
Delaware Register of Regulations

Issue Date: August 1, 2020

Volume 24 - Issue 2, Pages 69 - 199



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Proposed
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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 July 15, 2020.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
September 1	August 17	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.

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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.).

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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) and 29 Delaware Code, Section 10119 (14 **Del.C.** §122(b)(2) & 29 **Del.C.** §10119)
14 DE Admin. Code 612

ORDER

612 Possession, Use or Distribution of Drugs and Alcohol

WHEREAS, pursuant to 14 **Del.C.** §101, the general administration of the educational interests of the State shall be vested in a Department of Education (Department) within the Executive Branch; and

WHEREAS, pursuant to 14 **Del.C.** §121(a), the Department shall exercise general control and supervision over the public schools of the State; and

WHEREAS, pursuant to 14 **Del.C.** §122(b)(1) and (b)(2), the Department shall prescribe rules and regulations:

(1) Governing the hygienic, sanitary and protective construction of school buildings; the selection, arrangement and maintenance of school sites and grounds; and the condemnation, for school purposes, of public school buildings that do not conform to such rules and regulations;

(2) Governing the physical inspection of and the protection of the health and physical welfare of public school students in the State; and

WHEREAS, the Centers for Disease Control and Prevention determined that a novel coronavirus ("COVID-19") presents a serious public health threat and, as a result, on March 12, 2020, the Governor issued a Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat ("State of Emergency Order"), which has been modified; and

WHEREAS, the Delaware Department of Health and Social Services' Division of Public Health issued guidance concerning COVID-19 stating in part that individuals need to continue to take precautions like staying at least 6 feet apart from others, wear a face covering, and wash your hands frequently and thoroughly with soap and hot water. If you do not have access to soap and water, use hand sanitizer until you can wash your hands;

and

WHEREAS, hand sanitizers are over-the-counter (OTC) drugs regulated by U.S. Food and Drug Administration; and

WHEREAS, the Department is developing recommendations for the opening of Delaware schools for the 2020-2021 academic year; and

WHEREAS, the Department determined that provisions of 14 **DE Admin. Code** 612 should not inhibit or prohibit districts and charter schools from offering hand sanitizer as a supplemental method to prevent viral spread; and

WHEREAS, on July 15, 2020, the Department determined that the adoption of this amended regulation was necessary to protect the health and physical welfare of Delaware students and promote healthy lifestyles during the State of Emergency and proposed that the adoption of this amended regulation subject to the State Board of Education's approval occur on an emergency basis; and

WHEREAS, in accordance with 29 **Del.C.** §10119(4), the Department will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of this regulation by addressing the petitions to the attention of the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us; and

WHEREAS, in accordance with 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date it is executed and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar of Regulations for publication in the next issue of the *Delaware Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 16th day of July, 2020 that the following amended regulation, 612 Possession, Use or Distribution of Drugs and Alcohol, attached hereto as Exhibit A shall take effect immediately.

IT IS SO ORDERED the 16th day of July 2020

DEPARTMENT OF EDUCATION

Susan S. Bunting, Ed. D., Secretary of Education

Approved this 16th day of July, 2020.

State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

/s/ Audrey J. Noble, Ph.D., Vice President

/s/ Provey Powell, Jr.

/s/ Nina Lou Bunting

/s/ Wali W. Rushdan, II

/s/ Candace Fifer

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 Purpose

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

2.0 General Provisions

~~2.1 The following provisions shall apply to all public school district and charter schools:~~

~~2.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.~~

~~2.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.~~

- 2.1.3- ~~Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.~~
- 2.1.4 ~~All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 Del.C. Ch. 47, turned over to police as potential evidence.~~

3.02.0 Definitions

The following definitions shall apply to this regulation, unless a specific regulation, statute or the context in which they are used clearly indicates otherwise, and shall apply to all public school districts and charter schools. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

"**Alcohol**" means alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"**Designated Caregiver**" means, pursuant to 16 **Del.C.** §4902A(5), a person ~~who~~ who is at least ~~21~~ twenty-one (21) years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than ~~5~~ five (5) qualifying patients with their medical use of marijuana.

"**Distribute**", "**Distributing**" or "**Distribution**" means the transfer or attempted transfer of Alcohol, a Drug, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" means any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug Like Substance**" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

"**Drug Paraphernalia**" means all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging Drugs.

"**Hand Sanitizer**" means a commercially available health care topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

"**Look Alike Substance**" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. ~~See 16 Del.C. §4752A.~~

"**Medical Marijuana Oil**" means as defined in 16 **Del.C.** §4902A(10).

"**Nonprescription Medication medication**" means any over the counter medication that can be sold legally without a prescription; ~~some of these medications may be a "Drug Like Substance. this definition may include a Drug Like Substance but excludes Hand Sanitizer.~~

"Possess" "Possessing" or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance, or Drug Paraphernalia.

"Prescription Medication(s) medication" means ~~any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found~~ a legal drug that has a written order for a student by a licensed health care provider licensed to prescribe medication.

"Relative Caregiver" means ~~an individual who meets the criteria and requirements of 14 Del.C. §202 (f)(1).~~

"School Environment" means within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at ~~extra-curricular~~ extra-curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Use" means that a student is reasonably known to have ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

3.0 General Provisions

- 3.1 The following provisions shall apply to all public school district and charter schools:
- 3.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.
- 3.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 3.1.3 Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search and will result in loss of the privilege to bring the vehicle on campus.
- 3.1.4 All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 Del.C. Ch. 47, turned over to police as potential evidence.

4.0 Requirement of Each School District and Charter School to have a Policy

- 4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:
- 4.1.1 A system of notification of each student and their parent, guardian or ~~Relative Caregiver~~ relative caregiver at the beginning of the school year, of the state and district policies and regulations. In ~~addition~~ addition, a system for the notification of each student and their parent, guardian or ~~Relative Caregiver~~ relative caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
- 4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.

- 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or ~~Relative Caregivers~~ relative caregivers and to the Department of Education, while maintaining confidentiality.
- 4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- 4.1.5 A written policy on search and seizure.
- 4.1.6 A program of assistance for students with counseling and referral to services as needed.
- 4.1.7 A policy in cases involving a Drug Like Substance or a Look Alike Substance for establishing that the student intended to use, possess or distribute the substance as a Drug.
- 4.1.8 A policy which establishes how Prescription ~~Medications~~ medications and Nonprescription ~~Medications~~ medications shall be handled in the School Environment and when they will be considered unauthorized and subject to these state and local policies.
- 4.1.9 A policy which sets out the conditions for return after expulsion for Alcohol or Drug infractions.
- 4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler with an individual prescription label, an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump") or Hand Sanitizer; provided, nevertheless, that the student uses the inhaler, autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the ~~parent(s) or legal custodian(s)~~ parents or legal custodians of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.
- 4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.
- 4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.
- (For students who use prescribed asthmatic quick relief inhalers, autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy or Hand Sanitizer, see 14 **DE Admin. Code** 817, Administration of Medications and ~~Treatments~~) Treatments.)
- 4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of ~~dose(s)~~ doses prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

5.0 Reporting Requirements and Timelines

- 5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of Drugs and Alcohol policy on file with the Department of Education.
- 5.2 When a local school district or charter school revises its possession, use, and distribution of Drugs and Alcohol policy, it shall notify the Department of Education of the revised policy within thirty (30) days of the revision, even if the revision was made because of changes in federal, state or local law, regulations, guidance or policies.
-

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) and 29 Delaware Code, Section 10119 (14 **Del.C.** §122(b)(2) & 29 **Del.C.** §10119)
14 **DE Admin. Code** 817

ORDER**817 Medications and Treatments**

WHEREAS, pursuant to 14 **Del.C.** §101, the general administration of the educational interests of the State shall be vested in a Department of Education (Department) within the Executive Branch; and

WHEREAS, pursuant to 14 **Del.C.** §121(a), the Department shall exercise general control and supervision over the public schools of the State; and

WHEREAS, pursuant to 14 **Del.C.** §122(b)(1) and (b)(2), the Department shall prescribe rules and regulations:

(1) Governing the hygienic, sanitary and protective construction of school buildings; the selection, arrangement and maintenance of school sites and grounds; and the condemnation, for school purposes, of public school buildings that do not conform to such rules and regulations;

(2) Governing the physical inspection of and the protection of the health and physical welfare of public school students in the State; and

WHEREAS, the Centers for Disease Control and Prevention determined that a novel coronavirus ("COVID-19") presents a serious public health threat and, as a result, on March 12, 2020, the Governor issued a Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat ("State of Emergency Order"), which has been modified; and

WHEREAS, the Delaware Department of Health and Social Services' Division of Public Health issued guidance concerning COVID-19 stating in part that individuals need to continue to take precautions like staying at least 6 feet apart from others, wear a face covering, and wash your hands frequently and thoroughly with soap and hot water. If you do not have access to soap and water, use hand sanitizer until you can wash your hands; and

WHEREAS, hand sanitizers are over-the-counter (OTC) drugs regulated by U.S. Food and Drug Administration; and

WHEREAS, the Department is developing recommendations for the opening of Delaware schools for the 2020-2021 academic year; and

WHEREAS, pursuant to 14 **Del.C.** § 10119, it is necessary to promulgate an amendment to Regulation 817 Medications and Treatments relating to Hand Sanitizer.

WHEREAS, the Department determined that provisions of 14 **DE Admin. Code** 612 should not inhibit or prohibit districts and charter schools from offering hand sanitizer as a supplemental method to prevent viral spread; and

WHEREAS, on July 1, 2020, the Department determined that the adoption of this amended regulation was necessary to protect the health and physical welfare of Delaware students and promote healthy lifestyles during the State of Emergency and proposed that the adoption of this amended regulation occur on an emergency basis; and

WHEREAS, in accordance with 29 **Del.C.** §10119(4), the Department will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of this regulation by addressing the petitions to the attention of the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street,

Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us; and

WHEREAS, in accordance with 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date it is executed and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar of Regulations for publication in the next issue of the *Delaware Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 15th day of July, 2020 that the following amended regulation, 817 Administration of Medications and Treatments, attached hereto as Exhibit A shall take effect immediately.

IT IS SO ORDERED the 15th day of July 2020

DEPARTMENT OF EDUCATION

Susan S. Bunting, Ed. D., Secretary of Education

Approved this 15th day of July, 2020.

817 Medications and Treatments

1.0 Purpose

The purpose of this regulation is to provide guidance regarding the medications and treatments to be provided to students pursuant to current Delaware Code.

2.0 Definitions

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

“Approved School Activity” means a school-sponsored field trip or approved school activity outside of the traditional school day or ~~off campus~~ off campus.

“~~Assistance~~ Assistance with Self-Administration of Medication” means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail for life-threatening symptoms of a diagnosed ~~condition~~, condition and includes the administration of the medication based on the healthcare provider’s order and parent permission.

“Controlled Medication medication” means those prescribed drugs regulated by Federal (Controlled Substance Act of 1970) and/or State Controlled (dangerous) Substances Act.

“Current” means a medication or prescription that is not outdated or expired according to the date on the label. A current prescription is written for a specific time period, not to exceed one (1) year.

“Dosage” or **“Dose”** means a specific amount of medication prescribed or directed to be taken at any one (1) time.

“Educators” means teachers, administrators, and paraeducators employed by a school.

“Emergency Medication” means a medication necessary for response to a life-threatening allergic reaction.

“Emergency Medication for a Diagnosed Medical Condition” means a medication prescribed to treat a life-threatening symptom of a diagnosed medical condition.

“Emergency Medication Summary Sheet” means a document developed by the Department of Education and the Division of Public Health to report the use of Emergency Medication in the school setting.

“Field Trip” means any off campus, school sponsored activity.

“Hand Sanitizer” means a commercially available healthcare topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

“Licensed Healthcare Provider” means anyone lawfully authorized to prescribe medications and treatments.

“Medication” means a legal drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs. This definition excludes Hand Sanitizer.

“Non-prescription Medication medication” means any over-the-counter medication that can be sold legally without a prescription. This definition excludes Hand Sanitizer.

“Other School Employees” means coaches or persons hired or contracted by schools.

“Paraeducators” mean teaching assistants or aides in a school.

“Prescription Medication medication” means a legal drug that has a written order for an individual student by a licensed ~~health-care~~ healthcare provider licensed to prescribe medication.

“School” means an educational facility serving students in kindergarten through grade 12 and any associated pre-kindergarten program in such facility.

“School Nurse” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“Self-Use of Hand Sanitizer” means a student using Hand Sanitizer in a legally permissible manner.

“Traditional School Day school day” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

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

“Trained Person” means an Educator or Other School Employee who has completed the training to administer Emergency ~~Medicine~~ medication to diagnosed and undiagnosed students with symptoms of a life-threatening allergic reaction in the school setting.

3.0 Medications

- 3.1 Medications may be administered to a public school student by the School Nurse when a written request to administer the medication or treatment is on file from the parent, guardian or ~~Relative Caregiver~~ relative caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~) 42 U.S.C. §11434a).
 - 3.1.1 The School Nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.
 - 3.1.2 The School Nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 3.2 In addition to the requirements set forth in subsection 3.1 above, in the case of a Prescription ~~Medications~~ medications, the requirements set forth below in subsections 3.2.1 through 3.2.4 shall also apply.
 - 3.2.1 Prescription medications shall be provided to the School in the original container and properly labeled with the student's name; the prescribing licensed ~~health-care~~ healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
 - 3.2.2 Medications and dosages administered by the School Nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses

or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.

- 3.2.3 The prescription and the medication shall be current and ~~long-term~~ long-term prescriptions shall be reauthorized at least once a year.
- 3.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the School Nurse and kept under double lock. Such medications should be transported to and from School by an adult.
- 3.3 Non-prescription ~~Medication~~ medication must be in an original container with full label and may be given by the School Nurse after the School Nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

4.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed ~~health care~~ healthcare provider with directions relative to administration or supervision.

5.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the School Nurse.

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

- 6.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 **Del.C.** §1921(a)(13) to assist a student with self-administration of Medications at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:
- 6.1.1 Assistance with Self-Administration of Medication shall not be provided without the prior written request or consent of a parent, guardian or ~~Relative Caregiver~~ relative caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~ 42 U.S.C. §11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a Field Trip or Approved School Activity outside of the traditional ~~School~~ school day or ~~off-campus~~ off campus.
- 6.1.1.1 Medications shall be prescribed by a licensed ~~health care~~ healthcare provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.
- 6.1.1.1.1 Doses may be provided for up to one week, unless covering an Approved School Activity lasting longer than this time ~~period~~, period and shall be maintained in a secure location.
- 6.1.1.2 Prescription medications shall be provided to the School Nurse by the parent and shall be properly labeled with the student's name; the licensed ~~health care~~ healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 6.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining doses for greater than one day is not permitted except in the case of an overnight activity.
- 6.1.1.3 Non-prescription medications shall be provided to the School Nurse by the parent in an original container along with a current, written directive from the student's licensed ~~health care~~ healthcare provider and shall include the student's name; the licensed ~~health care~~ healthcare

healthcare provider's name; the name of the medication; the dosage; and how and when it is to be administered.

6.1.2 In order to be qualified to provide Assistance with Self-Administration of Medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921(a)(13). Training shall be renewed minimally every five years. No person shall provide Assistance with Self-Administration of Medications without documented acknowledgment to the Department of Education that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A School Nurse shall:

6.1.2.1 Complete instructor training as designated by the Department of Education.

6.1.2.2 Oversee the training for Educators and Other School Employees.

6.1.2.3 Coordinate the collection and review of the written parental consent.

6.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the Trained Assistant for Self-Administration.

6.1.3 Each School shall maintain a record of all students receiving Assistance with Self-Administration of Medications pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.

6.1.4 The School Nurse may prepare a Trained Assistant for Self-Administration to render emergency care to a student, with a known, diagnosed condition, who is in pre-kindergarten through Grade 12 and shows life-threatening signs and symptoms of the condition at an Approved School Activity.

6.1.4.1 Response shall include immediate activation of emergency medical services.

6.1.4.2 Preparation shall include instruction in the provision of the student's Emergency Medication for a Diagnosed Medical Condition, including injection, for symptoms related to the condition. Instruction will be based on the healthcare provider's order and the manufacturer's instructions for administration.

6.1.4.3 The Trained Assistant for Self-Administration shall annually demonstrate his/her ability to provide Emergency Medication for a Diagnosed Medical Condition.

6.1.4.4 An Emergency Medication for a Diagnosed Medical Condition shall be a current prescription provided by the student's licensed healthcare provider for a diagnosed medical condition that requires immediate medication to save or sustain life and is one which can be safely provided by a Trained Assistant for Self-Administration.

6.1.4.5 In addition to subsection 6.1.3, the Trained Assistant for Self-Administration shall provide documentation related to the rendering of emergency care, to include at a minimum, the student's symptoms, time of the incident, medication administered, other actions taken, and the response by emergency medical services.

6.2 District and charter school boards may develop policies for unique Approved School Activities for which the specified process is unable to be implemented.

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

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

7.1.1 ~~Public~~ School Nurses shall follow the Division of Public Health's medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals.

7.1.2 Trained Persons shall follow the guidance issued by the Division of Public Health on the administration of Emergency Medications without an order in the school setting to undiagnosed individuals.

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

- 7.2.1 An identified person cannot be compelled to become a Trained Person, unless training is a requirement of their position, hire, or contract.
- 7.2.2 The training shall be a program approved by the Department of Education and the Division of Public Health.
- 7.2.3 The Trained Person shall annually re-train or demonstrate competency as a Trained Person.
- 7.2.4 The School shall maintain documentation of annual training and Trained Persons and make available upon request to the Department of Education or Division of Public Health.
- 7.3 The School shall maintain current, stock Emergency Medication.
 - 7.3.1 Emergency Medication shall be stored in a minimum of two (2) secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other for the Trained Person.
- 7.4 The School shall maintain documentation of the use of Emergency Medication.
 - 7.4.1 The Trained Person shall complete the Emergency Medication Administration by Trained Person Sheet on the day of the any administration and shall submit to the School Nurse.
- 7.5 The School Nurse shall submit the Emergency Medication Summary Sheet to the Department of Education and the Division of Public Health within 48 hours of the use of an Emergency Medication.

