolete, and the unit is now subject to compliance with the general 20 percent opacity limit in Section 2.1. This is a burdensome requirement to administer and track, and is no longer either relevant or necessary. The revised regulation will, once promulgated, be submitted to the EPA as a revision to Delaware's State Implementation Plan ("SIP").

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notices 2013-13(E.O.36), 2013-15(E.O.36), and 2013-16(E.O.36), respectively. The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 1, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on August 1, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was 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 proposed promulgation 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 September 28, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. The adoption of this Order will enable Delaware to update its existing, older air regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues. Moreover, the revisions to **7 DE Admin. Code** 1104 and **7 DE Admin. Code** 1114 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public

with an adequate opportunity to comment on the initial proposed Amendments, including at the public hearing held on August 1, 2013;

3.) The Department held a public hearing on August 1, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will enable Delaware to update its existing, older regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues. Moreover, the revisions to 7 **DE Admin. Code** 1104 and 7 **DE Admin. Code** 1114 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan;

6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) update its existing, older air regulations (as well as its SIP), and provide additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

***Please Note: Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:**

7 DE Admin. Code 1101, 1104, and 1114

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 1139

Secretary's Order No.: 2013-A-0041

1139 Nitrogen Oxides (NOx) Budget Trading Program

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulatory action to repeal 7 **DE Admin. Code** 1139: Nitrogen Oxides (NOx) Budget Trading Program, and the adoption of an associated State Implementation Plan ("SIP") as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under

E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality ("DAQ") identified 7 **DE Admin. Code** 1139, Nitrogen Oxides (NOx) Budget Trading Program, as an existing, older regulation which required repeal at this time.

The Department is proposed to repeal 7 **DE Admin. Code** 1139, Nitrogen Oxides (NOx) Budget Trading Program, in its entirety at this time. This regulation established Delaware's participation in the NOx Budget Trading Program, which was a multi-state NOx emissions cap and trade program established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. The underlying federal program was subsequently replaced by the federal Clean Air Interstate Rule (CAIR). Given this, the original Air Regulation 1139 no longer serves its intended purpose. Additionally, the Department is also at this time proposing the adoption and submission to the U.S. Environmental Protection Agency ("EPA") of a State Implementation Plan ("SIP") that demonstrates Delaware's compliance with the federal NOx SIP Call requirements.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-17 (E.O.36). The Department published its initial proposed regulation repeal action in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 1, 2013.

These proposed regulatory actions were thoroughly vetted by the Department at the aforementioned public hearing on August 1, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was 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 proposed promulgation 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 September 30, 2013 (Report). The Report recommends certain findings and the adoption of the proposed regulatory actions as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed regulatory actions are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed regulatory actions. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory actions. The adoption of this Order will enable Delaware to streamline its existing air regulations by repeal of this older, obsolete regulation, which no longer serves its intended purpose. Moreover, the Department will be able to update EPA with the adoption and submission of a SIP which demonstrates Delaware's compliance with the federal NOx SIP Call requirements at this time.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed regulatory actions as final;
- 2.) The Department provided adequate public notice of the proposed regulatory actions, and provided the public with an adequate opportunity to comment on the initial proposed actions, including at the public hearing held on August 1, 2013;
- 3.) The Department held a public hearing on August 1, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended regulatory actions as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will enable Delaware to streamline its existing air regulations by repeal of this older, obsolete regulation, which no longer serves its intended purpose. Moreover, the Department will be able to update EPA with the adoption and submission of a SIP which demonstrates Delaware's compliance with the federal NOx SIP Call requirements at this time;
- 6.) The recommended regulatory actions should be adopted as final regulatory actions because Delaware will be able to (1) update its existing, older air regulations by removing that which no longer serves its intended purpose, while simultaneously providing additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit:

strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the regulation actions are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 47 (17 DE Reg. 47). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1139 Nitrogen Oxides (NOx) Budget Trading Program

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1143

Secretary's Order No.: 2013-A-0042

Repeal of 7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standard, and correlating Revision To Delaware's State Implementation Plan (SIP)

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulatory action to repeal 7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standard, and correlating revision to Delaware's State Implementation Plan ("SIP"), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality ("DAQ") identified 7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standard as an existing, older regulation which required repeal at this time.

The Department is proposed to repeal 7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standard in its entirety at this time. The provisions of this regulation apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented, acquired, or received in the State of Delaware. This regulation was developed and adopted as a backstop to a then- anticipated U.S. Environmental Protection Agency ("EPA") regulation. EPA successfully adopted standards, and thus this regulation itself is no longer needed. Additionally, once this regulatory action has been taken, the Department will also submit the repeal of 7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standard to the EPA as a revision to Delaware's State Implementation Plan ("SIP").

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-19 (E.O.36). The Department published its initial proposed regulation repeal action in the July 1, 2013

Delaware Register of Regulations, and held a public hearing on August 1, 2013.

These proposed regulatory actions were thoroughly vetted by the Department at the aforementioned public hearing on August 1, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was 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 proposed promulgation 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 September 30, 2013 (Report). The Report recommends certain findings and the adoption of the proposed regulatory actions as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed regulatory actions are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed regulatory actions. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory actions. The adoption of this Order will enable Delaware to streamline its existing air regulations by repeal of this older, obsolete regulation, which no longer serves its intended purpose. Moreover, the Department will be able to update EPA with the submission of a correlating SIP revision to note the formal appeal of this obsolete air regulation;

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed regulatory actions as final;

2.) The Department provided adequate public notice of the proposed regulatory actions, and provided the public with an adequate opportunity to comment on the initial proposed actions, including at the public hearing held on August 1, 2013;

3.) The Department held a public hearing on August 1, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended regulatory actions as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will enable Delaware to streamline its existing air regulations by repeal of this older, obsolete regulation, which no longer serves its intended purpose. Moreover, the Department will be able to update EPA with the submission of a correlating SIP revision to note the formal appeal of this obsolete air regulation;

6.) The recommended regulatory actions should be adopted as final regulatory actions because Delaware will be able to (1) update its existing, older air regulations by removing that which no longer serves its intended purpose, while simultaneously providing additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the regulation actions are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 48 (17 DE Reg. 48). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Repeal of 7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standard, and correlating Revision To (SIP)

FINAL REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(b); (7 Del.C., §901(b))
7 DE Admin. Code 3507

Secretary's Order No.: 2013-F-0038

7 DE Admin. Code 3507, Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 3507, Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas, as a result of the Department's exhaustive review of its existing Fish and Wildlife Regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. As a result, the Department's review found that the current black sea bass regulations, as found in 7 DE Admin. Code 3507, contain unnecessary qualifying criteria and do not adequately address black sea bass commercial permit transferability. The proposed amendments to 7 DE Admin. Code 3507 will better accommodate the needs of Delaware's commercial black sea bass permittees.

The proposed amendments to Delaware's existing black sea bass regulations are needed because several of the current permit holders will be retiring from commercial fishing, and the Department wants to allow other Delawareans to obtain these permits. The Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Black Sea Bass allocates Delaware an annual commercial black sea bass quota. This proposed regulatory action will assure that there will continue to be Delaware permit holders to harvest this valuable resource.

The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-18 (E.O.36). The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on July 25, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on July 25, 2013. No member of the public attended said hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was 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 proposed promulgation 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 September 28, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no members of the public attended the hearing held on

July 25, 2013, and no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. The adoption of this Order will allow Delaware to better accommodate the needs of Delaware's commercial black sea bass permittees by removing existing unnecessary qualifying criteria and adequately addressing black sea bass commercial permit transferability.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the initial proposed Amendments, including at the public hearing held on July 25, 2013;

3.) The Department held a public hearing on July 25, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will allow Delaware to better accommodate the needs of Delaware's commercial black sea bass permittees by removing existing unnecessary qualifying criteria and adequately addressing black sea bass commercial permit transferability;

6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) assure that there will continue to be Delaware permit holders to harvest black sea bass commercially; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 50 (17 DE Reg. 50). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7 DE Admin. Code 3507, Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(b); (7 Del.C., §901(b))
7 DE Admin. Code 3507

Secretary's Order No.: 2013-F-0046

7 DE Admin. Code 3507, Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 3507, Delaware Black Sea Bass:

Size Limit, Trip Limits, Seasons, and Quotas. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-20. The Department published its initial proposed regulation amendments in the August 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on August 21, 2013. The public hearing record remained open at that time for public comment through September 5, 2013.

The purpose of the Department's proposed promulgation is to formally adopt the provisions of the federal Final Rule for the recreational black sea bass fishery and remain compliant with Addendum XXIII to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass by amending Tidal Finfish Regulation 3507, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas (12.0, 12.1, and 12.2).

Addendum XXIII to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration (NOAA) published a Final Rule in the Federal Register on June 21, 2013 (Federal Register/Vol.78, No. 120), specifying recreational management measures for black sea bass in federal waters. The Final Rule set the recreational black sea bass fishing season as May 19 through October 14, and November 1 through December 31, with a recreational possession limit of 20 black sea bass during those periods. The minimum size limit will remain 12.5 inches (excluding the caudal filament).

As a result of the Final Rule, the Department will close Delaware's January 1 through February 28 recreational black sea bass season, and adjust the black sea bass possession limits from 25 to 20 fish for the open seasons of May 19 through October 14, and November 1 through December 31, as indicated by the strikethrough notations to 7 **DE Admin. Code** 3507 (Sections 12.0, 12.1, and 12.2) in the attached proposed regulation amendments under "Appendix A".

The proposed amendments were thoroughly vetted by the Department at the public hearing on August 21, 2013. No member of the public attended said hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was 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 proposed promulgation 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 October 7, 2013 (Report). The Report recommends certain findings and the adoption of the proposed amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments. As previously noted, no members of the public attended the hearing held on August 21, 2013, and no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these amendments. The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXIII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a closed season from January 1 through February 28; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31, with an adjusted black sea bass possession limit during those seasons from 25 to 20 fish per person.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed amendments as final;

2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on August 21, 2013;

3.) The Department held a public hearing on August 21, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXIII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a closed season from January 1 through February 28; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31, with an adjusted black sea bass possession limit during those seasons from 25 to 20 fish per person.

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by both the NMFS and the ASMFC; and lastly, because (3) the amendments are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 172 (17 DE Reg. 172). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7 DE Admin. Code 3507, Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

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

Secretary's Order No.: 2013-WH-0045

7 DE Admin. Code 1301 Regulations Governing Solid Waste ("DRGSW")

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 1301, Regulations Governing Solid Waste ("DRGSW"), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality ("DAQ") identified 7 **DE Admin. Code** 1301, Regulations Governing Solid Waste ("DRGSW"), as an existing, older regulation which required revision at this time.

The purpose of the revisions being proposed at this time to 7 **DE Admin. Code** 1301, Regulations Governing

Solid Waste ("DRGSW"), which includes infectious waste, is to provide amendments that afford regulated parties the opportunity to propose alternative packaging methods for infectious waste, provided that compliance is achieved with applicable federal Department of Transportation ("DOT") and Occupational Safety and Health Administration ("OSHA") standards. It is also proposed to allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, it is proposed to amend the regulations with regard to industrial landfill capping and grading, to allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, providing more flexibility for landfill operators.

The Department's Division of Waste and Hazardous Substances commenced the regulatory development process with Start Action Notice 2013-10 (E.O.36). The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 7, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on August 7, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. With the exception of a brief clarifying question from a representative of Dover Air Force Base made at the time of the aforementioned public hearing, no other public comment was received by the Department during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation 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 October 2, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these Amendments. The adoption of this Order will enable Delaware to update its existing, older regulations by affording regulated parties the opportunity to propose alternative packaging methods for infectious waste, provided that compliance is achieved with applicable federal Department of Transportation ("DOT") and Occupational Safety and Health Administration ("OSHA") standards. Moreover, these revisions will allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, with regard to Delaware's existing regulations concerning industrial landfill capping and grading, these revisions will allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, thus providing more flexibility for landfill operators.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed amendments as final;
- 2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on the initial proposed amendments, including at the public hearing held on August 7, 2013;
- 3.) The Department held a public hearing on August 7, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will enable Delaware to update its existing, older regulations by providing for consistency in state and federal packaging and labeling methods for infectious waste. Additionally, these revisions will afford use of soil equivalent materials as the final grading layer within industrial landfills
- 6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) update its existing, older regulations, and provide additional clarity and understanding

to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

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

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 58 (17 DE Reg. 58). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7 DE Admin. Code 1301 Regulations Governing Solid Waste ("DRGSW")

DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Section 7505(g) (7 Del.C., §7505(g))
7 DE Admin. Code 7503

Secretary's Order No.: 2013-W-0043

7 DE Admin. 7503 Regulations Governing Oil, Gas and Mineral Exploration

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

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

Background and Procedural History

This Order considers proposed regulatory action to repeal 7 DE Admin. Code 7503: Regulations Governing Oil, Gas and Mineral Exploration, as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Water identified 7 DE Admin. Code 7503: Regulations Governing Oil, Gas and Mineral Exploration as an existing, older regulation which required repeal at this time.

The Department is proposed to repeal 7 DE Admin. Code 7503: Regulations Governing Oil, Gas and Mineral Exploration in its entirety at this time. This Regulation has been a part of the Delaware Code since 1971, and there is no record of an application for (nor has there been any decision upon) any permit under said Regulation. Therefore, pursuant to Executive Order No. 36, DNREC has reviewed this Regulation and recommends that it be repealed.

The Department's Division of Water commenced the regulatory development process with Start Action Notice 2013-11 (E.O.36). The Department published its initial proposed regulation repeal action in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 7, 2013.

These proposed regulatory actions were thoroughly vetted by the Department at the aforementioned public hearing on August 7, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days

subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was 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 proposed promulgation 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 September 30, 2013 (Report). The Report recommends certain findings and the adoption of the proposed regulatory actions as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed regulatory actions are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed regulatory actions. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Water fully developed the record to support adoption of these regulatory actions. The adoption of this Order will enable Delaware to streamline its existing regulations by repeal of this older, obsolete regulation, which no longer serves its intended purpose. Moreover, the Department will be able to update EPA with the submission of a correlating SIP revision to note the formal appeal of this obsolete air regulation;

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed regulatory actions as final;
- 2.) The Department provided adequate public notice of the proposed regulatory actions, and provided the public with an adequate opportunity to comment on the initial proposed actions, including at the public hearing held on August 7, 2013;
- 3.) The Department held a public hearing on August 7, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended regulatory actions as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will enable Delaware to streamline its existing regulations by repeal of this older, obsolete regulation, which no longer serves its intended purpose;
- 6.) The recommended regulatory actions should be adopted as final regulatory actions because Delaware will be able to (1) update its existing, older regulations by removing that which no longer serves its intended purpose; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the regulation actions are well supported by documents in the record; and
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 61 (17 DE Reg. 61). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

7 DE Admin. 7503 Regulations Governing Oil, Gas and Mineral Exploration

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4101(d) (21 Del.C. §4101(d))
2 DE Admin. Code 1205

ORDER

1205 Electronic Red Light Safety Program (ERLSP)

Summary of the Evidence and Information Submitted

The Secretary of the Department of Safety and Homeland Security sought to update the existing regulations governing the Electronic Red Light Safety Program, as part of the general regulatory overview required by Executive Order No. 36.