8.0 Other School Employees Obligation

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

9.0 Self-Use of Hand Sanitizer

- 9.1 Annually each district and charter school shall publish on its website and through at least one (1) other format that Hand Sanitizer will be available for student use.
 - 9.1.1 The parent, guardian or relative caregiver shall be provided a process for their child to be identified as unable to use Hand Sanitizer.
 - 9.1.2 The parent, guardian or relative caregiver shall be provided a process for their child to receive assistance on self-use of Hand Sanitizer.
 - 9.1.3 Any information received pursuant to subsections 9.1.1 and 9.1.2 shall be maintained in the student's Cumulative Record File.
 - 9.1.4 Relevant school personnel shall be made aware of any student identified in subsections 9.1.1 and 9.1.2.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine, an insulin pump or administration of medical marijuana oil.

Nonregulatory note: 16 **Del.C.** §3007E provides liability protection for any Trained Person or School Nurse, who, in good faith and without expectation of compensation from the person aided or treated, administers Emergency Medication.

Nonregulatory note: 16 **Del.C.** §4904A provides exceptions for the administration of medical marijuana oil by a parent or designated caregivers.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(a)-(c); 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(15) & 303(a)-(c) & 29 **Del.C.** §10119)

ORDER**1010 Interscholastic Athletics during the COVID-19 Pandemic**

WHEREAS, pursuant to 14 **Del.C.** §§303(a) and (b), the Delaware Interscholastic Athletic Association (“DIAA”) is a unit of the Delaware Department of Education that works in consultation and cooperation with the Department of Education to develop regulations relating to interscholastic athletics for middle and secondary schools in Delaware; and

WHEREAS, pursuant to 14 **Del.C.** §303(c), DIAA adopts regulations as to the sports over which it has jurisdiction; and

WHEREAS, pursuant to 14 **Del.C.** §301, DIAA was established, in part, to protect the physical well-being of student athletes and promote healthy adolescent lifestyles; and

WHEREAS, the Centers for Disease Control and Prevention determined that a novel coronavirus (“COVID-19”) presents a serious public health threat and, as a result, on March 12, 2020, the Governor issued a Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (“State of Emergency Order”), which has been modified; and

WHEREAS, on June 1, 2020, DIAA’s Sports Medicine Advisory Committee (“SMAC”) issued recommendations to the DIAA Board of Directors for returning to play once interscholastic athletics resumes; and

WHEREAS, on June 4, 2020, DIAA’s Rules and Regulations Committee recommended the DIAA Board of Directors develop a new regulation regarding COVID-19 that includes SMAC’s recommendations for returning to play; and

WHEREAS, on June 14, 2020, the Governor issued the Twenty-First Modification of the State of Emergency Order, which permits youth sports and other types of physical activity for children to resume during Phase 2 of the State’s economic reopening, beginning on June 15, 2020; and

WHEREAS, the Delaware Department of Health and Social Services’ Division of Public Health issued guidance concerning youth sports and suggested guidelines for returning to sports safely during COVID-19; and

WHEREAS, on June 24, 2020, the DIAA Board of Directors determined that the adoption of this regulation was necessary to protect the physical well-being of student athletes and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of this regulation to the Department of Education, subject to the State Board of Education’s approval, occur on an emergency basis; and

WHEREAS, in accordance with 29 **Del.C.** §10119(4), the DIAA Board of Directors will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of this regulation by addressing the petitions to the attention of the DIAA Board of Directors, Delaware Department of Education, 35 Commerce Way, Suite 1, Dover, DE 19904.

WHEREAS, in accordance with 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date it is executed and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar of Regulations for publication in the next issue of the *Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 30th day of June, 2020 that the following regulation, Interscholastic Athletics during the COVID-19 Pandemic, attached hereto as Exhibit A shall take effect immediately.

IT IS SO ORDERED the 30th day of June, 2020.

Department of Education

Susan S. Bunting, Ed., Secretary of Education

Approved this 30th day of June, 2020.

State Board of Education

/s/ Whitney Townsend Sweeney, President	/s/ Vincent Lofink
/s/ Audrey J. Noble, Ph.D., Vice President	/s/ Provey Powell, Jr.
/s/ Nina Lou Bunting	/s/ Wali W. Rushdan, II
Candace Fifer (absent)	

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

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

1010 Interscholastic Athletics during the COVID-19 Pandemic

**DEPARTMENT OF LABOR
DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10119(4)
(19 **Del.C.** §3122 & 29 **Del.C.** §10119(4))
19 **DE Admin. Code** 1201

**ORDER
(Extension of Emergency Order Dated March 18, 2020)**

1201 Unemployment Insurance Appeal Board Regulations

WHEREAS, pursuant to 29 *Del. C.* § 10119, the Unemployment Insurance Appeal Board (the "Board") adopted through emergency order an amendment dated March 18, 2020, to Regulation 4.2, 19 *Delaware Administrative Code* 1201 ("Emergency Order");

WHEREAS, the amendment adopted by the Emergency Order set forth in Board Regulation 4.2.1 temporarily amends the personal appearance requirement for Board hearings and provides as follows: "The Board will consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing or absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing when it believes it would be practicable and efficient to do so."

WHEREAS, the Emergency Order was published in the April 1, 2020 *Delaware Register of Regulations*, 23 *DE Reg.* 802;

WHEREAS, pursuant to 29 *Del. C.* § 10119(3), the Emergency Order is effective for 120 days from its March 18, 2020 execution or through July 16, 2020 (unless withdrawn earlier by the Board);

WHEREAS, the Board has determined that COVID-19 continues to present an imminent peril to the public health, safety or welfare of the public;

WHEREAS, in order to continue to protect parties, witnesses, attorneys, Board staff, and other interested persons, the Board has determined that it is necessary to renew the Emergency Order for an additional 60 days, pursuant to 29 *Del.C.* §10119(3),

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the *Delaware Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 8th day of July, 2020:

1. The aforementioned Emergency Order is renewed for an additional period of 60 days in order to maintain the current interim measure set forth in Board Regulation 4.2.1 which the Board has deemed necessary to protect parties, witnesses, attorneys, Board staff, and other interested persons.

2. In accordance with the provisions of 29 *Del. C.* § 10119(4), the Board will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Emergency Order. Petitions should be presented to the Board Secretary, Unemployment Insurance Appeal Board c/o Department of Labor, 4425 North Market Street, Wilmington, Delaware 19802.

3. In accordance with the provisions of 29 *Del. C.* § 10119(3), the renewal of this Emergency Order shall take effect at 12:01 a.m. on July 17, 2020 and shall remain in effect up to 60 additional days unless withdrawn earlier by the Board.

IT IS SO ORDERED this 8th day of July, 2020.

UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:

Chairman, Elmer L. Newlin	Vance G. Daniels
Beverly G. Bell	Drew A. Dorak
Sarah Buttner	

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

As used in these Rules and Regulations, the following definitions shall apply:

“**Board**” shall mean the Unemployment Insurance Appeal Board.

“**Chairman**” shall mean the Chairman of the Board.

“**Hearing Officer**” shall mean the Appeals Referee or his or her designate who heard the initial appeal.

“**Hearsay Evidence**” shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

“**Relevant Evidence**” shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

2.0 Location of Unemployment Insurance Appeal Board

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board’s fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

3.0 Commencement

A hearing before the Board may be initiated by:

- 3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;
- 3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
- 3.3 The Board *sua sponte* with notice to the parties below or their counsel.

4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee’s record and any new evidence presented to the Board shall be considered by the Board in making its decision.

- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
- 4.2.1 The Board will consider conducting hearings telephonically, when it believes it would be practicable and efficient to do so and will promptly consider any written request by a party to change a hearing from being held in-person to a telephonic hearing or absent any written request by a party, the Board may, on its own initiative, change a hearing from being in-person to a telephonic hearing when it believes it would be practicable and efficient to do so.
- 4.3 Representation.
- 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.
- 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
- 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.
- 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
- 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
- 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
- 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
- 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.
- 4.7.4 The Board shall not receive into evidence any new testimony offered by means of a telephone or other electronic or electromagnetic device, however the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.
- 4.8 Subpoenas.
- 4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.
- 4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.

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- 4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.
- 4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

5.0 Remand

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

6.0 Decisions

- 6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.
- 6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.
- 6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.
- 6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 **Del.C.** §3323.

7.0 Rehearing

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

- 7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.
- 7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.
- 7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10119(4)
(19 **Del.C.** §3122 & 29 **Del.C.** §10119(4))
19 **DE Admin. Code** 1201

ORDER**1201 Unemployment Insurance Appeal Board Regulations**

WHEREAS, in connection with the serious public health threat from the novel coronavirus ("COVID-19") that has impacted the State of Delaware, Governor Carney issued a Declaration of a State of Emergency for the entire state at 3:00 p.m. on March 12, 2020, which was effective as of Friday, March 13, 2020 at 8:00 a.m. E.S.T. ("State of Emergency Declaration");

WHEREAS, during the past several months, Governor Carney has issued Twenty-Three Modifications to the State of Emergency Declaration to protect from the spread of COVID-19 and to protect the public health, safety and welfare of Delawareans during the COVID-19 pandemic;

WHEREAS, Governor Carney extended Delaware's State of Emergency for an additional 30 days on April 10, 2020, on May 8, 2020, on June 6, 2020; and on July 6, 2020;

WHEREAS, the Unemployment Insurance Appeal Board (the "Board") regularly conducts hearings involving

the attendance of parties, witnesses, attorneys, Board staff, and other interested persons;

WHEREAS, in the interest of protecting the foregoing individuals and the public, the Board finds that adoption of a regulation temporarily amending the requirements set forth in Regulation 4.7.4 must occur on an emergency basis because the Board has determined that COVID-19 continues to present an imminent peril to the public health, safety or welfare of the public; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the *Delaware Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 22nd day of July, 2020:

1. Section 4.7.4 of the Board Regulations is amended as follows:
The Board ~~shall not~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or electronic or electromagnetic device.
2. In accordance with the provisions of 29 *Del. C.* § 10119(4), the Board will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Emergency Order. Petitions should be presented to the Board Secretary, Unemployment Insurance Appeal Board c/o Department of Labor, 4425 North Market Street, Wilmington, Delaware 19802.
3. In accordance with the provisions of 29 *Del. C.* § 10119(3), this Emergency Order shall be effective for 120 days from the date of execution unless withdrawn earlier by the Board. At the end of 120 days, the Board may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del. C.* § 10119(3).

IT IS SO ORDERED this 22nd day of July, 2020.

UNEMPLOYMENT INSURANCE APPEAL BOARD MEMBERS:

Chairman, Elmer L. Newlin	Vance G. Daniels
Beverly G. Bell	Drew A. Dorak
Sarah Buttner	

1201 Unemployment Insurance Appeal Board Regulations

1.0 Definitions

As used in these Rules and Regulations, the following definitions shall apply:

“**Board**” shall mean the Unemployment Insurance Appeal Board.

“**Chairman**” shall mean the Chairman of the Board.

“**Hearing Officer**” shall mean the Appeals Referee or his or her designate who heard the initial appeal.

“**Hearsay Evidence**” shall be such evidence so designated by the Delaware Rules of Evidence (D.R.E.).

“**Relevant Evidence**” shall mean evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without this evidence, as set forth in D.R.E. 401.

2.0 Location of Unemployment Insurance Appeal Board

- 2.1 All correspondence or other papers or documents filed with the Board shall be filed, either by mail or by hand delivery, at the following address: Unemployment Insurance Appeal Board, Department of Labor, 4425 North Market Street, Wilmington, DE 19802. The Board phone number is (302) 761-8370 and the Board’s fax number is (302) 761-6635.
- 2.2 Notices of Appeal to the Board may be filed, by mail or personal delivery, at any local Unemployment Office or at the Board Office listed at Rule 2.1. All notices of Appeal must be in writing.

3.0 Commencement

A hearing before the Board may be initiated by:

- 3.1 Either party to the action heard by the Hearing Officer upon filing a timely Notice of Appeal with the Board;
- 3.2 A party whose appeal was dismissed by the Hearing Officer for failure of that party to appear at the scheduled hearing before the Hearing Officer, upon filing of a timely Notice of Appeal with the Board, in which case the Board may, at its sole discretion, remand the case to the Hearing Officer for a prompt hearing to make a full and complete record; or
- 3.3 The Board *sua sponte* with notice to the parties below or their counsel.

4.0 Hearings

- 4.1 Purpose. The purpose of a hearing before the Board is to examine the factual and legal bases for the decision rendered by the Hearing Officer. The parties shall not re-litigate the case presented to the Referee, but may present additional evidence. Both the referee's record and any new evidence presented to the Board shall be considered by the Board in making its decision.
- 4.2 Presence of parties required. All parties to the appeal shall be present at the Board's hearing. Failure to appear within 10 minutes of the time indicated on the Notice may result in the Board hearing the appeal in absence of the delinquent party or, if the delinquent party is the appellant, dismissal of the appeal.
- 4.3 Representation.
 - 4.3.1 At any hearing, a party may appear *pro se* or be represented by an attorney-at-law duly admitted to practice law in the State of Delaware. A corporation or other artificial entity desiring legal representation must be represented by an attorney-at-law duly admitted to practice law in the State of Delaware.
 - 4.3.2 The Board or its attorney may examine any witnesses, and move the admissions of documents and things into evidence.
- 4.4 Continuances and Postponements.
 - 4.4.1 Applications for a continuance or postponement of any hearing shall be made in writing to the Board office no later than 6 days prior to the hearing. The request shall state the reasons for which the continuance or postponement is requested. The grant or denial of any request for continuance or postponement is within the discretion of the Board Chairman or his or her designee.
 - 4.4.2 Applications for any continuance or postponement of any hearing made less than 6 days prior to the hearing shall set forth with specificity the reason(s) for the continuance or postponement, and shall typically be granted only for reasons of unanticipated emergencies.
 - 4.4.3 An appealing party may request to withdraw its appeal at any time prior to hearing. All requests for withdrawal must be made in writing.
- 4.5 Length of hearing. Hearings are scheduled to last 20 minutes from the time the presiding member calls the case, except that the Board may extend the length of the hearing at its discretion.
- 4.6 Record. A record shall be made of all hearings before the Board. The record may be made either by a stenographic record or by audio recording. The record does not need to be transcribed unless and until an appeal is taken to Superior Court from the Board's decision.
- 4.7 Evidence.
 - 4.7.1 The Board follows the Delaware Rules of Evidence. The Board may admit and consider hearsay evidence, however, the Board shall not base its decision solely on hearsay or other evidence not admissible under the Rules of Evidence.
 - 4.7.2 The Board may consider any relevant evidence relating to any issue raised below, whether or not that issue was decided by the Hearing Officer.
 - 4.7.3 The admissibility of evidence and determinations of the weight to be given evidence and the credibility of witnesses shall be within the sound discretion of the Board.

4.7.4 The Board ~~shall not~~ may receive into evidence any new testimony or document offered by means of a telephone or other electronic or electromagnetic device, ~~however~~ and the Board may review testimony contained within the record of the proceedings below that was offered by means of a telephone or other electronic or electromagnetic device.

4.8 Subpoenas.

4.8.1 A party may request subpoenas to compel a witness or witnesses to appear at a hearing or to compel the production of documents at or prior to a hearing. Such a request shall be in writing, be received by the Board at least 7 days prior to the hearing, and state the full name and address of the person(s) to be subpoenaed and a detailed description of the documents to be produced. The issuance of such subpoena(s) shall be at the sole discretion of the Board and its attorney.

4.8.2 The Board *sua sponte* may issue subpoenas to compel witnesses to appear at a hearing or documents to be produced at or prior to a hearing.

4.9 Exhibits. Any party offering any document into evidence at a hearing shall provide at least 4 copies of such document at the time of the hearing.

4.10 Written Submissions. The Board or its attorney may at their discretion request written submissions from the parties prior to or following the hearing.

5.0 Remand

The Board may remand any case to the Hearing Officer at any time and for any purpose at its sole discretion.

6.0 Decisions

6.1 The Board shall render its decision promptly, usually within 14 days after the hearing.

6.2 The Board may affirm, modify, or reverse, in whole or in part, the decision of the Appeals Referee.

6.3 The Board may *sua sponte* affirm, modify or set aside any decision of an appeal tribunal on the basis of evidence previously submitted, without further hearing, or direct the taking of additional evidence or may permit any of the parties to the decision to initiate further appeal before it.

6.4 Final decisions shall be accompanied by a notice of the right to appeal the Board's decision to Superior Court pursuant to 19 **Del.C.** §3323.

7.0 Rehearing

At any time subsequent to a Board decision but prior to the Board's decision becoming final, any party to the appeal may request by motion, with notice to all parties, a rehearing before to Board. The motion shall set forth briefly and distinctly the grounds for the motion. The Board shall promptly consider the motion for reconsideration. A copy of the Board's decision on the motion for rehearing shall be mailed to all parties or their counsel if represented by an attorney.

7.1 The grant or denial of a motion for rehearing is solely within the discretion of the Board.

7.2 The Board shall not consider any motion for rehearing filed after the Board's decision has become final.

7.3 The Board shall not consider any motion for rehearing of the Board's denial of a prior motion for rehearing.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) and 29 Delaware Code, Section 10119 (24 **Del.C.** §2906(a)(1) & 29 **Del.C.** §10119)
24 **DE Admin. Code** 2925

ORDER**2925 Real Estate Commission Education Committee**

WHEREAS, the Real Estate Commission (the "Commission") has been charged by the Delaware legislature, pursuant to 24 **Del.C.** §2900, to protect the general public from unsafe practices with respect to the practice of real estate and to maintain minimum standards of practitioner competency; and

WHEREAS, the Commission's Education Guidelines ("Guidelines") set forth the content and conduct of all pre-licensing courses for salesperson and brokers as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware; and

WHEREAS, pursuant to Section 4.0 of the Guidelines, pre-licensing for both salesperson and brokers and continuing education courses may be taken through distance education, with the requirements that all distance education courses must be certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC), and all instructors must have Distance Education Instructor Certification from IDECC; and

WHEREAS, obtaining certification from ARELLO and IDECC is a lengthy process; and

WHEREAS, due to the current State of Emergency in Delaware related to COVID-19, in classroom continuing education classes for real estate practitioners have been canceled; and

WHEREAS, in order to ensure compliance with continuing education requirements to maintain practitioner competency, real estate licensees need access to distance learning classes in timely manner; and

WHEREAS, to provide that access to continuing education by distance learning, the requirements of Section 4.0 will be amended on a temporary basis; and

WHEREAS, amending Section 4.0 to add a subsection 4.5 as follows will serve to both protect the public and ensure practitioner competency:

4.5 Continuing education by distance learning during the COVID-19 State of Emergency.

4.5.1 Notwithstanding the provisions of Section 4.0 of the Guidelines, for the period from June 25, 2020 until 60 days after the State of Emergency is lifted, continuing education courses may be provided by remote, live instruction; and

WHEREAS, the Commission finds that adoption of an emergency regulation to govern the Commission's continuing education requirements must occur on an emergency basis to avoid imminent peril to the public health, safety or welfare; and

WHEREAS, consistent with the requirements of 29 **Del.C.** §10119(4), the Commission will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Danielle Cross, the Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904; and

WHEREAS, in accordance with the provisions of 29 **Del.C.** §10119(3), this Emergency Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Emergency Order will be submitted to the Registrar for publication in the next issue of the *Delaware Register of Regulations*.