Notice for public comment was properly noticed in 17 DE Reg. 182, August 1, 2013.

The Department received comments from the American Automobile Association, Mid-Atlantic, making several suggestions. These included using standardized warning signs alerting motorists of the system locations, making sure the vendor is paid an amount that does not correlate to the number of citations issued, a confirmation statement in the citation stating that the system was operating correctly at the time of the citation, and a suggestion about where any funds generated from the system should be directed.

The Department of Transportation is currently handling a Request for Proposals for a new vendor contract for the ERLSP. It will take the AAA comments into account while developing and negotiating the new contract.

Gary Myers, Esquire also commented on the statutory requirements that any potential location for the placement of the enforcement systems was subject to objection by the area's state representative or senator. While that statutory requirement remains in place, no member of the General Assembly has ever exercised this option.

Other comments from members of the public were directed primarily at the circumstances of the citations they received, and not at the content of the proposed regulatory changes.

Findings of Fact

The Secretary finds that it is appropriate to amend the existing ERLSP regulations as proposed, to incorporate the programmatic changes to the Program since the original regulations were adopted.

Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Existing ERLSP regulations as proposed.

Text and Citation

The text of 2 DE Admin. Code 1205 shall be in the form attached as Exhibit "A".

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 2013.

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

*Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 182 (17 DE Reg. 182). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1205 Electronic Red Light Safety Program (ERLSP)

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))
24 **DE Admin. Code** 300

ORDER

300 Board of Architects

NATURE AND STAGE OF THE PROCEEDINGS

On August 1, 2013, the Delaware Board of Architects published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 17, Issue 2. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 4, 2013 at a regularly scheduled meeting of the Delaware Board of Architects to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

Board Exhibit 3 - Correspondence from Charles M. Weymouth, AIA arguing that the current available continuing education courses are insufficient and that the proposed audit process is "sporadic and thus weak."

There was no verbal testimony given at the public hearing on September 4, 2013. 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 was one public comment provided to the Board, which actually pre-dated the initial 30 day comment period but addressed some of the proposed changes which were set forth in the Board's newsletter.

3. There were no additional public comments received during the public hearing or in the 15 day comment period following the hearing.

4. Pursuant to 24 **Del.C.** §306(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

5. The proposed amendments to Rules 4.1.2.1 and 4.1.2.2 seek to allow applicants for licensure with five or more years of experience in a different jurisdiction to seek a waiver of the NCARB IDP program and set forth the process by which other applicants must meet NCARB IDP guidelines in order to be licensed in Delaware. The proposed changes at 6.2.1, seek to pro rate the continuing education credits a new applicant must complete based upon receipt of a license. The changes proposed at 6.2.2, 6.2.2.1 and 6.2.2.2 set forth what types of continuing education courses will be acceptable to the Board, and the changes at 6.3 and 6.3.1-6.3.3 seek to implements rules for audits of licensees' continuing education requirements. The proposed additions of Rules 6.9-6.9.3 set forth the requirements for ant the process by which a licensee may attain emeritus status in Delaware.

With regard to the public comment from Mr. Weymouth, the Board deliberated on the comments and determined that the regulations as proposed conform with the national standards under NCARB and thus are

sufficient to address continuing education courses and audits. In short, the Board does not believe the public comments from Mr. Weymouth were valid. As such, the Board decided not to change the proposed regulations in response to Mr. Weymouth's comments.

DECISION AND EFFECTIVE DATE

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

SO ORDERED this 2nd day of October, 2013.

BY THE DELAWARE BOARD OF ARCHITECTS

John Mateyko, RA, President (Absent)

Elizabeth Happoldt, Public Member (Absent)

Prameela Kaza, Public Member

Joseph Schorah, Jr., Public Member

Kevin W. Wilson, RA, Secretary

Kenneth M. Freemark, Jr., RA

Peter H. Jennings, RA

Brian Lewis, Public Member

Richard Wertz, RA

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 188 (17 DE Reg. 188). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

300 Board of Architects

DIVISION OF PROFESSIONAL REGULATION

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

ORDER

4100 Board of Home Inspectors

NATURE AND STAGE OF THE PROCEEDINGS

On September 1, 2013, the Delaware Board of Home Inspectors published proposed regulations in the *Delaware Register of Regulations*, Volume 17, Issue 3. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 24, 2013 at a regularly scheduled meeting of the Delaware Board of Home Inspectors to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on September 24, 2013. 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.

FINAL REGULATIONS

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 regulations.
2. There were no public comments provided to the Board during the initial written public comment period, public hearing or fifteen day period following the public hearing.
3. Pursuant to 24 **Del.C.** §4106(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed additions at 3.5 and 10.1.2 seek to allow applicants for trainee status to obtain partial credit for inspections performed before November 4, 2013, as long as the application is submitted on or before November 4, 2013. The addition at 10.1.1 seeks to allow trainee applicants to obtain full credit for supervised inspections performed prior to November 4, 2013, and the proposed amendment at 3.5 seeks to decrease the overall number of supervised inspections a trainee licensee must complete in order to become a fully licensed home inspector. The addition at 5.1 seeks to allow the Board to pre-approve qualifying education courses for applicants.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

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

SO ORDERED this 10th day of October, 2013.

BY THE DELAWARE BOARD OF HOME INSPECTORS

Donald Pyle, Sr., Chairman

Timothy Harriger

Dennis Theoharis, Vice Chairman

Joyce Edwards

***Please note that no changes were made to the regulation as originally proposed and published in the September 2013 issue of the *Register* at page 309 (17 DE Reg. 309). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4100 Board of Home Inspectors

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 **Del.C.** §5206(1))
24 **DE Admin. Code** 5200

ORDER

5200 Board of Examiners of Nursing Home Administrators

NATURE AND STAGE OF THE PROCEEDINGS

On October 1, 2012, the Delaware Board of Nursing Home Administrators published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 16, Issue 4. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 13, 2012 at a regularly scheduled meeting of the Delaware Board of Nursing Home Administrators to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on November 13, 2012. 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.** §10115(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.** §5206(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed amendment to Rule 5.3.4 seeks to increase the number of online or similar continuing education courses licensees are permitted to take in order to meet the continuing education requirements. The proposed additions of Rules 5.6 and 5.6.1 are an attempt to grant continuing education credits to approved preceptors for providing supervision to applicants for licensure.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

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

SO ORDERED this 10th day of September, 2013.

BY THE DELAWARE BOARD OF NURSING HOME ADMINISTRATORS

Teruko White, N.H.A., President

Victorine Parker, Public Member

Michael Salitsky, N.H.A., Vice President

E. Ray Quillen, N.H.A

Timothy Bane, Public Member

Hope Squier, Healthcare Public Member

Sandra Dole, Healthcare Public Member

Frances Wimbush, Public Member Secretary

Elizabeth Hague, Healthcare Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 397 (16 DE Reg. 397). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5200 Board of Examiners of Nursing Home Administrators

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 1001

IN THE MATTER OF REVISION TO THE RULES OF PRACTICE AND PROCEDURE OF THE DELAWARE PUBLIC SERVICE COMMISSION
(FILED JANUARY 6, 1999; RE-OPENED OCTOBER 9, 2012) | PSC REGULATION DOCKET NO. 99-9

ORDER NO. 8473

AND NOW, this 22nd day of October, 2013, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, by Order No. 8232 (October 9, 2012), the Commission reopened Regulation Docket No. 99-9 to review and amend the "Rules of Practice and Procedure of the Delaware Public Service Commission," 26 **DE Admin. Code** §1001 et seq. (the "Rules"); and

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

WHEREAS, the Rules require amendment to include provisions relating to electronic filing (the "Amendments"); and

WHEREAS, pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2) of the Administrative Procedures Act (the "APA"), because the Amendments are strictly procedural and statutorily exempt from formal notice requirements, they are not substantive amendments which would otherwise require publication and a public comment period pursuant to §§ 10114 - 10118 of the APA;

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

1. Pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2) of the APA, decretal paragraphs 2 and 3 of Order No. 8232 are hereby waived.
2. Pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the Amended Rules of Practice and Procedure of the Delaware Public Service Commission, (the "Amended Rules") as official regulations as defined by 29 **Del.C.** §1132. A true and correct copy of the redlined version reflecting the changes as between the current Rules and the Amended Rules is attached as Exhibit "A". A clean version of the Amended Rules reflecting the changes is attached as Exhibit "B".
3. On and after November 4, 2013, all Filings with the Commission shall be E-Filed as defined in the Amended Rules.
4. All Filings in the following Dockets currently open at the Commission shall be E-filed:

Docket No.	Description
10-CPCN-28	IN THE MATTER OF THE APPLICATION OF CAMDEN-WYOMING SEWER AND WATER AUTHORITY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 <i>DEL. C.</i> §203C ("CAMDEN-WYOMING SEWER & WATER") (FILED SEPTEMBER 21, 2010) – PSC DOCKET NO. 10-CPCN-28
10-WW-011	IN THE MATTER OF THE APPLICATION OF ARTESIAN WASTEWATER MANAGEMENT, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES PURSUANT TO 26 <i>DEL. C.</i> §203D ("ROUTE 9 AREA PART 4") (FILED DECEMBER 3, 2010) - PSC DOCKET NO. 10-WW-011
12-292	IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL OF NATURAL GAS EXPANSION SERVICE OFFERINGS (FILED JUNE 25, 2012)
12-544	IN THE MATTER OF INTEGRATED RESOURCE PLANNING FOR THE PROVISION OF STANDARD OFFER SERVICE BY DELMARVA POWER & LIGHT COMPANY UNDER <i>DEL. C.</i> §1007(c) & (d)(OPENED DECEMBER 18, 2012)

FINAL REGULATIONS

555

12-546	IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR A CHANGE IN NATURAL GAS BASE RATES AND MISCELLANEOUS TARIFF CHANGES (FILED DECEMBER 7, 2012)
13-115	IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN INCREASE IN ELECTRIC BASE RATES AND MISCELLANEOUS TARIFF CHANGES (FILED MARCH 22, 2013)
13-134	IN THE MATTER OF THE APPLICATION OF LOCAL ACCESS LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE COMPETITIVE LOCAL EXCHANGE AND INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF DELAWARE AND FOR REVIEW OF A PLAN FOR PROVIDING INTRALATA TOLL DIALING PARITY IN ACCORDANCE WITH FEDERAL COMMUNICATIONS REQUIREMENTS (FILED MARCH 28, 2013)
13-152	IN THE MATTER OF THE INVESTIGATION INTO DELMARVA POWER & LIGHT COMPANY'S PLANNED DISTRIBUTION INFRASTRUCTURE INVESTMENTS OVER THE NEXT FIVE YEARS (OPENED APRIL 16, 2013)
13-208	IN THE MATTER OF THE APPLICATION OF INTELLIGEN RESOURCES LP FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (FILED MAY 28, 2013)
13-248	IN THE MATTER OF THE APPLICATION OF TIDEWATER UTILITIES, INC. FOR APPROVAL ON LANDOWNER NOTICE CORRESPONDENCE (FILED JUNE 21, 2013)
13-250	IN THE MATTER OF LEGISLATIVE PETITION FOR REVIEW AND RECOMMENDATIONS ON DELMARVA POWER & LIGHT COMPANY UTILITY BILL TRANSPARENCY (FILED JUNE 20, 2013)
13-308	IN THE MATTER OF THE JOINT APPLICATION OF VERIZON DELAWARE, LLC AND VOXBEAM TELECOMMUNICATIONS, INC. FOR APPROVAL OF AN INTERCONNECTION AGREEMENT PURSUANT TO SECTION 252 (E) OF THE TELECOMMUNICATIONS ACT OF 1996 (FILED JULY 24, 2013)
13-347	IN THE MATTER OF THE JOINT APPLICATION OF PRIMUS TELECOMMUNICATIONS, INC. AND PTUS, INC. FOR APPROVAL OF A TRANSFER OF CONTROL (FILED AUGUST 28, 2013)
13-348	IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN ANNUAL UPDATE IN THE GAS ENVIRONMENTAL SURCHARGE RIDER RATE ("ESR")(FILED AUGUST 28, 2013)
13-349F	IN THE MATTER OF APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR APPROVAL OF MODIFICATIONS TO ITS GAS COST RATES ("GSR")(FILED AUGUST 28, 2013)
13-351F	IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL OF A CHANGE IN ITS GAS SALES SERVICE RATES ("GSR") TO BE EFFECTIVE NOVEMBER 1, 2013 (FILED SEPTEMBER 3, 2013)
13-364	IN THE MATTER OF THE APPLICATION OF SLAUGHTER BEACH WATER COMPANY FOR AN INCREASE IN WATER RATES (FILED SEPTEMBER 18, 2013)
13-370	IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL OF THE ISSUANCE OF COMMON STOCK (FILED SEPTEMBER 24, 2013)
13-379	IN THE MATTER OF THE APPLICATION OF COMCAST OF DELMARVA, INC., FOR A CHANGE IN ITS BASIC SERVICE RATES AND NECESSARY EQUIPMENTY AND INSTALLATION CHARGES IN THE UNINCORPORATED AREAS OF LOWER PORTION OF SUSSEX COUNTY, NORTH OF DELMAR AND KENT COUNTY. (FILED SEPTEMBER 30, 2013).
13-380	IN THE MATTER OF THE APPLICATION OF COMCAST OF EASTERN SHORE, LLC., FOR A CHANGE IN ITS BASIC SERVICE RATES AND NECESSARY EQUIPMENTY AND INSTALLATION CHARGES IN THE UNINCORPORATED AREAS SERVED BY THE OCEAN CITY HEADEND. (FILED SEPTEMBER 30, 2013).