NOW, the Real Estate Commission's Guidelines, attached hereto as Exhibit A, shall take effect immediately.

IT IS SO ORDERED this 25th day of June 2020 by the Delaware Real Estate Commission.

DELAWARE REAL ESTATE COMMISSION

/s/ Nikki Lane, Chairperson

/s/ Lynette Scott

/s/ Randy Marvel, Vice Chairperson

Jason Giles (absent)

/s/ Nora Martin, Secretary

/s/ Lynn Rogers

***Please Note: Electronic signatures (" /s/ ") were accepted pursuant to 6 Del.C. §12A-107(d).**

2925 Real Estate Commission Education Committee
(Break in Continuity of Sections)

4.0 Distance Education

(Break in Continuity Within Section)

4.5 Continuing education by distance learning during the COVID-19 State of Emergency.

4.5.1 Notwithstanding the provisions of Section 4.0 of the Guidelines, for the period from June 25, 2020 until 60 days after the State of Emergency is lifted, continuing education courses may be provided by remote, live instruction.

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

2925 Real Estate Commission Education Committee

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(11) (14 **Del.C.** §122(b)(11))
14 **DE Admin. Code** 252

PUBLIC NOTICE

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

252 Required Educational Records and Transfer and Maintenance of Educational Records

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(11), the Secretary of Education intends to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. Upon such review the Department concluded that some definitions need to be added or updated and that provisions for student records upon the closure of a charter school pursuant to 14 **Del.C.** §515(i) needed to be included in the regulation. Additionally, the regulation was updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 3, 2020 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement

standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all 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 continues to help ensure that all students' legal rights are respected.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional material costs to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 97RFA 08-01-20.pdf>

252 Required Educational Records and Transfer and Maintenance of Educational Records

1.0 Definitions

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

"Court Orders" means any written direction from a court of competent jurisdiction directed to the student or affecting the student's care or custody.

"Cumulative Record File" means a file containing the Emergency/Nursing Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above), and Discipline Record.

"Delaware School Health Record" means the form required by 14 DE Admin Code 811 for Delaware public school students.

"Discipline Record" means information about any and all periods of suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district's code of conduct or other rules.

~~**"Emergency/Nursing Treatment Card"** means the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 DE Admin. Code 811.~~

"Emergency/Nursing Treatment Card" means a form containing contact information and general school emergency procedures for the care of a student who becomes sick or injured at school. The card contains the following information: the student's name, birth date, school district, school, grade or class assignment, home address, and telephone number; the name, place of employment and work

telephone number of the parent, guardian or relative caregiver; two other names, addresses, and telephone numbers of individuals who can be contacted at times when the parent, guardian or relative caregiver cannot be reached; the name and telephone number of the primary health care provider and family dentist; any medical conditions or allergies the student has; and the student's medical insurance.

"Identifying Data" means the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the ~~parent(s), guardian(s) or Relative Caregiver.~~ parents, guardians, or relative caregivers.

"Progress Report" means a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized ~~test(s) tests~~ scores such as the state student assessment; and attendance data for each year of the student's attendance.

"Public School" means a school or charter school having any or all of grades kindergarten through ~~twelve, grade 12,~~ supported primarily from public funds and under the supervision of public school administrators.

"Student Transcript" means a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized ~~test(s) tests~~ scores such as the state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

2.0 Education Records Required by Schools in Delaware

- 2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.
 - 2.1.1 The student Cumulative Record File shall contain the Emergency/Nursing Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.
 - 2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district's possession, and;
 - 2.1.3 The Cumulative Record File for a child with a disability as defined in 14 **DE Admin Code** 925 or for a child identified under Section 504 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

3.0 Transfer of the Records of Public School and Private Schools Students

- 3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children, Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.
- 3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.
 - 3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children, Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.
 - 3.2.1.1 Public schools and school districts shall maintain the original Cumulative Record File and provide a copy of the file when students transfer to a private school or educational program operated by the Department of Services for Children, Youth and Their Families.
 - 3.2.1.2 Public schools and school districts shall provide the original Cumulative Record File when transferring records to another public school.

PROPOSED REGULATIONS

- 3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children, Youth and Their Families to deny or to delay transfer of the Cumulative Record File.
- 3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.
- 3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.
- 3.4 When students transfer to a Delaware school from any other school including a school in a foreign ~~country~~ country, the receiving school is responsible for having the transcripts evaluated.
- 3.5 Upon the closure of a charter school, the student's Cumulative Record File shall be forwarded to the receiving school in accordance with charter school closure protocol as outlined in 14 Del.C. §512(16) and §515(i).

4.0 Maintenance of the Education Records of Public Schools

- 4.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.
- 4.2 Contracts for storage of student records of graduates, withdrawals and special education students shall be initiated between the school district or charter school and the Delaware Public Archives.
- 4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

5.0 Destruction of Education Records of Public Schools

- 5.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.
- 5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 DE Admin. Code 927.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 101, 121(a), 122(b)(1) and (b)(2)
 (14 Del.C. §§101, 121(a), 122(b)(1) and (b)(2))
 14 DE Admin. Code 612

PUBLIC NOTICE

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

612 Possession, Use or Distribution of Drugs and Alcohol

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §101, §121(a) and §122(b)(1) and (b)(2), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 612 Possession, Use or Distribution of Drugs and Alcohol. This regulation is being amended to add a definition of "Hand Sanitizer" in order to clarify its use in response to the COVID-19 pandemic and beyond, as well as to edit the regulation to comply with the *Delaware*

Administrative Code Drafting and Style Manual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not directly address students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment regulation will help ensure all 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 continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
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 is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 100RFA 08-01-20.pdf>

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 Purpose

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

2.0 General Provisions

~~2.1 The following provisions shall apply to all public school district and charter schools:~~

- ~~2.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.~~

PROPOSED REGULATIONS

- 2.1.2- ~~Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.~~
- 2.1.3- ~~Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.~~
- 2.1.4 ~~All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 Del.C. Ch. 47, turned over to police as potential evidence.~~

3.02.0 Definitions

~~The following definitions shall apply to this regulation, unless a specific regulation, statute or the context in which they are used clearly indicates otherwise, and shall apply to all public school districts and charter schools. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:~~

"Alcohol" means alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"Designated Caregiver" means, pursuant to 16 **Del.C.** §4902A(5), a person ~~who~~ who is at least ~~24~~ twenty-one (21) years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than ~~5~~ five (5) qualifying patients with their medical use of marijuana.

"Distribute", "Distributing" or "Distribution" means the transfer or attempted transfer of Alcohol, a Drug, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"Drug" means any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"Drug Like Substance" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco and Smoking Policy.

"Drug Paraphernalia" means all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging Drugs.

"Hand Sanitizer" means a commercially available health care topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

"Look Alike Substance" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See ~~16 Del.C. §4752A.~~

"Medical Marijuana Oil" means as defined in 16 **Del.C.** §4902A(10).

~~"Nonprescription Medication medication" means any over the counter medication; some of these medications may be a "Drug Like Substance. that can be sold legally without a prescription. This definition may include a Drug Like Substance but excludes Hand Sanitizer.~~

~~"Possess" "Possess", "Possessing" or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance, or Drug Paraphernalia.~~

~~"Prescription Medication(s) medication" means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 ~~Del.C.~~ §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found a legal drug that has a written order for a student by a licensed health care provider licensed to prescribe medication.~~

~~"Relative Caregiver" means an individual who meets the criteria and requirements of 14 ~~Del.C.~~ §202 (f)(1).~~

~~"School Environment" means within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at ~~extra-curricular~~ extra-curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.~~

~~"Use" means that a student is reasonably known to have ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.~~

3.0 General Provisions

3.1 The following provisions shall apply to all public school district and charter schools:

3.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.

3.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

3.1.3 Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search and will result in loss of the privilege to bring the vehicle on campus.

3.1.4 All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 ~~Del.C.~~ Ch. 47, turned over to police as potential evidence.

4.0 Requirement of Each School District and Charter School to have a Policy

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.1 A system of notification of each student and their parent, guardian or ~~Relative Caregiver~~ relative caregiver at the beginning of the school year, of the state and district policies and regulations. In ~~addition~~ addition, a system for the notification of each student and their parent, guardian or

PROPOSED REGULATIONS

- ~~Relative Caregiver~~ relative caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
- 4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.
- 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or ~~Relative Caregivers~~ relative caregivers and to the Department of Education, while maintaining confidentiality.
- 4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- 4.1.5 A written policy on search and seizure.
- 4.1.6 A program of assistance for students with counseling and referral to services as needed.
- 4.1.7 A policy in cases involving a Drug Like Substance or a Look Alike Substance for establishing that the student intended to use, possess or distribute the substance as a Drug.
- 4.1.8 A policy which establishes how Prescription ~~Medications~~ medications and Nonprescription ~~Medications~~ medications shall be handled in the School Environment and when they will be considered unauthorized and subject to these state and local policies.
- 4.1.9 A policy which sets out the conditions for return after expulsion for Alcohol or Drug infractions.
- 4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler with an individual prescription label, an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump") or Hand Sanitizer; provided, nevertheless, that the student uses the inhaler, autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the ~~parent(s) or legal custodian(s)~~ parents or legal custodians of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.
- 4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.
- 4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.
- (For students who use prescribed asthmatic quick relief inhalers, autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy or Hand Sanitizer, see 14 **DE Admin. Code** 817, Administration of Medications and ~~Treatments~~) Treatments.)
- 4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of ~~dose(s)~~ doses prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

5.0 Reporting Requirements and Timelines

- 5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of Drugs and Alcohol policy on file with the Department of Education.
 - 5.2 When a local school district or charter school revises its possession, use, and distribution of Drugs and Alcohol policy, it shall notify the Department of Education of the revised policy within thirty (30) days of the revision, even if the revision was made because of changes in federal, state or local law, regulations, guidance or policies.
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OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 101, 121(a), 122(b)(1) and (b)(2)
(14 Del.C. §§101, 121(a), 122(b)(1) and (b)(2))
14 DE Admin. Code 817

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****817 Medications and Treatments****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §101, §121(a) and §122(b)(1) and (b)(2), the Secretary of Education seeks to amend 14 DE Admin. Code 817 Medications and Treatments. This regulation is being amended to add a definition of "Hand Sanitizer" in order to clarify its use in response to the COVID-19 pandemic and beyond, as well as to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not directly address students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment regulation will help ensure all 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 continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed

in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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 is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 105RFA 08-01-20.pdf>

817 Medications and Treatments

1.0 Purpose

The purpose of this regulation is to provide guidance regarding the medications and treatments to be provided to students pursuant to current Delaware Code.

2.0 Definitions

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

“Approved School Activity” means a school-sponsored field trip or approved school activity outside of the traditional school day or ~~off campus~~ off campus.

“~~Assist(ance)~~ Assistance with Self-Administration of Medication” means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail for life-threatening symptoms of a diagnosed ~~condition~~, condition and includes the administration of the medication based on the healthcare provider’s order and parent permission.

“Controlled Medication medication” means those prescribed drugs regulated by Federal (Controlled Substance Act of 1970) ~~and/or~~ or State Controlled (dangerous) Substances Act.

“Current” means a medication or prescription that is not outdated or expired according to the date on the label. A current prescription is written for a specific time period, not to exceed one (1) year.

“Dosage” or **“Dose”** means a specific amount of medication prescribed or directed to be taken at any one (1) time.

“Educators” means teachers, administrators, and paraeducators employed by a school.

“Emergency Medication” means a medication necessary for response to a life-threatening allergic reaction.

“Emergency Medication for a Diagnosed Medical Condition” means a medication prescribed to treat a life-threatening symptom of a diagnosed medical condition.

“Emergency Medication Summary Sheet” means a document developed by the Department of Education and the Division of Public Health to report the use of Emergency Medication in the school setting.

“Field Trip” means any off campus, school sponsored activity.

“Hand Sanitizer” means a commercially available healthcare topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

“Licensed Healthcare Provider” means anyone lawfully authorized to prescribe medications and treatments.

“Medication” means a legal drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs. This definition excludes Hand Sanitizer.

“Non-prescription Medication medication” means any over-the-counter medication that can be sold legally without a prescription. This definition excludes Hand Sanitizer.

“Other School Employees” means coaches or persons hired or contracted by schools.

“Paraeducators” mean teaching assistants or aides in a school.

“Prescription Medication medication” means a legal drug that has a written order for an individual student by a licensed ~~health-care~~ healthcare provider licensed to prescribe medication.

“School” means an educational facility serving students in kindergarten through grade 12 and any associated pre-kindergarten program in such facility.

“School Nurse” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“Self-Use of Hand Sanitizer” means a student using Hand Sanitizer in a legally permissible manner.

“Traditional School Day school day” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

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

“Trained Person” means an Educator or Other School Employee who has completed the training to administer Emergency ~~Medicine~~ medication to diagnosed and undiagnosed students with symptoms of a life-threatening allergic reaction in the school setting.

3.0 Medications

- 3.1 Medications may be administered to a public school student by the School Nurse when a written request to administer the medication or treatment is on file from the parent, guardian or ~~Relative Caregiver~~ relative caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~) 42 U.S.C. §11434a).
 - 3.1.1 The School Nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.
 - 3.1.2 The School Nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 3.2 In addition to the requirements set forth in subsection 3.1 above, in the case of a Prescription ~~Medications~~ medications, the requirements set forth below in subsections 3.2.1 through 3.2.4 shall also apply.
 - 3.2.1 Prescription medications shall be provided to the School in the original container and properly labeled with the student's name; the prescribing licensed ~~health-care~~ healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
 - 3.2.2 Medications and dosages administered by the School Nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses

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or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.

3.2.3 The prescription and the medication shall be current and ~~long-term~~ long-term prescriptions shall be reauthorized at least once a year.

3.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the School Nurse and kept under double lock. Such medications should be transported to and from School by an adult.

3.3 Non-prescription ~~Medication~~ medication must be in an original container with full label and may be given by the School Nurse after the School Nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

4.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed ~~health care~~ healthcare provider with directions relative to administration or supervision.

5.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the School Nurse.

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

6.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 ~~Del.C.~~ §1921(a)(13) to assist a student with self-administration of Medications at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:

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

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

6.1.1.1.1 Doses may be provided for up to one week, unless covering an Approved School Activity lasting longer than this time ~~period,~~ period and shall be maintained in a secure location.

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

6.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining doses for greater than one day is not permitted except in the case of an overnight activity.

6.1.1.3 Non-prescription medications shall be provided to the School Nurse by the parent in an original container along with a current, written directive from the student's licensed ~~health care~~ healthcare provider and shall include the student's name; the licensed ~~health care~~ healthcare

healthcare provider's name; the name of the medication; the dosage; and how and when it is to be administered.

6.1.2 In order to be qualified to provide Assistance with Self-Administration of Medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921(a)(13). Training shall be renewed minimally every five years. No person shall provide Assistance with Self-Administration of Medications without documented acknowledgment to the Department of Education that ~~he/she~~ has they have completed the course and that ~~he/she~~ understands they understand the same, and will abide by the safe practices and procedures set forth therein. A School Nurse shall:

6.1.2.1 Complete instructor training as designated by the Department of Education.

6.1.2.2 Oversee the training for Educators and Other School Employees.

6.1.2.3 Coordinate the collection and review of the written parental consent.

6.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the Trained Assistant for Self-Administration.

6.1.3 Each School shall maintain a record of all students receiving Assistance with Self-Administration of Medications pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.

6.1.4 The School Nurse may prepare a Trained Assistant for Self-Administration to render emergency care to a student, with a known, diagnosed condition, who is in pre-kindergarten through Grade 12 and shows life-threatening signs and symptoms of the condition at an Approved School Activity.

6.1.4.1 Response shall include immediate activation of emergency medical services.

6.1.4.2 Preparation shall include instruction in the provision of the student's Emergency Medication for a Diagnosed Medical Condition, including injection, for symptoms related to the condition. Instruction will be based on the healthcare provider's order and the manufacturer's instructions for administration.

6.1.4.3 The Trained Assistant for Self-Administration shall annually demonstrate ~~his/her~~ their ability to provide Emergency Medication for a Diagnosed Medical Condition.

6.1.4.4 An Emergency Medication for a Diagnosed Medical Condition shall be a current prescription provided by the student's licensed healthcare provider for a diagnosed medical condition that requires immediate medication to save or sustain life and is one which can be safely provided by a Trained Assistant for Self-Administration.

6.1.4.5 In addition to subsection 6.1.3, the Trained Assistant for Self-Administration shall provide documentation related to the rendering of emergency care, to include at a minimum, the student's symptoms, time of the incident, medication administered, other actions taken, and the response by emergency medical services.

6.2 District and charter school boards may develop policies for unique Approved School Activities for which the specified process is unable to be implemented.

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

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

7.1.1 ~~Public~~ School Nurses shall follow the Division of Public Health's medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals.

7.1.2 Trained Persons shall follow the guidance issued by the Division of Public Health on the administration of Emergency Medications without an order in the school setting to undiagnosed individuals.