FINAL REGULATIONS

13-381	IN THE MATTER OF THE APPLICATION OF COMCAST CABLE COMMUNICATIONS, LLC., FOR A CHANGE IN ITS BASIC SERVICE RATES AND NECESSARY EQUIPMENTY AND INSTALLATION CHARGES (FILED SEPTEMBER 30, 2013).
13-383	IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR APPROVAL OF CHANGES TO THE TRANSPORTATION AND BALANCING RIDER AND THE GAS SUPPLIER SCHEDULE OF ITS TARIFF (FILED OCTOBER 1, 2013)
13-384	IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR APPROVAL OF ITS FORWARD LOOKING RATE PLAN (FILED OCTOBER 2, 2013)
13-388	IN THE MATTER OF THE APPLICATION OF VODAFONE GLOBAL ENTERPRISE INC. FOR AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF DELAWARE (FILED OCTOBER 7, 2013)
13-CPCN-09	IN THE MATTER OF THE APPLICATION OF TIDEWATER UTILITIES, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. §203C ("PRETTYMAN PROPERTY 2") (FILED SEPTEMBER 30, 2013)
13-WW-001	IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES PURSUANT TO 26 DEL. C. §203D (FILED APRIL 9, 2013)
13-WW-002	IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES PURSUANT TO 26 DEL. C. §203D (FILED OCTOBER 10, 2013)
387-13	IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION OF 26 DEL. ADMIN.C. §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO CHESAPEAKE UTILITIES CORPORATION. (OPENED JANUARY 8, 2013)
389-13	IN THE MATTER OF A PROTEST FILED BY I.G. BURTON AGAINST BLUE BIRD CORPORATION FOR DENIAL OF REIMBURSEMENT OF WARRANTY PARTS (FILED JULY 17, 2013)
390-13	IN THE MATER OF THE NOTICE OF POTENTIAL VIOLATION OF 26 DEL. ADMIN. C. §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO ALTMAN MANAGEMENT COMPANY (OPENED AUGUST 8, 2013)
391-13	IN THE MATER OF THE NOTICE OF POTENTIAL VIOLATION OF 26 DEL. ADMIN. C. §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO PETROLEUM EQUIPMENT, INC. (OPENED AUGUST 8, 2013)
392-13	IN THE MATER OF THE NOTICE OF POTENTIAL VIOLATION OF 26 DEL. ADMIN. C. §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO CHESAPEAKE UTILITIES CORPORATION (OPENED AUGUST 8, 2013)
393-13	IN THE MATER OF THE NOTICE OF POTENTIAL VIOLATION OF 26 DEL. ADMIN. C. §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO COUNTY PROPANE OF DELMARVA (OPENED AUGUST 8, 2013)

5. Pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the Delaware Register. An exact copy of the Amended Rules shall be published as the current official regulations in the Delaware Register.

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:

Dallas Winslow, Chair
 Joann T. Conaway, Commissioner
 Jaymes B. Lester, Commissioner
 Jeffrey J. Clark, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

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

[Rules of Practice and Procedure of the Delaware Public Service Commission](#)

GOVERNOR'S APPOINTMENTS

Name	Board Name	Appointment Date	Reappointment Date
Mrs. Jamie F Doane	Advisory Council to the Division of Developmental Disabilities Services	05/29/2012	7/24/2013
Ms. Theresa A. Hancharick		07/24/2013	
Mr. Anthony L. Horstman		08/24/2005	7/24/2013
Mr. Thomas E. Rust		01/15/1993	7/24/2013
Ms. Angela C. Sipple		06/11/2010	7/24/2013
Mr. James C. Martin, Jr.	Advisory Council to the Division of Substance Abuse and Mental Health	07/15/2013	
Ms. Joanna L. Rieger		08/09/2013	
Mr. Eric G. Potts	Architectural Accessibility Board	07/02/2013	
Mr. Everett L. DeWhitt, Jr.	Authority on Radiation Protection	09/10/2013	
Mr. Kenneth J Musto, Jr.		07/28/2010	9/10/2013
Mr. Thomas V. May		08/02/2013	
Noureddine Melikechi, Ph.D.		01/15/2007	9/10/2013
Dr. Kelly L. Keener	Board of Chiropractic	07/28/2010	9/10/2013
Ms. Lois J. Dunning		12/16/2009	9/10/2013
Ms. Marceline W. Knox		09/10/2013	
Mr. John F. Mucha	Board of Clinical Social Work Examiners	07/02/2013	
Lucinda K. Bunting, DMD	Board of Dentistry and Dental Hygiene	07/02/2012	9/12/2013
Mr. Nathaniel Gibbs		03/03/2011	9/12/2013
Ms. June K. Ewing		09/12/2013	
Mr. Chad H. Chandler	Board of Funeral Services	02/16/2010	9/10/2013
Mr. Duwayne M. Casini		09/10/2013	
Mr. William Torbert		04/29/2009	9/10/2013
Ms. Mary Christine Byrd		10/20/2009	9/10/2013
Daryl Sharman, M.D.	Board of Medical Licensure and Discipline	12/19/2008	7/17/2013
Dr. Karyl Rattay, M.D., M.S.		07/28/2010	8/16/2013
Joseph M. Parise, D.O.		05/13/2010	7/17/2013
Ms. Vonda S. Calhoun		05/13/2010	7/17/2013
Stephen Cooper, M.D.		02/28/2007	7/17/2013
Stephen T. Lawless, MD		07/17/2013	
Ms. Penelope Marshall	Board of Pilot Commissioners	09/10/2013	

GOVERNOR'S APPOINTMENTS

559

Mr. Gregg E. Drevno	Board of Professional Counselors of Mental Health & Chemical Dependency Professionals	05/11/2011	8/9/2013
Mr. Irvin W. Bowers		08/09/2013	
Ms. Teresa L. Wilson	Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers	07/10/2013	
Natalie S. Titus, DVM	Board of Trustees of the Delaware Institute for Veterinary Medical Education	09/10/2013	
Chief Henry V. Tobin	Child Death, Near Death and Stillbirth Review Commission	07/24/2013	
David A. Paul, M.D.		01/03/2003	7/15/2013
Garrett H. Colmorgen, M.D.		12/21/1995	7/15/2013
Lt. Teresa A. Williams		07/15/2013	
Philip A. Shlossman, M.D.		06/06/2006	7/15/2013
Ms Judith R. Catterton	Child Placement Review Board- Sussex	08/23/2013	
Mr. John C. Shockley	Child Support Collection Task Force	09/24/2013	
Ms. Sydney G. White		09/20/2013	
Sister Jeanne F. Cashman		09/20/2013	
Mr. Dennis E. Rozumalski		07/26/2013	
Mr. Michael B. Peyser		07/26/2013	
Mr. Patrick J. Bush		07/30/2013	
Mr. Rodney Brittingham		07/26/2013	
Mrs. Patricia Dailey Lewis	Child Welfare Data Sharing Task Force	07/26/2013	
Ms. Heather S. Williams		07/30/2013	
Ms. Mary Crabbe		07/26/2013	
Ms. Rhonda L. Ringer	Child Welfare Data Sharing Task Force	07/26/2013	
Mr. Leonard E. McCartney, Jr.	Commission on Adult Entertainment Establishments	10/04/2013	
Ms. Abby L. Adams	Commissioner of the Court of Common Pleas	07/12/2013	
The Hon. Andrew K. Southmayd	Commissioners of Family Court	07/16/1998	7/25/2013
The Hon. Jennifer L. Mayo		06/12/2003	7/2/2013
The Hon. John R. Carrow		02/03/1999	7/2/2013