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

- 7.2.1 An identified person cannot be compelled to become a Trained Person, unless training is a requirement of their position, hire, or contract.
- 7.2.2 The training shall be a program approved by the Department of Education and the Division of Public Health.
- 7.2.3 The Trained Person shall annually re-train or demonstrate competency as a Trained Person.
- 7.2.4 The School shall maintain documentation of annual training and Trained Persons and make available upon request to the Department of Education or Division of Public Health.
- 7.3 The School shall maintain current, stock Emergency Medication.
 - 7.3.1 Emergency Medication shall be stored in a minimum of two (2) secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other for the Trained Person.
- 7.4 The School shall maintain documentation of the use of Emergency Medication.
 - 7.4.1 The Trained Person shall complete the Emergency Medication Administration by Trained Person Sheet on the day of the any administration and shall submit to the School Nurse.
- 7.5 The School Nurse shall submit the Emergency Medication Summary Sheet to the Department of Education and the Division of Public Health within 48 hours of the use of an Emergency Medication.

8.0 Other School Employees Obligation

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

9.0 Self-Use of Hand Sanitizer

- 9.1 Annually each district and charter school shall publish on its website, and through at least one (1) other format, that Hand Sanitizer will be available for student use.
 - 9.1.1 The parent, guardian or relative caregiver shall be provided a process for their child to be identified as unable to use Hand Sanitizer.
 - 9.1.2 The parent, guardian or relative caregiver shall be provided a process for their child to receive assistance on self-use of Hand Sanitizer.
 - 9.1.3 Any information received pursuant to subsections 9.1.1 and 9.1.2 shall be maintained in the student's Cumulative Record File.
 - 9.1.4 Relevant school personnel shall be made aware of any student identified in subsections 9.1.1 and 9.1.2.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine, an insulin pump or administration of medical marijuana oil.

Nonregulatory note: 16 **Del.C.** §3007E provides liability protection for any Trained Person or School Nurse, who, in good faith and without expectation of compensation from the person aided or treated, administers Emergency Medication.

Nonregulatory note: 16 **Del.C.** §4904A provides exceptions for the administration of medical marijuana oil by a parent or designated caregivers.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1531

PUBLIC NOTICE

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

1531 Middle Level English Language Arts Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for a Middle Level English Language Arts Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Middle Level English Language Arts Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Middle Level English Language Arts Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Middle Level English Language Arts Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before September 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure 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 does not change authority and flexibility of decision makers at the local board and school level. By statute (14 Del.C. § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for the Middle Level English Language Arts Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates

upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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 is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies. The amended regulation provides the education, knowledge, and skill requirements to become certified as a teacher of English language arts.

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 111RFA 08-01-20.pdf>

1531 Middle Level English Language Arts Teacher

1.0 Content

- 4.4 This regulation shall apply to the issuance of a Middle Level English Language Arts Teacher Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), ~~for Middle Level English Language Arts Teacher~~. This ~~certification~~ Certification is required for grades 6, 7 and 8 in a ~~Middle Level~~ middle level Delaware public school. Notwithstanding the above requirement, the Secondary English Language Arts Teacher ~~Certification~~ Standard Certificate may be used for grades 6, 7 and 8 in a ~~Middle Level~~ middle level school in lieu of ~~this certification~~ the Middle Level English Language Arts Teacher Standard Certificate.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2.1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2.2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise~~:
- "Certification"** means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.
- "Department"** means the Delaware Department of Education.
- "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 Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority"** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

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

"Major or Its Equivalent" means a minimum of 30 semester hours of coursework in a particular content area.

"Passing Score" means a minimum score as established by the Professional Standards Board, Standards Board in consultation with the Department and with the approval of the State Board of Education.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Middle Level English Language Arts Teacher Standard Certificate as a ~~Middle Level English Language Arts Teacher~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
- 3.1.2 Has met the requirements as set forth in ~~14 DE Admin. Code 1505~~ Standard Certificate, including any subsequent amendment or revision thereto; and Has met the requirements for licensure and presents proof of a Valid and Current License or Certificate as a middle level English language arts teacher.
- 3.1.3 Has satisfied the additional requirements in this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Middle Level English Language Arts Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An educator shall have also met the following:
- 4.1.1 achieved on the ~~Praxis Subject Assessment—Middle School English Language Arts (ETS Test # 5047)~~ a Passing Score of 164.
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.

PROPOSED REGULATIONS

4.1.1 The applicant shall have:

- 4.1.1.1 Obtained and currently maintain an English Language Arts certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in middle level English language arts education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach middle level English language arts as provided in 14 Del.C. §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in middle level English language arts education.

4.1.2 The applicant shall have achieved a Passing Score of 164 on the Praxis Subject Assessment - Middle School English Language Arts (ETS Test Code # 5047).

- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on the Praxis Subject Assessment as provided in subsection 4.1.2.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Middle Level English Language Arts Teacher Standard Certificate:
 - 5.2.1 Evidence of obtaining and maintaining an English Language Arts certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Middle Level English Language Arts Teacher Standard Certificate:
 - 5.3.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a middle level English language arts teacher, the following documentation is required in the application for a Middle Level English Language Arts Teacher Standard Certificate:
 - 5.4.1 An official copy of the Valid and Current License or Certificate; and
 - 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

- 6.1 A Middle Level English Language Arts Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Middle Level English Language Arts Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

- 7.1 An Educator's Middle Level English Language Arts Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Middle Level English Language Arts Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Middle Level English Language Arts Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Middle Level English Language Arts Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.0 Past Certificate Recognized

The Department shall recognize a Middle Level English Language Arts Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach middle level English language arts.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1540

PUBLIC NOTICE

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

1540 Secondary English Language Arts Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1540 Secondary English Language Arts Teacher. The regulation concerns the requirements for a Secondary English Language Arts Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a Secondary English Language Arts Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Secondary English Language Arts Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Secondary English Language Arts Teacher Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business (4:30 p.m.) on or before September 2, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure 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 does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for the Secondary English Language Arts Teacher Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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 is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies. The amended regulation provides the education, knowledge, and skill requirements to become certified as a teacher of English language arts.

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 115RFA 08-01-20.pdf>

1540 Secondary English Language Arts Teacher

1.0 Content

- 4-1 This regulation shall apply to the issuance of a Secondary English Language Arts Teacher Standard Certificate, Certificate pursuant to 14 ~~Del.C.~~ §1220(a), ~~for Secondary English Language Arts Teacher.~~ This ~~certification~~ Certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level English Language Arts Teacher certification in grades 6 to 8 in Delaware public schools. The Secondary English Language Arts Teacher Standard Certificate may be used for grades 6, 7 and 8 in a middle level school in lieu of the Middle Level English Language Arts Teacher Standard Certificate.
- 4-2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~
- 2-2 The following ~~word~~ words and ~~term~~ terms, when used in this regulation, shall have the following meaning ~~unless the context clearly indicates otherwise:~~
- "Certification" means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.
- "Department" means the Delaware Department of Education.
- "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 Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- "Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "Major or Its Equivalent" means a minimum of 30 semester hours of coursework in a particular content area.
- "Passing Score" means a minimum score as established by the ~~Professional Standards Board,~~ Standards Board in consultation with the Department and with the approval of the State Board of Education.
- "Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.
- "Standards Board" means the Professional Standards Board established pursuant to 14 ~~Del.C.~~ §1201.
- "Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good

PROPOSED REGULATIONS

standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Secondary English Language Arts Teacher Standard Certificate as a ~~Secondary English Language Arts Teacher~~ to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, ~~2003~~; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
- 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure and presents proof of a Valid and Current License or Certificate as a secondary English language arts teacher.
- ~~3.1.3 Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Secondary English Language Arts Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~An educator shall have also met the following:~~
- 4.1.1 ~~achieved on the Praxis Subject Assessment – English Language Arts: Content Knowledge (ETS Test # 5038) a Passing Score of 167.~~
- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Obtained and currently maintain an English Language Arts certificate from the National Board for Professional Teaching Standards; or
- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in secondary English language arts education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach secondary English language arts as provided in 14 Del.C. §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in secondary English language arts education.
- 4.1.2 The applicant shall have achieved a Passing Score of 167 on the Praxis Subject Assessment - English Language Arts: Content Knowledge (ETS Test Code # 5038).
- 4.2 For an applicant who holds at least one content area Standard Certificate, the applicant shall have achieved a Passing Score on the Praxis Subject Assessment as provided in subsection 4.1.2.

5.0 **Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

- 5.2 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Secondary English Language Arts Teacher Standard Certificate:
- 5.2.1 Evidence of obtaining and maintaining an English Language Arts certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.4 Additional documentation as required by the Department.
- 5.3 For an applicant who holds at least one content area Standard Certificate, the following documentation is required in the application for a Secondary English Language Arts Teacher Standard Certificate:
- 5.3.1 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate as a secondary English language arts teacher, the following documentation is required in the application for a Secondary English Language Arts Teacher Standard Certificate:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
 - 5.4.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

- 6.1 A Secondary English Language Arts Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Secondary English Language Arts Teacher Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

- 7.1 An Educator's Secondary English Language Arts Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Secondary English Language Arts Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Secondary English Language Arts Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Secondary English Language Arts Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

9.0 Past Certificate Recognized

The Department shall recognize a Secondary English Language Arts Teacher Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard

Certificate shall be considered certified to teach secondary English language arts.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11004

PUBLIC NOTICE

Application Processing and Copay for the Child Care Subsidy Program

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2020. Please identify in the subject line: Application Processing and Copay for the Child Care Subsidy Program.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend Child Care Subsidy Program regarding Application Processing and Copay specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Statutory Authority

- 42 U.S.C. 9858
- 42 U.S.C. 618
- 45 CFR 98.20
- 45 CFR 98.21
- 45 CFR 98.45 (k)

Background

In 2014, the Child Care and Development Block Grant (CCDBG) Act was signed into law. The CCDBG Act authorizes the Child Care and Development Fund (CCDF), which is the primary federal funding source that provides eligible low-income families with child care assistance and improves the overall quality of child care. The CCDBG Act mandates new child care eligibility requirements for states. DSS is proposing to amend DSSM policies 11004.5, 11004.7, and 11004.7.1 to meet the requirements of the CCDBG Act.

DSS revised DSSM 11004.5 to update the case processing procedures for determining eligibility for child care. DSS removed the name of the obsolete eligibility system, DCIS II, and added steps that DSS case workers must complete once child care has been approved, including authorizing cases for 12 months, entering copayments, and notifying families of their eligibility determinations.

DSS revised DSSM 11004.7 to replace the policy on parent fees with a copayment policy to provide guidance on the new copayment structure that was developed for families receiving child care subsidy. Previously, families contributed to the cost of child care by paying a parent fee. Beginning in 2019, DSS transitioned from the parent fee to a copayment model. The revised policy explains how DSS determines a family's copayment and lists reasons DSS will waive a copayment.

DSS revised DSSM 11004.7.1 to replace the obsolete policy on parent fees with a new policy on determining excessive financial burden for families receiving child care subsidy. DSS considers a family to have an excessive financial burden for the Purchase of Care program when the family's disposable income is below 40% of the Federal Poverty Level prior to or after certain expense deductions. The policy explains the criteria for the excessive financial burden test. DSS will waive child care copayments for families who are determined to have an excessive financial burden.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Summary of Proposed Changes

Effective for services provided on and after October 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend Division of Social Service Manual regarding Application Processing and Copy specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on August 31, 2020.

Fiscal Impact

	Federal Fiscal Year 2018	Federal Fiscal Year 2019	Federal Fiscal Year 2020
General (State) funds	\$ 41,576,384.00	\$ 40,787,434.00	\$ 48,270,561.00
Federal funds	\$ 30,286,639.00	\$ 32,417,140.00	\$ 40,584,489.00

The proposed regulation does have foreseeable fiscal implications. Delaware's cost for child care has increased due to the federal mandate to eliminate the cost of care payment and switch to a copayment model. In addition, DSS now waives copayments for families that are determined to have an excessive financial burden in accordance with proposed policy, DSSM 11004.7.1.

In April 2019, DSS eliminated the excessive financial burden test when determining family copayments for Purchase of Care. An overall sample size of 78% of DSS child care cases determined that eliminating the excessive financial burden test increased the total amount for family copayments by an average of \$3,095 per month. The new copayment model and the resulting increase to copayment amounts caused a hardship on many families receiving child care subsidy. In October 2019, DSS reinstated the excessive financial burden test to decrease the financial burden on families. This change increased the State's cost by approximately \$65,597 per month.

Another contributing factor to the cost increase for child care is that Purchase of Care providers received two payment increases in FY 2019. The total amount paid for Purchase of Care services from July 2019 - January 2020 increased by \$6,702,002 from the same period in FY 2019.

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 120RFA 08-01-20.pdf>

POLICY – AMENDMENT

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

11004.5 Determination of Processing Eligibility for Child Care

45 CFR 98.20; 45 CFR 98.21

~~DSS programmed the DCIS II Child Care Sub system to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the DCIS II Child Care Sub system will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, the DCIS II Child Care Sub system will send the appropriate notice to inform the parent/caretaker of the DSS child care eligibility decision. Parents/caretakers, whether eligible or not, will always receive a written decision regarding their official request for child care services.~~

The DSS eligibility system determines if families applying for the Purchase of Care (POC) program are eligible for child care subsidy based on federal and state rules.

- 1. DSS case workers will enter a family's financial and technical information into the DSS eligibility system at application, at redetermination, and when a family reports a change in circumstances.**
- 2. DSS case workers will enter child care authorization information into the DSS eligibility system once a child has been determined eligible for the POC program.**
- 3. DSS case workers will authorize eligible children for 12 months of care.**
 - A. An authorization may be set for less than 12 months if the authorization period is requested in writing by:
 - i. The parent or caretaker;
 - ii. A medical professional verifying the length of time child care is required for a special need; or
 - iii. The Delaware Division of Family Services (DFS) verifying the length of time child care is needed to prevent child abuse or neglect.
- 4. DSS case workers will enter the child care copayment amount in the Dependent Care Expense screen of the DSS eligibility system after the copayment has been assigned to each authorization.**
- 5. DSS will send notification to the family of their eligibility and authorization status for the POC program.**
 - A. DSS will send a written notice to the family to confirm or deny eligibility for the POC program.
 - B. DSS will send a letter of authorization for each authorized child to the family. The letter will include:
 - i. The child's name;
 - ii. The child's Master Client Index (MCI) number;
 - iii. The child care provider's name;
 - iv. The type of care (full-time, part-time, or time and a half);
 - v. The number of days of care; and
 - vi. The family's copayment amount.

POLICY – AMENDMENT

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

**11004.7 ~~Determination Of The~~ Determining Child Care Parent Fee and Fee-Waiving Situations Copayments
 45 CFR 98.45 (k)**

~~Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.~~

Child care fees may be waived if the family meets one of the five (5) conditions below:

1. ~~On a case by case basis, families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.~~

2. ~~Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.~~

3. ~~Caretakers in Category 31 caring for a child/ children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).~~

4. ~~When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 40% of the federal poverty level. Deductions are limited to:~~

~~rent, mortgage, lot rent;~~

~~any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);~~

~~actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fee's and past due amounts are not included.~~

~~telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;~~

~~un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)~~

EXAMPLE:

A family of three has gross monthly income of \$1,300.00. The parent fee for this family would be 16% of the cost of care. The rent payment for this family is \$600/ month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals:	\$1,300.00
Total expenses are:	\$785.00
After deductions:	\$515.00

\$515.00 is less than \$553.00, 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.

PROPOSED REGULATIONS

EXAMPLE:

A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals:	\$2,203.00
Total expenses are:	\$785.00
After deductions:	\$1,418.00

\$1,418.00 is more than \$666.00, 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

5. Teen parents 18 years old or younger attending high school or a high school equivalent.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

DSS determines and assigns copayments for families who receive the Purchase of Care (POC) child care subsidy.

1. DSS determines copayments for the POC program according to:

- A. The family's household size;
- B. The family's gross monthly income;
- C. The family's shelter and utility expense deductions; and
- D. A percentage of the family's gross monthly income compared to the Federal Poverty Level (FPL).

2. DSS will waive the copayment if one of the following conditions applies to a family:

- A. The family has net income below 40% of the FPL and is determined to have an excessive financial burden in accordance with DSSM 11004.7.1.
- B. The family has gross income at or below 70% of the FPL.
- C. The family is active with and referred by the Delaware Division of Family Services (DFS), including foster care families.
- D. The family is participating in Delaware's Temporary Assistance for Needy Families (TANF) program.
- E. The child receives TANF and is being cared for by a caretaker who is not the child's natural or adoptive parent.
- F. The parent is age 18 or younger and is attending high school or a high school equivalent.

3. DSS may assign a copayment to a case with a caretaker if the eligible child receives income and does not meet one of the waiver conditions listed in section (2) of this policy.

4. DSS will calculate the family's assigned copayment as a monthly amount.

- A. The copayment will not increase beyond the initial copayment amount during the eligibility period if the family reports an increase in income.
- B. The copayment will decrease during the eligibility period if the family reports a decrease in income.

Note: If a family's copayment decreased during the eligibility period, and then the family reports an increase in income during the same eligibility period, the copayment may increase up to the initial copayment amount assigned at application.

POLICY – AMENDMENT

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

11004.7.1 ~~Child Care Parent Fee Scale and Determination of Fee~~ Determining Excessive Financial Burden for Child Care

45 CFR 98.45 (k)

The assessed child care parent fee is based on family size, family income as a percentage of the poverty scale and the cost of care. The current child care fee scale used to determine the child care parent fee is located in Administrative Notices as the ~~Child Care Sliding Fee Scale Appendix III of the Cost of Living Adjustment Notice.~~

To arrive at the actual fee, look at the current Child Care Sliding Fee Scale (noted above) and use the following steps:

- A. Determine the family size as outlined in section 11003.9.3.
- B. From the family size column, determine the income range of the parent/caretaker.
- C. At the top of the income ranges are percentages from 0% to 36% all the way up to 190% to 200%.

These are the percentages of the federal poverty scale as it relates to family income by family size. It means that a family's income can range between 0% to 36% all the way up to 190% to 200% of the federal poverty scale. Find the appropriate percentage column for your family.

D. Finally, based on family size and income at that appropriate percentage range, look at the percentages below (these are ranges from 1% to 80%). This is the percentage of the cost of care that this family will pay per child based on the percentage of their income as it relates to the federal poverty level.

Families with income between:

Poverty — percentage ranges — based — on income	Percentage of the cost of care paid
0% and 36%	1%
36% and 45%	5%
45% and 55%	7%
55% and 65%	8%
65% and 75%	10%
75% and 85%	12%
85% and 95%	14%
95% and 100%	16%
100% and 105%	21%
105% and 115%	23%
115% and 120%	25%
120% and 125%	30%
125% and 135%	32%
135% and 145%	44%

PROPOSED REGULATIONS

145% and 155%	46%
155% and 160%	48%
160% and 170%	50%
170% and 180%	60%
180% and 190%	70%
190% and 200%	80%

E. Finally, based upon the type of care (i.e., home, center, etc.) a parent/caretaker selects, multiply the percentage of the cost of care by the cost for that type of care. This is the parent fee the parent/caretaker will pay.

This is a per child fee. If more than one child is in care, repeat the calculations for each child, then combine all the per child fees to arrive at the total fee.

EXAMPLE: Based upon income and family size, a parent is to pay seven percent of the cost of care for a three-year-old child in a contracted child care center. If the cost of care for a child over two in a center is \$12.40 per day, multiply \$12.40 by .07, giving the parent a fee of .87 cents per day for that child.

NOTE: Use the same rules for determining family size for the child care fee scale as done for determining family size for income. Include all of the family's children under age 18 in the family size even if not all will need child care services. In other words, the people whose needs and income are included together are counted together to comprise the definition of family size. Review Section 11003.9.3 for further guidance.

DSS programmed the DCIS II Child Care Sub-system to do the actual child care parent fee calculation.

The child care parent fee which shows in the DCIS II Child Care Sub-system is the actual amount of care that is authorized. The actual fee the parent/caretaker pays for that child is indicated on the authorization form.

DSS determines if a family has an excessive financial burden when establishing the family's copayment for the Purchase of Care (POC) program.

1. DSS considers a family to have an excessive financial burden for the POC program if the family's net income is below 40% of the Federal Poverty Level (FPL) prior to or after DSS deducts certain household expenses from the family's gross income.

- A. When determining excessive financial burden, expense deductions are limited to:
- i. Rent, mortgage, and lot rent;
 - ii. Any mandatory expense required by a landlord or a mortgage holder (e.g., homeowners insurance, property taxes, and school taxes);
 - iii. Current monthly utility expenses (e.g., electric, gas, trash, water, and sewer), excluding late fees and past due amounts;
 - iv. Telephone expenses, which are capped at the same rate as the Food Supplement Program's standard allowance; and
 - v. Unreimbursed medical costs.
 - a. Before considering medical costs as a deduction, a family not already receiving Medicaid or the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or DHCP.
 - b. The DHCP premiums are included in the unreimbursed medical cost deduction.
 - c. DSS will consider any unreimbursed medical costs not covered by Medicaid or DHCP as a deduction to determine the family's income for excessive financial burden.
- B. Case workers must verify all expenses by using:
- i. The documentation of the actual billed expense;
 - ii. A receipt of payment;

- iii. A signed lease; or
- iv. A DSS approved form detailing the expense.
- C. DSS will apply one of the following utility allowances as a deduction to a family's gross income when applicable:
 - i. The heating and cooling standard utility allowance (HCSUA);
 - ii. The limited utility allowance (non-heating/non-cooling);
 - iii. The one-utility allowance; or
 - iv. The telephone allowance.

2. DSS will deduct allowable and verified expenses from a family's gross income to determine if the family's net income falls below 40% of the FPL for excessive financial burden.

3. DSS will waive child care copayments for families who are determined to have an excessive financial burden.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

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

REGISTER NOTICE SAN # 2019-02

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste* (DRGHW)

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

To provide greater environmental protection and to reduce human health risks, the Compliance and Permitting Section (CAPS) proposes to modify the DRGHW to incorporate federal amendments into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act (RCRA) program delegation and remain current with the federal hazardous waste program.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Sections 6010(a) and 6305(a).

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

None

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing on the proposed amendments to DRGHW (Docket #2020-R-WH-0020) will be held on

PROPOSED REGULATIONS

Thursday, August 27, 2020, beginning at 6:00 PM. A web link to the virtual hearing will be posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use iUp5w2XNns3. To access the audio-only portion of the virtual hearing, dial in at 1-408-418-9388 and enter event code 129 301 6372. Closed-captioning available by request if made at least 7 days before the event.

The proposed amendments may be inspected online as of August 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person by appointment only by contacting contact Melissa Ferree by phone at 302-739-9403; or by email at Melissa.Ferree@delaware.gov.

The hearing record will remain open for at least 15 days following the date of the hearing. The Department will accept public comment through the close of business on Friday, September 11, 2020 and comments pertaining to the above regulations will only be accepted in written form via:

Email: DNRECHearingComments@delaware.gov

Online Form: <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>

or via USPS to the following address:

Theresa Newman, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway
Dover, DE 19901

7. PREPARED BY:

Melissa Ferree, Engineer III, Solid and Hazardous Waste Management Section - (302) 739-9403

*Please Note:

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 127RFA 08-01-20.pdf>

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

<http://regulations.delaware.gov/register/august2020/proposed/DRGHW Proposed Regs.pdf>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 2900 REAL ESTATE COMMISSION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 Del.C. §2906(a)(1))
24 DE Admin. Code 2900

PUBLIC NOTICE

2900 Real Estate Commission

Pursuant to 24 Del.C. § 2906(a)(1), the Delaware Real Estate Commission ("Commission") has proposed revisions to its rules and regulations.

On December 1, 2019, proposed revisions to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 23, Issue 6. Specifically, the Commission's proposed regulations included a new subsection 8.5 which set forth requirements for real estate "teams." New Section 9.0 addressed the scope of permissible activities under the property management licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shortened the late renewal period from 60 to 30 days and clarified that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement were amended. As set forth in the new subsection 14.13, new licensees would be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve

hours were to be completed within 90 days after the date of initial licensure and would not count towards the continuing education required for license renewal. New licensees would also be required to complete the continuing education applicable to all licensees pursuant to the pro-ration schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 would be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 would be imposed for a second finding of unjustified noncompliance.

A public hearing was held on January 9, 2020. The Commission deliberated on February 13, 2020, and based on those deliberations, made substantive revisions to the proposed rules and regulations. Pursuant to a Public Notice published in the March 1, 2020 *Register of Regulations*, Vol. 23, Issue 9, the Commission struck the rules and regulations as proposed in the December 1, 2019 *Register of Regulations* and proposed further revisions. A hearing was scheduled for April 9, 2020. However, due to the State of Emergency related to COVID-19, the hearing was canceled.

The revised rules and regulations, as set forth in the March 1, 2020 *Register of Regulations*, are attached hereto as Exhibit A. Any person wishing to submit written suggestions, testimony, briefs or other written materials concerning the proposed rules and regulations should submit such comments no later than **August 31, 2020** to:

Danielle Cross, Administrative Specialist III
Delaware Real Estate Commission
Delaware Division of Professional Regulation
Cannon Building, Suite 203
861 Silver Lake Boulevard
Dover, Delaware 19904
Email: danielle.cross@delaware.gov
Fax: (302) 739-2711

***Please Note:**

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 128RFA 08-01-20.pdf>

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

2900 Real Estate Commission

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 **Delaware Code** §302 and 29 **Delaware Code** §8404(8)
(21 **Del.C.** §302 & 29 **Del.C.** §8404(8))
2 **DE Admin. Code** 2222

PUBLIC NOTICE

2222 School Bus Driver Qualifications and Endorsements

Pursuant to the authority provided by 21 *Del. C.* §302 and 29 Delaware Code, Section 8404(8), the Delaware Division of Motor Vehicles (DMV), adopted the School Bus Driver Qualifications and Endorsements.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the School Bus Driver Qualifications and Endorsements, to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through these regulations.

Public Comment Period

DMV will take written comments on these proposed general revisions to Regulation 2222 of Title 2, Delaware Administrative Code, from August 1, 2020 through August 31, 2020. The public may submit their comments to:

Rick Cesta, Chief of Driver Services, Division of Motor Vehicles

(rick.cesta@delaware.gov) or in writing to his attention,

Delaware Department of Transportation (DelDOT)

Division of Motor Vehicles

PO BOX 698

Dover, DE 19903

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

<http://regulations.delaware.gov/register/august2020/proposed/24 DE Reg 129RFA 08-01-20.pdf>

2222 School Bus Driver Qualifications and Endorsements**1.0 Authority**

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §2708, 21 **Del.C.** §2709.

2.0 Purpose

2.1 This regulation establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on a Delaware commercial driver licenses.

2.2 The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

3.0 Applicability

This regulation interprets §2708 and §2709 of Title 21 of the **Delaware Code**.

4.0 Definitions.

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

~~“Air Brake Restriction” means a restriction that prohibits the CDL holder from operating a school bus (or any commercial motor vehicle) which is equipped with air brakes. The CDL will be marked with an “L”.~~

“**Commercial Driver License (CDL)**” means a driver license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

CDL CLASS A - Required for the operation of vehicles with a registered, actual or gross vehicle weight rating (GVWR) of 26,001 or more pounds and the vehicle is towing a vehicle with a registered, actual or GVWR of 10,000 or more pounds. The holder of a Class A CDL may, with proper endorsement, operate any Class B or Class C vehicle.

CDL CLASS B - Required for the operation of vehicles with a registered, actual or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds. The holder of a Class B CDL may, with proper endorsement, operate any Class C vehicle.

CDL CLASS C - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

“**Commercial Learner Permit (CLP)**” means a commercial learner permit issued pursuant to 21 **Del.C.** §2608(d).

“Commercial Motor Vehicle (CMV)” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or
- Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is required to be placarded for the transportation of hazardous materials.

~~“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.~~

“P” Endorsement, (P) means an endorsement that authorizes a driver to transport passengers in all classes of commercial motor vehicles.

“S” Endorsement, (S) means an endorsement that indicates the CLP/CDL holder meets the requirements of 21 Del.C. §2708 and this regulation and is authorized to operate a school bus. The CLP/CDL (S) endorsement must also be accompanied by a (P) endorsement and any necessary restrictions that may be applicable.

“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Delaware Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.

“Restriction, (L)” means a limitation that restricts the driver from operating any CMV which is equipped with air brakes.

“M” Restriction, (M) means a limitation that restricts the driver from operating any CMV Class A passenger vehicle.

“N” Restriction, (N) means a limitation that restricts the driver from operating any CMV Class A and B passenger vehicle.

“P” Restriction, (P) means a limitation that restricts the driver from operating any CMV with passengers.

“Road Test” means a 3 part skills test in a commercial motor vehicle that includes a vehicle pre-trip safety inspection evaluation, a vehicle skills maneuver evaluation, and an on-road driving skills evaluation.

“School Bus” as specified by 21 Del.C. §2603(29) means a commercial motor vehicle used to transport pre-primary, primary or secondary school students from home to school, from school to home, or to and from school-sponsored events, or any vehicle which meets the regulatory requirements adopted by the Department of Education with the advice of the Division of Motor Vehicles as specified under 14 Del.C. §2901. School Bus does not include a bus used as a common carrier.

“Yellow Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of DOE requirements for an (S) endorsement as specified in 21 Del.C. §2708. The applicant will surrender the Yellow Card to the DMV when the applicant’s school bus endorsement is issued. The DMV will forward the Yellow Cards to DOE.

5.0 Substance of Policy

5.1 Procedures.

5.1.1 Basic Requirements:

- 5.1.1.1 Basic. School bus drivers are required to have been issued and have in their possession, while driving a school bus, a CDL with an (S) endorsement, a (P) endorsement, any applicable restrictions, and a valid physical examination certification (Green Card).

PROPOSED REGULATIONS

- 5.1.1.2 Exceptions. These exceptions are only for drivers undergoing school bus training and evaluation.
- 5.1.1.2.1 Basic Training. For training and evaluation a driver may drive a school bus with a valid CLP containing the proper passenger endorsements and applicable restrictions (P, S, M, N, L), but only when accompanied by a DOE Certified Delaware School Bus Driver Trainer (CDSBDT) or a DMV Examiner. In addition, for vehicle maneuvering skills training, a driver may drive a school bus with a valid CLP containing the proper passenger endorsements and applicable restrictions (P, S, M, N, L) when accompanied by a driver with a valid CDL with an (S) endorsement and other applicable endorsements/restrictions.
- 5.1.1.2.2 45-Day Temporary (S) Endorsement for Classroom Training Unavailability. If a driver has completed all DMV CDL requirements, including the DMV road test, and the DOE 4 hours of on-bus training, the DMV may, upon specific written DOE request, issue a CDL license along with a one-time only temporary (S) endorsement for a period not to exceed 45 days. This temporary (S) endorsement allows the driver to carry students upon successful completion of the last 2 hours of DOE on-board training, if all other (S) endorsement requirements have been met. This temporary (S) endorsement is intended for the driver who, due to exceptional circumstances, has been unable to complete the DOE classroom training. This temporary (S) endorsement will only be issued one time and cannot be extended.
- 5.1.1.2.3 Temporary (S) Endorsement Conversion. The DMV will convert the temporary (S)-endorsed CDL to an (S)-endorsed CDL upon receipt of certification (Yellow Card) issued to the applicant by the district/school transportation supervisor (subsection 5.1.2.11 of this regulation) indicating that the required training has been completed. The DMV will forward the Yellow Cards to DOE.
- 5.1.2 Initial Issuance Requirements: All of the following requirements shall be met by all new ~~and out-of-state transfer~~ applicants applying for an (S) endorsement. Drivers must:
- 5.1.2.1 Be 18 years of age or older with at least one (1) year of valid driving experience.
- 5.1.2.2 Have a valid Delaware Class D driver license or CDL with a (P) endorsement.
- 5.1.2.3 Pass the applicable knowledge tests administered by the DMV containing specific content as required by 49 C.F.R. 383.123(a)(2).
- 5.1.2.4 Obtain a Delaware CLP with (P) and (S) endorsements and ~~M-(or-N)-and-P~~ (M or N) and (P) restrictions.
- 5.1.2.5 Complete a driver training course with specific course content as determined by 49 C.F.R. 383.123(a)(2) and DOE requirements as specified in 21 **Del.C.** §2708(b)(3).
- 5.1.2.6 Pass a road test in a school bus administered by the DMV as required by 49 C.F.R.383.123 (a)(3). NOTE: Per 49 C.F.R. 383.25 (e), an applicant must hold a CLP for a minimum of 14 days before they are eligible to receive a road test by the DMV.
- 5.1.2.7 Not have more than five (5) points (full point value) on the applicant's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to (S) endorsement holders in meeting this requirement.
- 5.1.2.8 Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five (5) years. This five (5) year period will begin from the date the suspension, revocation or disqualification has been cleared. Certified driving records from other jurisdictions may be requested from these applicants for the DMV to verify compliance with this section.
- 5.1.2.9 Never been convicted of any crime under the laws of this State or any other jurisdiction as specified in 21 **Del.C.** §2708(b)(7).
- 5.1.2.9.1 Prior to being issued an (S) endorsement applicants must complete a Federal Bureau of Investigation and a State Bureau of ~~Investigation~~ Identification criminal background

- check to verify that they are clear of any disqualifying crime as specified in 21 **Del.C.** §2708(b)(7) and to ensure applicants are qualified in accordance with 5.1.2.9 above.
- 5.1.2.9.2 Criminal background checks will be reviewed by the Department of Transportation's (DOT) Deputy Attorney General. The DOT Deputy Attorney General will forward the criminal background check issuance recommendation, to the DMV.
- 5.1.2.9.3 Once the criminal background check is issued by the State Bureau of Identification for the purpose of obtaining an (S) endorsement, it is valid for a period of six months. An (S) endorsement applicant presenting an outdated criminal background check must apply for a new criminal background check and pay appropriate fees.
- 5.1.2.10 Have a valid physical examination certification (Green Card).
- 5.1.2.11 The applicant will be issued a School Bus Driver's Certificate (Yellow Card) by a district/school transportation supervisor as certification of DOE requirements being completed as specified in 21 **Del.C.** §2708(b)(3). The applicant will surrender the Yellow Card to the DMV when the applicant's (S) endorsement is issued. The DMV will forward the Yellow Cards to DOE.
- 5.1.2.12 Drivers transferring into Delaware with ~~other a valid~~ jurisdiction school bus endorsed licenses ~~will be required to meet all Delaware Initial Issuance Requirements (5.1.2 this regulation)~~ license are authorized to transfer into Delaware once they meet the requirements set forth by the Delaware Department of Education and in 21 **Del.C.** §2708. Upon failure to meet the Delaware Department of Education's requirements, the applicant must meet all requirements set forth in subsection 5.1.2 of this regulation.
- 5.1.2.12.1 Transferring (S) endorsement holders shall provide a certified five (5) year motor vehicle driving record from their previous jurisdiction or jurisdictions to the DMV. The DMV will electronically ~~check~~ validate transferring (S) endorsement holders' motor vehicle records. If the electronic check is unable to be performed, transferring (S) endorsement holders will need to provide an official certified copy of their motor vehicle driving records to the DMV. The DMV will ensure these driving records meet the requirements in subsection 5.1.2.7 and subsection 5.1.2.8.
- 5.1.2.12.2 ~~In accordance with 5.1.2.11, applicants will be issued a School Bus Driver's Certificate (Yellow Card) by district/school transportation supervisors.~~
- 5.1.2.12.2 Not have more than five (5) points (full point value) on the applicant's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to (S) endorsement holders in meeting this requirement.
- 5.1.2.12.3 ~~All transferring (S) endorsement holders will be required to pass a DMV administered road test in a school bus per 5.1.2.6, regardless of past experience, training or qualifications.~~
- 5.1.2.12.3 Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five (5) years. This five (5) year period will begin from the date the suspension, revocation or disqualification has been cleared. Certified driving records from other jurisdictions may be requested from these applicants for the DMV to verify compliance with this section.
- 5.1.2.12.4 ~~All transferring (S) endorsement holders will be required to pass a school bus knowledge test administered by the DMV per 5.1.2.3, regardless of past experience, training or qualifications.~~
- 5.1.2.12.4 Never been convicted of any crime under the laws of this State or any other jurisdiction as specified in 21 **Del.C.** §2708(b)(7).
- 5.1.2.12.5 Prior to being issued an (S) endorsement applicants must complete a Federal Bureau of Investigation and a State Bureau of Identification criminal background check to verify that they are clear of any disqualifying crime as specified in 21 **Del.C.** §2708(b)(7) and to ensure applicants are qualified in accordance with subsection 5.1.2.9 above.