GOVERNOR'S APPOINTMENTS

The Hon. Loretta M. Young		05/21/1998	7/2/2013
The Hon. M. DeSales Haley Reis		02/03/1999	7/2/2013
The Hon. Mary Ann H. Herlihy		02/03/1999	7/2/2013
The Hon. Pamela D. Holloway		07/05/1994	7/25/2013
Karen Rosenberg, Ph.D.	Committee on Disposition of Unmarked Human Burials	09/27/2004	9/10/2013
Mr. John E. Tracey	Council of Delaware Association of Professional Engineers	09/04/2009	9/10/2013
Mr. Robert C. Wheatley		09/10/2013	
Mr. Donato R. Buccini	Council on Apprenticeship and Training	04/01/1999	9/10/2013
Mr. John M. Hagelstein		06/02/2008	9/10/2013
Mr. Orville L. Mills, Jr.		09/12/2013	
Ernest G. Cole, Ed.D.	Council on Services for Aging and Adults with Physical Disabilities	08/27/2009	8/2/2013
Mr. Martin A. Markiewitz	Council on Services for Aging and Adults with Physical Disabilities	08/06/2013	
Ms. Linda A. Smith		08/25/2011	8/2/2013
Ms. Mary Ann C. Miller		01/21/2011	8/2/2013
Ms. Mary L. Andersen		08/02/2013	
Mr. Jackie R. Turner	Council on the Blind	02/28/2007	8/6/2013
Mr. Lewis K. Rolph, Jr.		09/03/2013	
Ms. Nancy R. Frankl		08/30/2010	9/3/2013
Mr. Irwin G. Burton, III	Council on Transportation	02/07/2002	8/23/2013
Mr. John J. Gilbert		08/23/2013	
Mr. Lee J. Beetschen		07/09/2003	8/23/2013
Mr. Ted C. Williams		08/19/2008	8/23/2013
Mr. Sheldon K. Rennie	Court of Common Pleas	07/19/2013	
Mr. James Wilson	Delaware Bicycle Council	09/10/2013	
Mr. Michael L. Krumrine		11/13/2007	9/10/2013
Mr. Thomas C. Felice		01/24/2006	9/10/2013
Ms. Alison M. Kirk		09/01/2010	9/10/2013
Sergeant George A. Heberling		11/13/2000	9/10/2013
The Hon. Roger P. Roy	Delaware Bicycle Council	04/06/2010	9/10/2013
Mr. Harland W. Sanders, Jr.		05/26/2010	9/12/2013
Ms. Dianne Halpern		09/04/2009	9/12/2013
Ms. Jenifer M. Duncan		09/12/2013	
Ms. Kathy L. Bradley, LPN		09/04/2009	9/12/2013

GOVERNOR'S APPOINTMENTS

561

Ms. Victoria M. Udealer		09/12/2013	
Robert Contino, Ed.D		04/21/2010	9/12/2013
Mr. A. Glenn Barlow	Delaware College Investment Board	08/19/2002	7/9/2013
Mr. Santosh P. Viswanathan		05/24/2006	7/9/2013
Col. Ronald Sarg	Delaware Commission of Veterans' Affairs	05/01/2009	8/2/2013
Mr. MyRon W. Smith		08/02/2013	
Mr. Charles A. Salkin	Delaware Council on Greenways and Trails	08/02/2013	
Mr. Charles R. Emerson		07/29/2003	8/2/2013
Mr. Scott C. Blaier		08/02/2013	
Mr. Wendel R. Cassel		02/17/2010	8/2/2013
Vincent Lobo, Jr., D.O.	Delaware Health Resources Board	07/17/2013	
Ms. Claudia M. Poretti	The Delaware Hispanic Commission	08/23/2013	
Mr. John H. Morris	Delaware Manufactured Home Relocation Authority	07/16/2013	
Chief Christine R. Dunning	Delaware Police Accreditation Commission	09/19/2013	
Col. Elmer M. Setting	Delaware Police Accreditation Commission	09/19/2013	
Col. Nathaniel McQueen, Jr.		09/19/2013	
Jeffrey Horvath		09/19/2013	
Mr. Andrew Staton	Delaware Real Estate Commission	02/27/2009	9/10/2013
Mr. Michael J. Harrington, Sr.		11/05/2010	9/10/2013
Mr. Robert J. Healy		09/10/2013	
The Hon. Lynn J. Rogers		09/10/2013	
Carol L. Rothschild	Delaware State Arts Council	01/26/2011	7/2/2013
Mr. Robert M. Fitzgerald		07/02/2013	
Ms. Catherine M. Walls		04/28/2010	7/2/2013
Ms. Heather K. Morrissey		07/02/2013	
Ms. Tina D. Betz		07/02/2013	
Mr. Gregory B. Patterson	Delaware Statewide Interoperability Executive Council	08/20/2013	
Mr. Chris A. Burkhard	Delaware Workforce Investment Board	08/16/2013	
Mr. Daniel Madrid		08/28/2013	
Mr. Jack Berberian		08/12/2013	

GOVERNOR'S APPOINTMENTS

Mr. John J. Casey, Jr.	Delaware Workforce Investment Board	08/16/2013	
Mr. Nello Paoli, Jr.		08/16/2013	
Ms. Alisha W. Bryson		08/12/2013	
Ms. Joan Verplanck		08/12/2013	
Ms. Michelle A. Taylor		08/15/2013	
Mrs. Sandra Mifflin Taylor	Dover Housing Authority	01/03/2012	7/9/2013
Mr. Jonathan N. Street	Dover/Kent Metropolitan Planning Organization PAC	10/03/2013	
Ms. Phyllis K. Collins		08/30/2010	10/3/2013
Ms. Joan Verplanck	Education Commission of the States	07/18/2013	
Ms. Lindsay C. O'Mara		09/05/2013	
Mr. Andrew H. Lippstone	Election Law Task Force	07/16/2013	
Ms. Lindsay C. O'Mara	Enrollment Preferences Task Force	08/02/2013	
Ms. Susan E. Francis		08/09/2013	
Randall L. Hughes, II		08/02/2013	
Mary Ann Mieczkowski	Governor's Advisory Council for Exceptional Citizens	09/09/2013	
Mrs. Glenda L. Krause		07/02/2013	
Ms. Brenne' M. Shepperson		07/02/2013	
Mr. Gary Patterson	Governor's Committee on Interstate Cooperation	07/26/2013	
Mr. Michael A. Barlow		07/26/2013	
The Hon. Nancy W. Cook		07/26/2013	
Mr. Steven R. Chambliss	Greater Wilmington Convention and Visitors Bureau	08/26/2013	
Ms. Deborah N. Buckson		07/28/2010	8/20/2013
Ms. Jeanne L. Belk		07/12/2007	8/20/2013
Mr. George W. Forbes, III	Health Facilities Authority	10/26/2007	7/9/2013
Mr. William G. Neaton		01/07/2002	7/9/2013
Mr. Rodney Brittingham	Healthy Mother and Infant Consortium	08/23/2013	
Ms. Elizabeth A. O'Neill		07/02/2013	
The Hon. Nicole Poore	Interagency Coordinating Council	07/24/2013	
The Hon. Thomas J. Cook	Lottery & Gaming Study Commission	07/01/2013	
Mr. John K. Starke	Manufactured Home Installation Board	07/10/2013	

GOVERNOR'S APPOINTMENTS

563

Mrs. Barbara A. Williams		08/02/2013	
Ms. Margaret L. Harper		07/10/2013	
Ms. Cheryl Dennis	New Castle County Vocational-Technical Board of Education	09/20/2013	
Ms. Pamela S. Lilly	Organ and Tissue Donor Awareness Board	07/10/2013	
Mr. Brock J. Vinton, II	Recycling Public Advisory Council	07/22/2010	9/10/2013
Mr. George Danneman		07/22/2010	9/10/2013
Mr. Michael Fusca	Recycling Public Advisory Council	08/02/2010	9/10/2013
Ms. Marjorie A. Crofts		07/22/2010	9/10/2013
The Hon. Mark T. Murphy	Southern Regional Education Board	06/20/2012	9/9/2013
Mr. John A. McManus, II		09/23/2013	
Mr. Daniel F. Creedon	State Board of Electrical Examiners	07/28/2010	9/10/2013
Mr. Robert F. MacLennan		08/27/2009	9/10/2013
Mr. William D. Poore		09/15/2009	9/10/2013
Mr. Victor F. Kennedy	State Board of Examiners of Psychologists	08/09/2013	
Ms. Ronise E. Ball		08/09/2013	
Mr. Kenneth M. Sellers	State Board of Pharmacy	09/10/2013	
Ms. Bonnie J. Wallner		09/10/2013	
Mr. Gerard J. Pepeta	State Board of Plumbing, Heating, Ventilation, Air Conditioning & Refrigeration	12/16/2009	9/12/2013
Mr. Harold R. Caswell		09/12/2013	
Mr. James T. Anderson		10/02/2008	9/12/2013
Erin Giebel Whaley, D.V.M.	State Board of Veterinary Medicine	09/23/2013	
Ms. Ann F. Sellers		09/23/2013	
Ms. Roberta A. Jackson		12/16/2009	9/23/2013
Mr. James Lee	State Emergency Response Commission	03/06/2002	9/10/2013
Mr. Michael D. Layton		09/10/2013	
Mr. Robert L. Byrd		02/26/2007	9/10/2013
Mr. Charles Boyer	State Fire Prevention Commission	09/13/2013	
Mr. Richard D. Senato	State Human Relations Commission	09/10/2013	
Ms. Misty A. Seemans		09/10/2013	