PROPOSED REGULATIONS

- 5.1.2.12.6 Criminal background checks will be reviewed by the Department of Transportation's (DOT) Deputy Attorney General. The DOT Deputy Attorney General will forward the criminal background check issuance recommendation, to the DMV.
- 5.1.2.12.6.1 Once the criminal background check is issued by the State Bureau of Identification for the purpose of obtaining an (S) endorsement, it is valid for a period of six months. An (S) endorsement applicant presenting an outdated criminal background check must apply for a new criminal background check and pay appropriate fees.
- 5.1.2.13 ~~Any driver with an (S) endorsement that was issued the (S) endorsement in Delaware who has transferred his driver license out of Delaware and subsequently is attempting to transfer back into the State of Delaware may do so within 60 days of leaving the State without having to complete the requirements as outlined in 5.1.2 of this regulation.~~
- 5.1.2.13 In accordance with subsection 5.1.2.11, applicants will be issued a School Bus Driver's Certificate (Yellow Card) by district/school transportation supervisors.
- 5.1.2.14 Have a valid physical examination certification (Green Card).
- 5.1.2.15 Successfully completed training in a previous state of record, validated by Delaware Department of Education.
- 5.1.2.15.1 The Department of Education will ensure the applicant's out-of-state training is equivalent or higher than that completed in the State of Delaware.
- 5.1.2.15.2 The Department of Education will complete and submit a signed School Bus Endorsement Transfer Request Form to the Delaware Division of Motor Vehicles prior to, or at the time of, the transfer.
- 5.1.2.16 Any driver with an (S) endorsement that was issued the (S) endorsement in Delaware who has transferred his driver license out of Delaware and subsequently is attempting to transfer back into the State of Delaware may do so within 6 months of leaving the State without having to complete the requirements as outlined in subsection 5.1.2 of this regulation.
- 5.1.3 Removal of School Bus Endorsements:
- 5.1.3.1 All (S) endorsement removals, except those under subsection 5.1.3.9 below, will be approved by the Chief of Driver Services, the CDL Program Manager or the CDL Management Analyst.
- 5.1.3.2 The (S) endorsement will be removed when driving privileges are withdrawn for any reason.
- 5.1.3.3 The (S) endorsement will be removed when a driver's record exceeds eight (8) points (full point value) for moving violations on the driver's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to (S) endorsement holders in meeting this requirement.
- 5.1.3.4 The (S) endorsement will be removed when the DMV is made aware of a conviction of a disqualifying crime as specified in 21 **Del.C.** §2708(b)(7).
- 5.1.3.5 The (S) endorsement will be removed when the DMV receives in writing, a report from a physician that a driver is not medically qualified to operate a motor vehicle or a commercial motor vehicle as specified in 21 **Del.C.** §2733(a)(3).
- 5.1.3.6 The (S) endorsement will be removed if a driver downgrades from a CDL to a Class D license.
- 5.1.3.7 Any driver that has an (S) endorsement and is required to register as a sex offender with the DMV pursuant to 11 **Del.C.** §4120 and §4121, shall have the (S) endorsement removed.
- 5.1.3.8 The DMV will notify the (S) endorsement holder and the DOE, in writing, when an (S) endorsement is removed from a license including the reason for removal. This notification

- will entitle the (S) endorsement holder to request a DMV hearing and will also require the (S) endorsement holder to notify his employer when the endorsement is removed.
- 5.1.3.9 The (S) endorsement will be removed when the DMV receives in writing, a notice from the DOE that a driver does not meet the requirements to retain the (S) endorsement.
- 5.1.4 School Bus Endorsement Reinstatement: An (S) endorsement, once removed, may be reinstated if all other DMV and DOE licensing requirements are met. If the (S) endorsement is withdrawn for one year or more, the driver will need to retake all DMV (S) endorsement testing requirements, pay appropriate fees, and provide DMV with a new School Bus Driver's Certificate (Yellow Card).
- 5.1.4.1 If the (S) endorsement was removed for points, the driver shall be eligible for reinstatement once the full point total on his three ~~3~~ (3) year driving record falls to eight (8) points or below. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to school bus drivers in meeting this eligibility.
- 5.1.4.2 If the (S) endorsement was removed due to a suspension for a non-moving violation, the driver shall be eligible to reapply for the (S) endorsement upon the reinstatement of driving privileges given the period of suspension did not exceed one year.
- 5.1.4.3 If the (S) endorsement was removed due to a suspension, revocation or disqualification for moving violations, the driver shall be eligible to reapply for the (S) endorsement five (5) years from the date the suspension, revocation or disqualification has been cleared, as long as there are no further violations incurred affecting eligibility during this time period.
- 5.1.4.4 If the (S) endorsement was removed due to a medical reason, the driver may be eligible for reinstatement once approved by the DMV.
- 5.1.4.5 If the driver voluntarily downgrades from an (S) endorsed CDL to a Class D license and then the driver wishes to reinstate the (S) endorsed CDL, the driver will be required to meet the initial issue requirements in accordance with subsection 5.1.2 of this regulation. If the downgrade has been over one (1) year, a new School Bus Driver's Certificate (Yellow Card) shall be required.
- 5.1.4.6 Any driver that has been convicted of a disqualifying crime as outlined in 21 **Del.C.** §2708(b)(7)(a-f) will never be eligible for an (S) endorsement or reinstatement regardless of the amount of time since the conviction.
- 5.1.4.7 After five (5) years has passed since the completion of all sentencing requirements resulting from the conviction of any other felony crime, other than those listed in 21 **Del.C.** §2708(b)(7)(a) through (f), and which have not been pardoned, then 21 **Del.C.** §2708(b)(7)(g) applies, and the driver must reapply as a new applicant for an (S) endorsement. The DMV may seek the guidance of the DOT Deputy Attorney General in these situations.
- 5.2 Driver's Status, Records and Record's Review: The following shall apply concerning the driving records and the status of all Delaware-licensed school bus drivers.
- 5.2.1 Upon a request from the DOE, a school district or a school bus contractor, the DMV shall provide a copy of a school bus driver's Delaware driving record free of charge. These agencies shall certify on DMV forms that they understand and will comply with the Delaware Privacy Act provisions as found in 21 **Del.C.** §305.
- 5.2.2 The DMV shall at any time review the driving records of all Delaware-licensed school bus drivers to ensure they continually meet school bus qualification requirements. This review is accomplished through a computerized search of records for violations, which may result in the removal of an (S) endorsement and notification to the driver and the DOE. Although not a prerequisite to a suspension, revocation or removal of an endorsement the DMV will attempt to send warning letters to (S) endorsement holders. Copies of such letters will be sent to the DOE, when an (S) endorsement holder's driving record indicates a situation where additional violations could readily result in the withdrawal of driving authority or the (S) endorsement.
- 5.2.3 Drivers moving to Delaware and requesting an (S) endorsement shall provide to the DMV a copy of their driving record(s) for the previous five (5) years from the driver's former state(s) of record. The DMV will electronically check the drivers' motor vehicle records. If the electronic check is

unable to be performed, the driver will need to provide an official certified copy of his motor vehicle driving record to the DMV.

6.0 Severability

If any part of this regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions shall remain in full force and effect under Delaware law.

7.0 Effective Date

This regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the *Register of Regulations* in accordance with 29 **Del.C.** §10118(e).

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(b) and 29 Delaware Code, Section 7528
(14 Del.C. §122(b) & 29 Del.C. §7528)
14 DE Admin. Code 401

REGULATORY IMPLEMENTING ORDER

401 Major Capital Improvement Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b) and 29 Del.C. §7528, the Secretary of Education intends to amend 14 DE Admin. Code 401 Major Capital Improvement Programs. This amendment is needed to provide clarity to local school districts regarding the Major Capital Improvement Program and individual major capital improvement projects, and to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 401 Major Capital Improvement Programs in order to provide clarity to local school districts regarding the Major Capital Improvement Program and individual major capital improvement projects, and to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 401 Major Capital Improvement Programs. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 401 Major

Capital Improvement Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 401 Major Capital Improvement Programs 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 401 Major Capital Improvement Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 401 Major Capital Improvement Programs 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 July 6, 2020. 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 6th day of July 2020.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 6th day of July 2020

401 Major Capital Improvement ~~Programs~~ Program

1.0 Purpose and Definitions

- 1.1 ~~The Major Capital Improvement Programs are~~ Program consists of one or more construction projects having a cost of \$750,000 or more.
 - 1.1.1 The Secretary of Education may annually review the current cost per square foot for construction and make necessary adjustments as required.
 - 1.1.2 ~~Projects~~ Multiple projects may be considered together to form a single Major Capital Improvement ~~Project Program project.~~ However, the consolidation of ~~major capital~~ Major Capital Improvement Program projects should be for one location.
 - 1.1.3 All Major Capital Improvement Program projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.
 - 1.1.3.1 ~~Districts~~ Local school districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.
 - 1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a local school district may use or enhance the modified documents.

1.2 Definitions

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

“Certificate of Necessity”—A means a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the local school district to hold a referendum for the Major Capital Improvement Program ~~identified and authorizes the school district to sell bonds to pay the local portion in the event of a successful referendum identified, if required.~~

“Certificate of Occupancy”—A means a document issued by a local code enforcement ~~official/office~~ official or office attesting that a Facility meets building codes and is fit for human occupancy.

“Change Orders”: ~~Documents~~ means documents that change the construction contract and are negotiated between the owner and contractor ~~in order~~ to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

“Completion of Construction” means the local school district, with the concurrence of the architect, accepts the facility as complete, meaning that all punch list items are resolved, release of liens has been received, and funds held in retainage have been released.

“Design Development Plans”: ~~Design~~ means documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. ~~Design development documents~~ Development Plans are at a 40% to 60% completion stage.

“Educational Specifications”: ~~A document~~ means documents which ~~explains~~ explain how the educational spaces relate to the educational programs as well as the requirements of an educational Facility to house and implement the educational philosophy and institutional program.

“Facility”: ~~Long-lived~~ means a long-lived capital assets to include asset including, but not limited ~~to~~ to, school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a local school district or school system.

“Final Construction Plans”: ~~Plans~~ means documents that show the complete Facility design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

“Schematic Design Plans”: ~~Documents~~ means documents that present a proposed Facility in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

“Signed and Sealed Plans”: ~~Plans~~ means design documents that have the architect's ~~and/or~~ or engineer's professional seal and signature affixed.

2.0 Certificates of Necessity

- 2.1 ~~Districts~~ Local school districts shall submit local school board approved projects to the Department of Education by August 31 of each fiscal year ~~in order~~ to be considered for a Certificate of Necessity and capital funding in the following fiscal year.
- 2.2 The Certificate of Necessity shall be quoted in the advertisement for the referendum.
- 2.3 Projects proposing the construction of a new Facility or for an addition to an existing Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new Facility or for an addition to an existing Facility shall not be transferred ~~between projects or~~ to projects in a separate Certificate of Necessity.
- 2.4 Additions and renovations to existing Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when such a multiple project Certificate of Necessity is issued, it shall identify each Facility in the program and describe the work to be done at that Facility including the dollar amount state and local share of the total cost for that work. Funds may be transferred between projects issued under the same Certificate of Necessity in accordance with Section 8.0 below of this regulation.
- 2.5 The Department of Education will complete and forward the Certificate of Necessity to the local school district superintendent for ~~his/her~~ that superintendent's signature.
- 2.6 A copy of the final Certificate of Necessity will be returned to the local school district within ten (10) working days following final approval by the Department of Education.

3.0 Procedures for Approval of a Site for School Construction

- 3-1 ~~Local school districts shall notify the Department of Education by letter to schedule a site review when they propose to purchase a site for school purposes; or when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation.~~

- ~~3.23.1~~ The local school board shall forward all prospective sites to the Office of State Planning Coordination for consideration and comment through the Planning Land use Use Service (PLUS) review process.
- 3.2 Local school districts shall notify the Department of Education in writing to schedule a site review when they propose to purchase a site for school purposes; when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation. Depending on the outcome of the PLUS review process, the Department of Education may conduct a site review.
- 3.3 The acquisition of lands for school construction shall comply with 29 Del.C. §7525.

4.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings

- 4.1 Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department of Education may provide comments on Educational Specifications at its discretion.
- 4.2 All Schematic Design Plans, Design Development Plans and Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one (1) set of each, including a signed and sealed Final Construction Drawings and specifications.
- 4.3 The local school district must involve all applicable ~~State, Local and Municipal~~ state, local and municipal regulatory agencies in reviewing Final Construction Drawings ~~prior to~~ before the start of construction. Copies of all applicable ~~State, Local and Municipal~~ state, local and municipal agency approvals shall be maintained in the local school district construction files. Required ~~State~~ state agency approvals ~~include but may not be limited to:~~ are noted in the *State of Delaware School Construction Technical Assistance Manual*, which is available on the Department of Education's website.
- ~~4.3.1 Fire Marshal to review the plans for fire safety.~~
- ~~4.3.2 Division of Public Health for swimming pools, and kitchens and cafeterias.~~
- ~~4.3.3 Division of Facilities Management for compliance with building codes.~~
- ~~4.3.4 Department of Transportation for review of the Site Plan showing entrances and exits as well as required transportation infrastructure improvements.~~
- ~~4.3.5 Architectural Accessibility Board to ensure that the building environment is safely accessible to, and usable by all persons.~~
- ~~4.3.6 Department of Natural Resources and Environmental Control for wastewater, storm water management and erosion control.~~
- 4.4 Exemptions: Major ~~Capitol~~ Capital ~~Projects~~ Improvement Program projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission of construction specifications or plans to the Department of Education.

5.0 Notification, Start and Completion of Construction, and Certificate of Occupancy

- 5.1 The local school district shall submit to the Department of Education and the Office of Management and Budget a construction schedule, showing start dates, intermediate stages and final completion dates.
- 5.2 The local school district shall notify the Department of Education, Office of Management and Budget and Insurance Coverage Office at the completion of the construction, ~~which is defined as when the school district, with the concurrence of the architect, accepts the Facility as complete. Completion means that the following have occurred: punch list items are resolved, release of liens has been received and funds held in retainage have been released.~~
- 5.3 The local school district shall record capital assets ~~(buildings)~~ in accordance with the ~~State of Delaware Budget and Accounting Manual which requires capital assets (buildings) to be recorded when the asset is ready for its intended use~~ *State of Delaware Budget and Accounting Manual*. As an

~~example, the capital asset (building) should be recorded when it has received an occupancy certificate or the building is ready for its intended use.~~

- 5.4 The local school district shall notify the Department of Education, Division of Accounting, State Auditor, and Office of Management and Budget upon approval of ~~Occupancy~~ occupancy.
- 5.5 Local school districts shall submit to the Department of Education a copy of the electronic ~~autocad~~ files in a format approved by the Department of Education. Electronic ~~autocad~~ files shall be submitted no later than ~~30-thirty (30)~~ calendar days after the completion of any major renovation, addition to an existing Facility, new school or replacement school.

6.0 Purchase Orders

All purchase orders for ~~any Major Capital~~ Capital Improvement Project ~~Program~~ projects shall be approved by ~~both~~ the Department of Education and Office of Management and Budget ~~prior to~~ before submission to the Division of Accounting.

7.0 Change Orders

- 7.1 All Change Orders must be agreed upon by the architect, local school district and contractor, and shall be forwarded to the Department of Education.
- 7.1.1 Submission of a Change Order must include the following documents:
- 7.1.1.1 A completed purchase order as applicable and ~~in accordance with~~ following the local school board approved change order approval and authorization process and procedure;
 - 7.1.1.2 ~~local~~ Local school board of education minutes identifying and approving the changes;
 - 7.1.1.3 ~~completed and in accordance with the local school board approved change order approval and authorization process and procedure~~ AIA American Institute of Architects (AIA) document G701-Change Order Form, Form; and
 - 7.1.1.4 ~~correspondence~~ Correspondence which gives a breakdown in ~~materials mark-up~~ materials, mark-up, and other expenses.

8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity

- 8.1 ~~School~~ Local school districts may request the transfer of funds between projects during the bidding and construction process in writing to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:
- 8.1.1 No project may have any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
- 8.1.2 No project may have any funding added to its initial funding without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
- 8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.

9.0 Educational Technology

All school facilities being constructed or renovated under the Major Capital Improvement Program shall include wiring for technology that meets the current Department of Technology and Information Wiring ~~Standards-Standards~~, and is appropriate to the grade level and educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

10.0 ~~Playground Construction:~~ Construction

~~Effective July 1, 2010, all~~ All playgrounds constructed or renovated pursuant to a ~~major capital improvement~~ Major Capital Improvement Program project shall comply with the most current editions

of the American Society of Testing Materials (ASTM) Designation F-1487 and the Consumer Products Safety Commission (CPSC) Publication Number 325.

11.0 Administration of the New School

An administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The ~~State~~ state portion of salary and benefits may be paid from Major Capital Improvement Programs Program funding.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 29 Delaware Code, Section 7528
(14 **Del.C.** §122(b) & 29 **Del.C.** §7528)
14 **DE Admin. Code** 405

REGULATORY IMPLEMENTING ORDER

405 Minor Capital Improvement Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b) and 29 **Del.C.** §7528, the Secretary of Education intends to amend 14 **DE Admin. Code** 405 Minor Capital Improvement Programs. This amendment is needed to provide clarity to local school districts regarding the Minor Capital Improvement Program and individual minor capital improvement projects, and to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2020, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 405 Minor Capital Improvement Programs in order to provide clarity to local school districts regarding the Minor Capital Improvement Program and individual minor capital improvement projects, and to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 405 Minor Capital Improvement Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 405 Minor Capital Improvement Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 405 Minor Capital Improvement Programs 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** 405 Minor Capital Improvement Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 405 Minor Capital Improvement Programs 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 July 6, 2020. 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 6th day of July 2020.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 6th day of July 2020

405 Minor Capital Improvement Programs Program

1.0 Minor Capital Improvement Program Purpose

- ~~1.1 The Minor Capital Improvement (MCI) Program is a program which provides for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capital Improvement projects cost less than \$750,000 unless the project is for roof repair. The MCI program shall be reviewed annually by the school district and should be comprised of work necessary for good maintenance practice.~~
- ~~1.2 Minor Capital Improvement Purchase Orders shall be reviewed and approved by both the Department of Education and the Office of Management and Budget prior to submission to the Division of Accounting. (One copy of the approved purchase order should be retained by the district for their information and record.)~~
- ~~1.3 Use of Funds: The following areas are authorized for the expenditure of MCI funds: maintenance; repairs, modernization, inspections, testing, maintenance agreements and service contracts related to: roofs, heating systems, ventilation and air conditioning systems, plumbing and water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built-in equipment, painting, fire suppression and life safety systems, security systems installation and maintenance, school grounds, athletic facilities and playgrounds, office equipment used for instructional purposes only and renovations, alterations and modernizations that do not require major structural changes.~~
- ~~1.4 Exclusions: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or sidewalks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted or deleted from major construction projects or floor space allocated according to formula and used otherwise.~~
- ~~1.5 Invoices: Invoices shall be approved by both the Department of Education and the Office of Management and Budget prior to submission to the Division of Accounting for processing. Payments may be made as the project progresses or after work has been completed and accepted, as warranted by the nature and scope of the individual project(s).~~

The Minor Capital Improvement Program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capital Improvement Program projects cost less than \$750,000 unless the project is for roof repair. The Minor Capital Improvement Program shall be reviewed annually by the school district and should be comprised of work necessary for good maintenance practice.

2.0 Definitions

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

"Career Technical Program Equipment" means either a movable or fixed unit but not a built-in unit. In addition, the equipment shall retain its original shape and appearance with use, be nonexpendable, and represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit. Computers and computer peripheral equipment may be purchased using Minor Capital Improvement Vocational Education

Equipment Replacement Funds provided such equipment purchased with such funds is used in a vocational education setting for the service life of said equipment.

“Minor Capital Improvement Program” means a program which provides for the planned and programmed maintenance and repair of the school plant.

3.0 Use of Funds

- 3.1 The expenditure of Minor Capital Improvement Program funds are authorized for the following areas, including but not limited to: maintenance and maintenance equipment, repairs, inspections, testing, maintenance agreements and service contracts related to: roofs, heating systems, ventilation and air conditioning systems, plumbing and water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built-in equipment, painting, fire suppression and life safety systems, security systems installation and maintenance, school grounds, athletic facilities and playgrounds, as well as renovations, alterations and modernizations that do not require major structural changes. Maintenance equipment may include specialized vehicles for maintaining buildings and grounds and attachments or accessories for general purpose vehicles where the attachments or accessories are for maintenance of buildings and grounds.
- 3.2 Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: motorized vehicles not identified in subsection 3.1, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or sidewalks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted or deleted from major construction projects or floor space allocated according to formula and used otherwise.

4.0 Invoices

Invoices shall be approved by the Department of Education and the Office of Management and Budget before submission to the Division of Accounting for processing. Payments may be made as the project progresses or after work has been completed and accepted, as warranted by the nature and scope of the individual project or projects.

2-05.0 Career Technical Program Equipment Replacement Requests

- 2-15.1 Replacement of Career Technical Program Equipment may be accomplished using MCI Minor Capital Improvement Vocational Education Replacement funds Funds.
- 2.2 Career Technical Program Equipment is defined as either a movable or fixed unit but not a built in unit. In addition, the equipment shall retain its original shape and appearance with use, be nonexpendable, and represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit. Computers and computer peripheral equipment may be purchased using MCI Vocational Education Equipment Replacement Funds provided such equipment purchased with such funds is used in a vocational education setting for the service life of said equipment.
- 2-2-15.2 In order to To replace Career Technical Program Equipment, the equipment must have a unit cost of \$500 or more, be obsolete or more than five (5) years old, and be purchased with state, state and local or local funds.
- 2-35.3 Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for Career Technical Program Equipment. Allocations for technical school districts do not require a local match.

3-06.0 Purchase Orders

- 6.1 Minor Capital Improvement Program project purchase orders shall be reviewed and approved by the Department of Education and the Office of Management and Budget before submission to the Division of Accounting.

6.2 Funds may be expended as long as the appropriation is active and continuing as authorized through legislation, usually a three (3) year period. Appropriations may be accumulated over those three (3) years and expended for a major replacement when a sufficient balance is attained. Funds unexpended when the appropriation expires shall revert to the State state unless properly continued through legislation, ~~and in accordance with legislation and~~ Office of Management and Budget requirements.

~~4.0~~ **Cost Limitations**

~~The maximum cost of a MCI project is \$750,000 except roof repairs and replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested through the Major Capital request process.~~

~~5.07.0~~ **Temporary Employees**

Workers may be hired under the ~~MCI~~ Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 29 (14 **Del.C.** Ch. 29)
14 **DE Admin. Code** 1150

REGULATORY IMPLEMENTING ORDER

1150 School Transportation

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Chapter 29, the Delaware Department of Education (“Department”) intends to amend 14 **DE Admin. Code** 1150 School Transportation. This regulation is being amended to clarify safety procedures and protocols for school bus drivers, aides and supervisors; to align with federal requirements per the Federal Motor Carrier Safety Administration’s Entry Level Driver Training; to align with requirements for commercial licensed drivers per the Commercial Driver’s License Drug and Alcohol Clearinghouse; and to make grammatical and style corrections per the *Delaware Administrative Code Drafting and Style Manual*. On November 1, 2019, the above amendments were published. In response to comments received, subsection 12.10 was amended to clarify that transportation benefits are based upon the *pupil’s individual need* as specified in a 504 Plan or Individualized Education Program (IEP). Such change is substantive under 29 **Del.C.** §10118(c). Therefore the Department of Education repropoed 14 **DE Admin. Code** 1150 School Transportation which included the original amendments and the revised subsection 12.10. In accordance with 14 **Del.C.** §2901(a), the Department sought the advice of the Director of the Division of Motor Vehicles regarding the amendments to subsections 3.1.20, 3.1.24, 10.6, 10.8.1, 10.11.1, 10.19, 10.22, 10.25, and 12.11.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2020. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2020, in the form hereto attached as *Exhibit “A”*. No comments were received for this regulation during the most recent comment period.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1150 School Transportation in order to clarify safety procedures and protocols for school bus drivers, aides and supervisors; to align with federal requirements per the Federal Motor Carrier Safety Administration’s Entry Level Driver Training; to align with requirements for commercial licensed drivers per the Commercial Driver’s License Drug and Alcohol Clearinghouse; and to make grammatical and style corrections per the *Delaware Administrative Code Drafting and Style Manual*. On November 1, 2019, the above amendments were published. In response to comments received, subsection 12.10 was amended to clarify that transportation benefits are based upon the *pupil’s individual need* as

specified in a 504 Plan or Individualized Education Program (IEP). Such change is substantive under 29 **Del. C.** § 10118(c). Therefore, the Department repropose 14 **DE Admin. Code** 1150 School Transportation which included the original amendments and the revised subsection 12.10. In accordance with 14 **Del.C.** §2901(a), the Department sought the advice of the Director of the Division of Motor Vehicles regarding the amendments to subsections 3.1.20, 3.1.24, 10.6, 10.8.1, 10.11.1, 10.19, 10.22, 10.25, and 12.11.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1150 School Transportation. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1150 School Transportation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1150 School Transportation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

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

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 6, 2020. 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 6th day of July 2020.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 6th day of July 2020

***Please note that no changes were made to the regulation as originally proposed and published in the June 2020 issue of the Register at page 984 (23 DE Reg. 984). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1150 School Transportation

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 & 1205(b) (14 **Del.C.** §§1203 and 1205(b))

14 **DE Admin. Code** 1503

REGULATORY IMPLEMENTING ORDER

1503 Educator Mentoring

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 1203 and 1205(b), the Delaware Department of Education ("Department"), in consultation and cooperation with the Professional Standards Board, is amending 14 **DE Admin. Code** 1503 Educator Mentoring under the provision of 29 **Del.C.** §10113(b)(5). The amendments are to remove all references to the provisional license, which no longer exists, and update statutory citations in the body of the regulation. Title 14, Chapter 12 of the Delaware Code was amended effective June 20, 2017 to remove provisional licenses from the statute. Because 14 **DE Admin. Code** 1503 is being amended to be consistent with changes in basic law, it is

exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(5).

II. FINDINGS OF FACT

The Department finds that the regulation is being amended to be consistent with the amendments to Title 14, Chapter 12 of the Delaware Code, that went into effect on June 20, 2017. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1503 Educator Mentoring.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1503 Educator Mentoring. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1503 Educator Mentoring, attached hereto as Exhibit "A," is hereby amended.

IV. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 10th day of July, 2020.

Department of Education
Susan Bunting, Ed.D., Secretary of Education

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 Comprehensive Induction Program" means all educator induction programs, including mentoring and professional development, approved by the Department to provide mentoring and professional development for educators.

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

"Department" means the Delaware Department of Education.

"DPAS II" means Delaware Performance Appraisal System II, 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.

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

"Experienced Educator" is an educator who holds a Continuing or Advanced License.

"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 be rated as Highly Effective or Effective on DPAS II evaluations, or the equivalent thereof on a state-approved alternative educator evaluation system, and

may not be on a DPAS II improvement plan, or the equivalent thereof in a state-approved alternative educator evaluation system.

"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 be rated as Highly Effective or Effective on DPAS II evaluations, or the equivalent thereof on a state-approved alternative educator evaluation system, and may not be on a DPAS II Improvement Plan, or the equivalent thereof in a state-approved alternative educator evaluation system.

"Mentoring" means 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 educator's employing authority. Mentoring includes, but is not limited to the mentoring that occurs in the approved comprehensive induction programs required for educators during their ~~one (1) year Provisional Licensure period, followed by a~~ four (4) year Initial Licensure period, Continuing Licensure period, or any other mentoring program as required by law.

"New to an Area" 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.

"Novice Educator" means an educator who holds ~~a Provisional~~ or an Initial License.

"Site Coordinator" means an individual appointed by an employing authority to oversee an approved 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 pursuant to 14 **Del.C.** §104.

3.0 Comprehensive Educator Induction Programs

- 3.1 The Department shall develop and approve comprehensive educator induction programs for the following:
 - 3.1.1 The teachers' program shall be aligned with Delaware Teaching Standards set forth in 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards and shall include training and support of the components of DPAS II or a state-approved alternative educator evaluation system, including descriptive, non-evaluative feedback.
 - 3.1.2 The specialists' program shall be aligned with applicable national specialist standards and shall include training and support of the components of DPAS II or a state-approved alternative educator evaluation system, including descriptive, non-evaluative feedback.
 - 3.1.3 The administrators' program shall be based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards and shall include training and support of the components of DPAS II or a state-approved alternative educator evaluation system, including descriptive, non-evaluative feedback.
- 3.2 An employing authority may develop and then implement a distinct comprehensive induction program as specified in Sections 4.0, 5.0, 6.0, 7.0, 8.0, and 9.0 of this regulation.
 - 3.2.1 Each comprehensive induction program shall meet the requirements in the distinct mentoring programs as specified in Sections 4.0, 5.0, 6.0, 7.0, 8.0, and 9.0 of this regulation.

- 3.2.2 The employing authority shall submit each distinct comprehensive induction program plan to the Department for review and consideration of approval according to the application procedure and timelines set by the Department.
- 3.3 Failure by an educator to successfully complete the requirements of an Approved Comprehensive Induction Program 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 training program for Lead Mentors, and
 - 3.4.2 A training program for Administrator Lead Mentors.

4.0 Novice Educators in Their First Year of Employment

- 4.1 In accordance with 14 ~~Del.C. §1210(b)~~ and 14 ~~Del.C. §1210A(e)~~ §1210(c), an educator who holds a ~~Provisional License~~ or an Initial License as his or her first license and intends to apply for an ~~Initial License~~ or a Continuing License shall complete the professional development and mentoring activities specified in subsection 4.2 of this regulation within the educator's first year of employment.
- 4.2 Within the first year of employment, the Novice Educator shall:
 - 4.2.1 At a minimum, meet weekly with his or her assigned Mentor, which may include a combination of in-school and after school time and virtual or electronic communication.
 - 4.2.1.1 The employing authority shall assign the Novice Educator a Mentor.
 - 4.2.1.2 The Mentor shall assist the Novice Educator in becoming acclimated to the role, the school or other setting, the Delaware content standards, and the Delaware Professional Teaching Standards or applicable national specialist standards.
 - 4.2.2 Complete the requirements of an ethics course that has been approved by the Department.
 - 4.2.3 Be observed a minimum of four (4) times by his or her assigned Mentor.
 - 4.2.4 Participate in a minimum of two (2) professional learning experiences designed to provide new educators with the support necessary to become familiar with school and district policies and procedures, hone their professional skills, help them evaluate and reflect upon their own professional performance, and develop an individualized growth plan to improve their effectiveness as planned by the Department or the employing authority.
 - 4.2.5 Observe experienced educators in practice a minimum of four (4) times, reflecting upon what was seen, implementing strategies learned, and reflecting upon the Novice Educator's own performance.

5.0 Novice Educators in Their Second Year of Employment

- 5.1 In accordance with 14 ~~Del.C. §1210A(e)~~ §1210(c), an educator who holds an Initial License and intends to apply for a Continuing License shall complete the professional development and mentoring activities specified in subsection 5.2 of this regulation within the educator's second year of employment.
- 5.2 Within the second year of employment, the Novice Educator shall:
 - 5.2.1 At a minimum, meet weekly with his or her assigned Mentor, which may include a combination of in-school and after school time and virtual or electronic communication.
 - 5.2.1.1 The employing authority shall assign the Novice Educator a Mentor.
 - 5.2.1.2 The Mentor shall assist the Licensee in becoming acclimated to the role, the school or other setting, the Delaware content standards, and the Delaware Professional Teaching Standards or applicable national specialist standards.
 - 5.2.2 Be observed a minimum of four (4) times by his or her assigned Mentor.
 - 5.2.3 Participate in a minimum of two (2) professional learning experiences designed to provide new educators with the support necessary to become familiar with school and district policies and procedures, hone their professional skills, help them evaluate and reflect upon their own

professional performance, and develop an individualized growth plan to improve their effectiveness as planned by the Department or the employing authority.

5.2.4 Observe experienced educators in practice a minimum of four (4) times, reflecting upon what was seen, implementing strategies learned, and reflecting upon the Novice Educator's own performance.

5.3 The assignment of a Mentor beyond the second year of employment in Delaware is at the discretion of the employing authority, based upon a review of the Novice Educator's performance.

5.4 Notwithstanding subsection 5.3 of this regulation, the employing authority shall provide continuing support to the Novice Educator beyond his or her second year of employment until the Novice Educator's Initial License has expired, including, but not limited to, ensuring a Lead Mentor monitors the educator's progress toward meeting the requirements set forth in subsection 6.2 of this regulation.

6.0 Novice Educators in Their Third and Fourth Years of Employment

6.1 In accordance with 14 **Del.C. §1210A(c)** ~~§1210(c)~~, an educator who holds an Initial License and intends to apply for a Continuing License shall complete the professional development and mentoring activities specified in subsection 6.2 of this regulation within the educator's third and fourth years of employment.

6.2 The Novice Educator shall:

6.2.1 Within his or her third year of employment, participate in a Professional Learning Community (PLC) specific to the statewide mentoring program that focuses on using data to make instructional decisions that best meet the needs of his or her students.

6.2.2 Within his or her fourth year of employment:

6.2.2.1 Conduct a self-analysis to assess his or her professional development needs in content knowledge and pedagogical skills; and

6.2.2.2 Develop and implement a personalized professional growth plan that addresses his or her individual needs identified through the self-analysis.

7.0 Experienced Educators New to the State of Delaware

7.1 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 comprehensive induction program. The educator shall either:

7.1.1 Participate in a Professional Learning Community (PLC) as provided in subsection 6.2.1 of this regulation; or

7.1.2 Conduct a self-analysis and develop and implement a personalized professional growth plan as provided in subsection 6.2.2 of this regulation.

8.0 Experienced Educators New to an Area

8.1 Experienced educators who are new to an area shall, within the first year of employment, be assigned a Mentor and participate in and complete an approved comprehensive induction program consisting of the professional development and mentoring activities specified in subsection 8.2 of this regulation, which address the educator's specific needs and which focus 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.

8.2 Within the first year of employment, an experienced educator who is new to an area shall:

8.2.1 At a minimum, meet weekly with his or her assigned Mentor, which may include a combination of in-school and after school time and virtual or electronic communications.

8.2.1.1 The employing authority shall assign the educator a Mentor.

8.2.1.2 The Mentor shall assist the educator in becoming acclimated to the role, the school or other setting, the Delaware content standards, and the Delaware Professional Teaching Standards or applicable national specialist or administrator standards.

- 8.2.2 Be observed a minimum of four (4) times by his or her assigned Mentor.
- 8.2.3 Participate in a minimum of two (2) professional learning experiences designed to provide educators who are new to an area with the support necessary to become familiar with school and district policies and procedures, hone their professional skills, help them evaluate and reflect upon their own professional performance, and develop an individualized growth plan to improve their effectiveness as planned by the Department or the employing authority.
- 8.2.4 Observe educators who have experience in the area in practice a minimum of four (4) times, reflecting upon what was seen, implementing strategies learned, and reflecting upon the educator's own performance.

9.0 Duties and Responsibilities of Mentors

9.1 Lead Mentors shall:

- 9.1.1 Complete the annual approval process as defined by the Department.
- 9.1.2 Oversee the school-level implementation of an approved comprehensive induction program, including but not limited to, a combination of in-school and after school activities, serving in a leadership role within the program, monitoring educators' progress toward meeting the requirements of Sections 4.0, 5.0, 6.0, 7.0, and 8.0 of this regulation, planning mentor training, providing mentor training to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the Site Coordinator.
- 9.1.3 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 or charter school shall be trained in the applicable Department approved specific specialist mentoring program.
- 9.1.4 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.