GOVERNOR'S APPOINTMENTS

Mrs. Brenda L. Lakeman	Statewide Labor Management Committee	07/09/2013	
Ms. Teresa G. Carey	Sussex County Vocational-Technical School Board of Education	10/31/1995	7/9/2013
M. Dean Betts, Ed.D.	Teen Driver Task Force	07/22/2013	
Mr. Anthony Kwoka		07/22/2013	
Mr. Julian H. Booker, Jr.		07/22/2013	
Mr. Robert M. Jones, Jr		07/22/2013	
Mr. Scott Vien		07/22/2013	
Ms. Jana R. Simpler		07/22/2013	
Ms. Jennifer Cohan		07/22/2013	
Ms. Karen Versuk		07/22/2013	
Ms. Kimberly Chesser		07/22/2013	
Ms. Shannon Timmons	Teen Driver Task Force	07/23/2013	
The Hon. Robert M. Coupe	Violence Against Women Act Implementation Committee	07/17/2013	
Ms. Constance C. Holland	Wilmington Area Planning Council (WILMAPCO)	01/27/2011	7/9/2013
Vincent M. White	Wilmington Housing Authority	09/20/2013	
Christopher Schellinger, D.C.	Workers' Compensation Task Force	07/29/2013	
Mr. Anthony M. Frabizzio		09/05/2013	
Mr. Glenn P. Brown		07/29/2013	
Mr. N. Lee Dotson		07/29/2013	

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

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

Secretary's Order No.: 2013-A-0036**RE: Approving Final Revision to Delaware's State Implementation Plan (SIP),
to wit: Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility
in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan****Date of Issuance: September 24, 2013****Effective Date of the Amendment: September 24, 2013**

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

Background and Procedural History

This Order considers the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan. Regional haze is defined as visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors, and which are located across a broad geographic area. These emissions are transported over large regions, including national parks, forests and wilderness areas ("Class I" federal areas).

The Federal Clean Air Act ("FCAA") mandates protection of visibility, especially in Class I areas. In 1999, and in various revisions that extend through 2006, the U.S. Environmental Protection Agency ("EPA") finalized the Regional Haze Rule ("RHR"). Under this rule, states are required to develop a series of SIPs every 10 years to reduce visibility impairment, with the express intent that, by 2062, visibility in all Class I areas will be returned to natural conditions. The first such SIP must establish interim goals and emissions reduction strategies for 2018.

On September 25, 2008, the Department's Division of Air Quality ("DAQ") submitted to EPA the Delaware Visibility State Implementation Plan (the "2008 SIP"), which was Delaware's first SIP demonstrating how Delaware met its 2018 visibility goals and emission reduction strategies. The 2008 SIP included (1) long-term strategies; (2) how Delaware met its fair share of the "reasonable progress goals" toward reducing visibility impairment in Class I areas; and (3) Best Available Retrofit Technology. EPA approved Delaware's SIP on July 19, 2011 (effective on August 18, 2011).

The aforementioned 5-Year Progress Report is a proposed SIP revision which fulfills the requirements of the Regional Haze Rule ("RHR") at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i). It is a report on Delaware's progress in improving visibility five years after Delaware's initial SIP submission to the EPA in 2008, and is due to the EPA by September 25, 2013.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the August 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 22, 2013. It should be noted that no members of the public attended the aforementioned hearing held by the Department, nor were any negative comments received in this matter. Proper notice of the hearing was provided as required by law.

The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 12, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the aforementioned Regional Haze 5-Year Periodic Report, as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed revision to Delaware's aforementioned SIP is well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed SIP revision.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the aforementioned Regional Haze 5-Year Periodic Report. With the adoption of this Order, Delaware will be enabled to fulfill the requirements of the Regional Haze Rule ("RHR") at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i), and will report its progress in improving visibility five years subsequent to Delaware's initial SIP submission to EPA in 2008.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on August 22, 2013;
- 3.) The Department held a public hearing on August 22, 2013, in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan, should be adopted as final, thereby enabling Delaware to (1) fulfill the requirements of the Regional Haze Rule ("RHR") at 40 C.F.R. Part 51, Sections 308(g), 308(h), and 308(i); (2) report its progress in improving visibility five years subsequent to Delaware's initial SIP submission to EPA in 2008; and (3) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the Regional Haze 5-Year Periodic Report Progress Toward the Reasonable Progress Goals for Visibility in Class I Federal Areas and Determination of Adequacy of Existing Implementation Plan to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

The SIP may be viewed on DNREC's website at:

<http://www.dnrec.delaware.gov/Air/Pages/Visibility-SIP-5-yr-Progress-Report.aspx>

Delaware State Implementation Plan Revision: Regional Haze 5-Year Periodic Report Progress Towards the Reasonable Progress Goals for Visibility In Class I Federal Areas And Determination of Adequacy of Existing Implementation Plan

PROPOSED Final

July 15, 2013 September 24, 2013

EXECUTIVE SUMMARY

Regional haze is defined as visibility impairment that is produced by a multitude of sources and activities which emit fine particles and their precursors, and which are located across a broad geographic area. These emissions are transported over large regions and can obscure vistas integral to the value of our national parks, forests and wilderness areas ("Class I" federal areas). The Clean Air Act mandates requirements to protect visibility, especially in Class I Federal areas. In 1999, the U.S. Environmental Protection Agency (EPA) finalized the Regional Haze Rule (RHR) to address visibility impairment at Class I areas.

The RHR calls for state, tribal, regional planning organizations (RPO) and federal agencies to work together to improve visibility in 156 Class I areas. Specifically, states are required to develop a series of state implementation plans (SIP) to reduce visibility impairment with the express intent that by 2064, the visibility in all Class I areas will be returned to natural conditions. The first such SIP must establish interim goals and emissions reduction strategies for 2018, based on trends from various sources including point, area, and mobile (both onroad and nonroad) source emissions, biogenic, and wildfire and agricultural emissions.

Visibility assessments prepared by the RPO: Mid-Atlantic/Northeast Visibility Union (MANE-VU) determined that for the initial Regional Haze SIPs, ammonium sulfate was the largest contributor to visibility impairment at Class I areas and reduction of sulfur dioxide (SO₂) emissions is the most effective means of reducing ammonium sulfate. As such, the majority of the focus with regard to existing and planned emission controls pertains to the largest sources of SO₂ emissions. These sources consist of electric generating units (EGUs) and large industrial boilers. Hence, MANE-VU's long term strategy to reduce SO₂ to improve visibility prior to 2018 includes:

- Timely implementation of Best Available Retrofit Technology,
- Reducing the sulfur content of fuel oil,
- Reducing sulfur dioxide emissions from electric power plants,
- Seeking to reduce emissions outside MANE-VU that impair visibility in our region, and
- Continuing to evaluate other measures such as energy efficiency, alternative clean fuels, and measures to reduce emissions from wood and coal combustion.

On September 25, 2008 Delaware submitted its "Delaware Visibility State Implementation Plan" (regional haze SIP) to EPA to comply with the 2018 MANE-VU strategy. Many of the EGUs and large industrial boilers within Delaware have committed to and have installed controls through a number of mechanisms, including Delaware's multi-pollutant regulation, federally enforceable permits, and state and federal consent agreements. Reductions associated with many of these mechanisms were used to estimate the 2018 visibility improvements at the Brigantine Wilderness Class I area in New Jersey. However, since Delaware submitted its initial regional haze SIP in 2008, additional regulations and actions have been imposed which will reduce visibility impairing pollutants. Moreover, as recently as the summer of 2012, several large EGUs have announced plans to either shutdown sources or curtail emissions by converting to natural gas, leading to even more significant reductions in SO₂ emissions. As this report will show, these additional mandates will help ensure that the reasonable progress goals are attained well before 2018.

Section 308(g) of the RHR also requires each state to report on progress in improving visibility five (5) years after submitting the initial SIP. Known as "5-Year Progress Reports" (Report), they must be in the form of SIP revisions that comply with the procedural requirements of the United States Clean Air Act, as amended. This Report fulfills the requirements of 40 CFR 51.308(g) requiring periodic reports evaluating progress in implementing the measures included in Delaware's 2008 SIP. This document also fulfills the requirements of 40 CFR Part 51.308(h), 308(i), and 40 CFR 51 Parts 102 and 103.

It is for these reasons that the Delaware Department of Natural Resources and Environmental Control (DNREC) submits a negative declaration to EPA, specifying that the Delaware 2008 Visibility State Implementation Plan is sufficient for meeting the requirements outlined in the RHR. Furthermore, no additional controls are necessary, based on this first Report.

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**PUBLIC NOTICE****201 Delaware Manufactured Home Relocation Trust Fund Regulations**

The Delaware Manufactured Home Relocation Authority (the "Authority") will entertain written comments to proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion.

Pursuant to its statutory authority, at the Authority's meeting on October 10, 2013, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the October 10, 2013 meeting of the Authority and published herein will set the maximum payments available to a landlords and tenants for removal and relocation costs and the maximum payment available to tenants for homes that are determined to be non-relocatable.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

Anyone wishing to submit written comments should submit such comments by December 1, 2013 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

DELAWARE STATE FIRE PREVENTION COMMISSION**PUBLIC NOTICE****710 Ambulance Service Regulations**

In accordance with procedures set forth in 29 **Del.C.** Ch. 101, the Delaware State Fire Prevention Commission is proposing to adopt changes and updates to current regulation 710 Ambulance Service Regulations.

The Delaware State Fire Prevention Commission will hold a public hearing at which members of the public may present comments on the proposed regulations on December 17, 2013 at 7:00 p.m. in the Delaware State Fire Prevention Chamber at the Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Additionally, members of the public may present written comments on the proposed regulations by submitting such written comments to Ms. Sherry Lambertson, Delaware State Fire Prevention Commission, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments must be received on or before January 2, 2014. Members of the public may receive a copy of the proposed regulations at no charge by United States Mail by writing Ms. Sherry Lambertson at the address of the Delaware State Fire Prevention Commission set forth above.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 21, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid Expansion under the Affordable Care Act 2014 – Modified Adjustment Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition**

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 proposing to amend the Division of Social Services Manual (DSSM) regarding the Modified Adjusted Gross Income (MAGI) methodology provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program) under the Affordable Care Act, specifically, *Reasonable Classifications of Individuals under Age 21 and MAGI Household Composition*.

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

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

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4459B Residential Property Renovation, Repair and Painting**

The Department of Health and Social Services (DHSS), Division of Public Health, Health Systems Protection, is proposing new State of Delaware Regulations to implement recent legislation (Senate Bill 139 w/ SA 3) authorizing DHSS to establish regulations for the training and certification of Renovators and Dust Wipe Technicians, and for the accreditation of training providers. The proposed regulations expand current lead-based paint hazard control activities to include routine repair and renovations, a major source of lead exposure for children. Renovators and Dust Wipe Technicians are required to meet minimum training qualifications and obtain licenses. Firms providing training programs are required to be accredited and meet minimum course requirements. The proposed regulations establish lead-safe work standards and ensure residents are informed of lead-based paint hazards before work begins.

Copies of the proposed regulations are available for review in the November 1, 2013 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Health Systems Protection Section at (302) 744-4705.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by Monday, December 2, 2013 at:

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

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****11003.7.5 Income Eligible/Education and Post-Secondary Education****Child Care Subsidy Program****Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation*.

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

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

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS****Office of Workers' Compensation****PUBLIC NOTICE****1341 Workers' Compensation Regulations**

The Secretary of Labor, in accordance with 19 **Del.C.** §2322B, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System (HCPS). These proposals 1) revise fees for hot/cold packs (CPT 97010); and 2) make Medispan the sole AWP source for pharmacy fees.

A public meeting will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on December 2, 2013, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware, 19802, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from Donna Forrest, Medical Component Manager, Office of Workers' Compensation, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware, 19802. Persons wishing to submit written comments may forward them to the Panel at the above address. The final date to receive written comments will be 20 days after the public meeting.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public meeting.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATER****PUBLIC NOTICE****7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems**

Substantial revisions to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems (On-site regulations) are proposed to incorporate the Guidance and Regulations Governing the Land Treatment of Wastes spray irrigation regulatory language. The on-site regulations have been revised to address large system site investigations, hydrogeological investigations, design

considerations, operation and maintenance practices, updating of individual on-site wastewater treatment and disposal system design criteria, establishment of new licensees and inspection protocols, and to establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

Upon the effective date of revised regulations, the Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds, effective November 11, 2008, Sections 6.0, 7.0 and 8.0, may be affected.

In order to thoroughly address the comments and concerns received from two previously held hearings in this matter (May 2012 and November 2012) a third public hearing for the proposed amendments will be held on November 21, 2013 beginning at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Jack Hayes, DNREC - Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901 and must be received by the Department no later than December 6, 2013.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Department of Natural Resources and Environmental Control
20653 DuPont Blvd, Unit 5
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Water, Groundwater Discharges Section website: <http://www.wr.dnrec.delaware.gov/Information/GWDInfo/Pages/GWDS%20Design%20Install%20Operate%20Info%20For%20Proposed%20Wastewater%20Treatment%20Regulations.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Jack Hayes, DNREC Division of Water, Groundwater Discharges Section, 89 Kings Highway, Dover, DE 19901, (302) 739-9948, John.Hayes@state.de.us.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 9.2.1.1.1 and 9.2.2.3.1 to add the requirement that at least three contact hours of the requisite continuing education needed for renewal or reinstatement must be in the area of substance abuse.

The Board will hold a public hearing on the proposed regulation change on January 8, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until December 3, 2013 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
2930 Council on Real Estate Appraisers

The Delaware Council on Real Estate Appraisers, pursuant to 24 **Del.C.** §4006(a)(1), proposes to revise its rules and regulations. The majority of the proposed revisions to the rules are changes of an administrative nature. The Board will hold a public hearing on the proposed rule change on January 21, 2014 at 9:30 AM, Second Floor

Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Council on Real Estate Appraisers, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 6, 2014.

DIVISION OF PROFESSIONAL REGULATION

PUBLIC NOTICE

3600 Board of Geologists

The Delaware Board of Geologists, pursuant to 24 **Del.C.** §3606(a)(1), proposes to revise its regulations. The proposed additions to the regulations seek to add rules regarding inactive status of a geology license and the requirements to reactive a license from inactive status. Additionally, the rules amend the use of the term expiration to termination to create continuity within the geology regulations as well as within the Division of Professional Regulation.

The Board will hold a public hearing on the proposed rule change on December 13, 2013 at 10:00 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Geologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.