9.2 Educator Mentors shall:

- 9.2.1 Complete the annual approval process as defined by the Department.
- 9.2.2 Facilitate mentoring activities as specified in Sections 4.0, 5.0, and 8.0 of this regulation, which may include a combination of in school and after school time and virtual or electronic communication with their mentees annually which are designed to help the new teacher or specialist acquire additional skills and knowledge appropriate to their specific positions.
- 9.2.3 Submit contact log documentation accounting for all mentoring activities provided during the specified time period to their Site Coordinator by May 15.
- 9.2.4 Teacher and Specialist Mentors also shall:
 - 9.2.4.1 Satisfactorily complete training in mentoring and coaching development aligned with the appropriate Department approved specific teacher or specialist mentoring program provided by the Lead Mentors.
 - 9.2.4.2 Attend structured meetings concerning the approved comprehensive induction program as directed by the employing authority.
- 9.2.5 Administrator Mentors also shall:
 - 9.2.5.1 Satisfactorily complete training in mentoring and coaching development based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards and aligned with DPAS II or a state-approved alternative educator evaluation system.
 - 9.2.5.2 Satisfactorily complete training in DPAS II or a state-approved alternative educator evaluation system.
 - 9.2.5.3 Attend a minimum of three (3) structured meetings with mentees, including but not limited to, team-level, school-level, district-level, and community-level meetings or events.

10.0 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 additional responsibility salary supplement annually, upon documentation of satisfactory fulfillment of duties and responsibilities.

11.0 Reporting

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1572

REGULATORY IMPLEMENTING ORDER**1572 Teacher of Students Who Are Gifted or Talented****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented. The regulation concerns the requirements for a Teacher of Students Who Are Gifted or Talented Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding clarifying language regarding category certificates in Section 1.0; adding defined terms to Section 2.0; clarifying the requirements for issuing a Teacher of Students Who Are Gifted or Talented Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Teacher of Students Who Are Gifted or Talented Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a Teacher of Students Who Are Gifted or Talented Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2020. The Professional Standards Board received a written submittal from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), who commented that GACEC supports the proposed amendments. In addition, GACEC recommended that subsection 3.2 be clarified because it is unclear whether the conduct listed in that subsection describes the only investigations where the Department will not act on an application or if the conduct listed represents examples. GACEC further commented that the Professional Standards Board does not prescribe specific professional development for educators and it is possible that an educator with a Teacher of Students Who Are Gifted or Talented Standard Certificate will not actually participate in any professional development related to the certificate. As a result, GACEC recommended that the Department consider whether including requirements for renewal of this standard certificate is warranted. Additionally, GACEC commented that "educators of special education students, which includes the gifted and talented population, require the most capable educators available" and recommended that Section 8.0 be removed from the regulation.

II. FINDINGS OF FACTS

On June 4, 2020, the Professional Standards Board considered GACEC's written submittal. The Professional Standards Board clarified the language of subsection 3.2 in response to SCPD's and GACEC's comment. In

accordance with 29 **Del.C.** §10118(c), the Professional Standards Board's Chairperson determined the changes to subsection 3.2 are not substantive and, as a result, the Professional Standards Board is not required to repropose the changes.

Additionally, the Professional Standards Board found that the proposed subsection 6.2, which provides that the Teacher of Students Who Are Gifted or Talented Standard Certificate is not renewed, is consistent with the statute concerning standard certificates. The statute, 14 **Del.C.** §1220(a), provides that the "Department shall issue a standard certificate to an applicant who . . . has acquired the prescribed knowledge, skill, or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students." 14 **Del.C.** Ch. 12 does not authorize the Department to renew a standard certificate once it has been issued, which is different from a continuing license that may be renewed for five years if an educator has completed 90 clock-hours of approved professional development (14 **Del.C.** §1212). The Professional Standards Board further found that it is in the process of obtaining recommendations from the Professional Development and Associated Compensation Committee to address the broader question of whether to change the current system for professional development in the future and that is the better approach rather than addressing the question piecemeal through individual regulations.

The Professional Standards Board found that the proposed Section 8.0, Secretary of Education Review, is an important tool that is available for all certifications by statute (14 **Del.C.** §1224).

With the exception of the non-substantive change to subsection 3.2, the Professional Standards Board determined that further changes in response to the written submittal were not necessary and voted to propose 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1572 Teacher of Students Who Are Gifted or Talented in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 18th day of June, 2020.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 18th day of June, 2020.

State Board of Education

/s/ Whitney Townsend Sweeney, President
 /s/ Audrey J. Noble, Ph.D., Vice President
 /s/ Nina Lou Bunting
 /s/ Candace Fifer

/s/ Vincent Lofink
 /s/ Provey Powell, Jr.
 /s/ Wali W. Rushdan, II

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1572 Teacher of Students Who Are Gifted or Talented

~~Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when approved by the Professional Standards Board with the concurrence of the State Board of Education. See the Department of Education website for additional information.~~

1.0 Content

- 1.1 ~~This regulation shall apply to the issuance of a Standard Certificate, Teacher of Students Who Are Gifted or Talented Standard Certificate (Category) pursuant to 14 **Del.C.** §1220(a), for Teacher of Students Who Are Gifted or Talented (Category). This certification is required in programs that are identified as specific to students who have been identified as gifted or talented through assessments and other criteria set forth by local school districts or other programs specifically identified by the Department as programs for students who are gifted or talented 14 **Del.C.** §1220(a).~~
- 1.1.1 ~~This Certification is required for an Educator who is assigned to teach in a program that is specific to students who have been identified as gifted or talented as provided in 14 **DE Admin. Code** 902 in Delaware public schools.~~
- 1.1.2 ~~This Certification is a category Standard Certificate and does not certify an Educator to practice in a particular area or teach a particular subject. A category Standard Certificate only establishes that an Educator has met the prescribed education, knowledge, or skill to instruct a particular category of students. This Certification is limited to the category of Gifted or Talented Students.~~
- 1.1.3 ~~An Educator shall hold at least one content area Standard Certificate.~~
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

~~The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

~~The following words and terms, when used in this regulation, shall have the following meaning:~~

~~**"15 Credits or the Equivalent in Professional Development"** means college credits or an equivalent number of hours with one credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.~~

~~**"Certification"** means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.~~

~~**"Department"** means the Delaware Department of Education.~~

~~**"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 Professional~~

Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

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

"Gifted or Talented Student" means the same as a "Gifted or Talented Student" as provided in 14 **DE Admin. Code** 902 Gifted or Talented Education Plan.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

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

"Major or Its Equivalent" means a minimum of 30 semester hours of coursework in a particular content area.

"Passing Score" means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board of Education.

"Professional Development" means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change participants' attitudes, insights, and perspectives and ultimately results in improved professional practice. Effective professional development programs include ample opportunities for knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

"Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 **Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Teacher of Students Who Are Gifted or Talented Standard Certificate as a Teacher of Students Who Are Gifted or Talented to an educator who has met the following applicant who:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Limited Standard, or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or~~
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and for licensure and holds a Valid and Current License or Certificate in gifted or talented education or teaching gifted students.
 - ~~3.1.3 Holds a Standard Certificate in a subject (content), grade level, or area; and~~
 - ~~3.1.4 Has satisfied the additional requirements in this regulation.~~
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a Teacher of Students Who Are Gifted or Talented Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the **alleged conduct involves allegations of**

~~allegations include but are not limited to conduct such as] Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.~~

4.0 **Additional Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 ~~An educator shall also have satisfied one of the following additional education requirements:~~
- 4.1.1 ~~Holding a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in an area listed in 4.1.1.1 from a program approved or recognized as provided in 4.1.1.2.~~
- 4.1.1.1 ~~Approved majors~~
- 4.1.1.1.1 ~~gifted or talented education;~~
- 4.1.1.1.2 ~~teaching gifted students; or~~
- 4.1.1.1.3 ~~special education with a gifted or talented endorsement or specialization.~~
- 4.1.1.2 ~~Required Program Approval or Recognition~~
- 4.1.1.2.1 ~~National Council for the Accreditation of Teacher Education (NCATE) recognized educator preparation program; or~~
- 4.1.1.2.2 ~~The Council for the Accreditation of Educator Preparation (CAEP) specialty organization recognized educator preparation program; or~~
- 4.1.1.2.3 ~~State approved educator preparation program where the state approval body employed the appropriate standards; or~~
- 4.1.2 ~~Completion of a minimum of fifteen (15) credits or their equivalent in professional development as approved by the Department, with a focus in special education for gifted or talented students or students who are gifted or talented in the following content areas:~~
- 4.1.2.1 ~~Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);~~
- 4.1.2.2 ~~Curriculum Design and Instructional Strategies for Gifted Students (3 credits);~~
- 4.1.2.3 ~~Psychology of Gifted Students (3 credits);~~
- 4.1.2.4 ~~Creative and Critical Thinking Skills (3 credits); and~~
- 4.1.2.5 ~~Practicum or Internship (3 credits).~~
- 4.1 ~~An applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.~~
- 4.1.1 ~~An applicant shall have satisfied one of the following education requirements:~~
- 4.1.1.1 ~~Obtained and currently maintain an Exceptional Needs Specialist certificate in specialty area of gifted and talented education from the National Board for Professional Teaching Standards; or~~
- 4.1.1.2 ~~Earned a bachelor's, master's, or doctoral degree from a Regionally Accredited college or university with a Major or Its Equivalent in gifted or talented education, teaching gifted students, or special education with a gifted or talented endorsement or specialization from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or~~
- 4.1.1.3 ~~Satisfactorily completed an alternative routes for licensure or certification program to teach Gifted or Talented Students as provided in 14 **Del.C.** §§1260 – 1266; or~~
- 4.1.1.4 ~~Satisfactorily completed a Department-approved educator preparation program in gifted or talented education; or~~
- 4.1.1.5 ~~Earned a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 15 Credits or the Equivalent in Professional Development with a focus in gifted or talented education or in students who are gifted or talented in the following areas:~~
- 4.1.1.5.1 ~~Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);~~

- 4.1.1.5.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits);
- 4.1.1.5.3 Psychology of Gifted Students (3 credits);
- 4.1.1.5.4 Creative and Critical Thinking Skills (3 credits); and
- 4.1.1.5.5 Practicum or Internship (3 credits).

4.1.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Gifted Education (ETS Test Code # 5358) a Passing Score of 157.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 The following documentation is required with the application for a Teacher of Students Who Are Gifted or Talented Standard Certificate:
 - 5.2.1 Evidence of obtaining and maintaining an Exceptional Needs Specialist certificate in specialty area of gifted and talented education from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the applicant's Employing Authority or Regionally Accredited college or university.
 - 5.2.2.2 Sealed paper transcripts may be submitted by the applicant, the applicant's Employing Authority, or the applicant's Regionally Accredited college or university.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 Documents verifying successful completion of Department-approved Professional Development, if applicable; and
 - 5.2.4 An experience form, completed in full and signed by the applicant, if applicable; and
 - 5.2.5 Official score on the *Praxis* Subject Assessment as provided in subsection 4.1.2; and
 - 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate in gifted or talented education or teaching gifted students, the following documentation is required in the application for a Teacher of Students Who Are Gifted or Talented Standard Certificate:
 - 5.3.1 An official copy of the Valid and Current License or Certificate; and
 - 5.3.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

- 6.1 A Teacher of Students Who Are Gifted or Talented Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 6.2 A Teacher of Students Who Are Gifted or Talented Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

- 7.1 An Educator's Teacher of Students Who Are Gifted or Talented Standard Certificate may be limited, suspended, or revoked for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 7.2 An Educator's Teacher of Students Who Are Gifted or Talented Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.

7.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Teacher of Students Who Are Gifted or Talented Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Teacher of Students Who Are Gifted or Talented Standard Certificate but whose effectiveness is documented by the local school district or charter school.

5.09.0 Past Certification Certificate Recognized

The Department shall recognize a Teacher of Students Who Are Gifted and Talented Standard Certificate Teacher of Students who are Gifted and Talented previously issued by the Department or a Teacher of Students Who Are Gifted or Talented Standard Certificate issued by the Department prior to the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students who are Gifted and Talented shall be considered certified to instruct the particular category of students specified herein as required by this regulation. An Educator holding such a Standard Certificate shall be considered certified to instruct Gifted or Talented Students.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 Del.C. §122(3)u.1)
16 DE Admin. Code 4458

ORDER

4458 State of Delaware Food Code Regulations

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Food Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code §122(3)(u)(1).

On December 1, 2019 (Volume 23, Issue 6), 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 January 31, 2020, after which time 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."

FINDINGS OF FACT:

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 Food Code is adopted and shall become effective August 11, 2020 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

July 14, 2020

Date of Signature

Kara Odom Walker, MD, MPH, MSHS
SECRETARY

SUMMARY OF EVIDENCE

STATE OF DELAWARE FOOD CODE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) State of Delaware Food Code Regulations were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (December 1, 2019 through January 31, 2020).

Entities offering written comments include:

- Walter Dodson Jr.
- Connie Groll
- Janice
- Mars, Incorporated - Michael Mayers, Director, Public Affairs & Government Relations
- Linda McLaughlin
- Eleanor Oudshoorn
- Rich Parfitt
- Jacqueline Rifenberg
- Taylor
- Anonymous, Lewes Resident
- Stanley C. Dillon
- Yum! Brands, Inc - Jessica Zetlau, Food Safety & Regulatory Affairs

Comments

Walter Dodson Jr.

<https://www.msn.com/en-ie/news/world/healthy-man-dies-after-being-licked-by-dog-and-getting-rare-infection-researchers-found/ar-BBXkkfs>

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Connie Groll

I wish to voice my opinion about the proposal for dogs on restaurant decks & patios. I have been a dog owner for 35 years. I am completely in support of pets owned by people for emotional support. They provide unconditional companionship for their owners, which in turn gives good care for themselves.

However, I do not think that dogs belong on any restaurant grounds. I cannot control my pet's needs such as defecating or barking when he chooses to do either. As well trained as any dog can be, this is impossible for anyone to assume or anticipate this occurrence.

Both are health risks & annoyances. I really wouldn't want my dog, or any dog to poop around my table while eating. That's really disgusting as well as rude. I would probably leave the restaurant if that happened around my table while eating.

My husband & I enjoy eating outdoors very much. We usually pick a table on decks if available.

I am personally allergic to very furry dogs. What about people like myself? That's a health risk in itself in case of severe reaction to animal danders. I have allergic asthma & I would be avoiding a table outside to eat, if I saw a large dog on the deck. Working in the medical field, especially in allergy treatment, has showed me that allergic reactions can be severe and life-threatening. Large dogs (like Labs) are often dirty or have an odor that I can detect & dislike. That would surely kill my appetite for eating!

Also, what about the "other" support pets that owners will then attempt to bring into restaurants? There opens another situation that the laws will need to deal with soon, I think. Dogs are popular, but owners will claim that their pets are cleaner, smarter, or more portable than active dogs.

Thank you for allowing me to voice my opinion. As much as I'd like to take my dog with me to lunch, it's not where he belongs. I actually took him to Irish Eyes outdoor bar area last year. He was scared & wanted to leave

since customers were constantly trying to pet him. After a while, he was exhausted & he was frightened. I decided that this was no place for animals. Do restaurant workers pet these animals? That's so unhealthy, too!

I hope we resolve this issue soon & create a safe, clean environment for people to eat.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Janice

We do not think dogs, unless a working service dog, should be allowed on any part of a restaurant's property. People try to treat them like they're a HUMAN part of their family, which they are not. They are animals. If they want them to be together while eating, do it at home. I like dogs but they should not be allowed in or on outside patios of a public eating establishment. It may offend non-dog lovers which could result in loss of business. Please vote this Down.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Mars, Incorporated - Michael Mayers, Director, Public Affairs & Government Relations

I am writing on behalf of Mars Petcare to provide our strong support for the Department of Health's proposed change to 16 DE Admin. Code 4458, amending Subpart 6-501.115 (B) to allow dogs in outdoor dining areas. Mars is proud to support this effort, as we believe that pets provide significant benefits to the communities they live in.

As you may know, Mars Petcare is the world's largest pet care company, whose leading brands include PEDIGREE®, WHISKAS®, ROYAL CANIN®, NUTRO™, GREENIES™, SHEBA®, CESAR®, IAMS™ and EUKANUBA™ as well as The WALTHAM™ Centre for Pet Nutrition which has advanced research in the nutrition and health of pets for over 50 years. Mars Petcare is also a leading veterinary health provider through a network of over 2,000 pet hospitals including BANFIELD®, BLUEPEARL™, PET PARTNERS™, VCA®, Linnaeus and AniCura. Mars currently employs over 260 Associates in Delaware, at 8 BANFIELD®, VCA®, and BLUEPEARL® pet hospitals.

We believe pets make the world a better place for people - and not only because they are our closest companions and confidants. Through our Waltham Centre for Pet Nutrition, we have conducted numerous studies into the human-animal relationship and found that pets reduce the risk of heart disease, help people better manage stress, promote healthy, active lifestyles, and help facilitate emotional connections between people. Given all the benefits pets bring to our lives, we launched the BETTER CITIES FOR PETS™ program, a comprehensive advocacy and education program which includes helping pets find permanent loving homes, improving shelter outcomes, and creating more pet-friendly spaces to encourage the bond between humans and pets. Allowing food establishments to create greater opportunities for people to bond with their pets and interact with other pet owners is not only a positive outcome for pets and pet owners - it also drives economic benefits for businesses! States across the country are recognizing the value of allowing pets in outdoor dining areas. In recent years, California, Ohio, Kentucky, New York, Tennessee, and Texas have enacted similar laws.

As pet lovers and as a pet business whose purpose is making A BETTER WORLD FOR PETS™, we applaud your efforts in proposing rulemaking to allow dogs in outdoor dining areas. Please do not hesitate to call on me at the numbers listed below if I can provide any additional information or perspective on this proposal, or any other pet-related measures.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Linda McLaughlin

The owners of outdoor restaurants should have the choice of allowing dogs in designated areas. If the restaurant has an outdoor area, a well behaved, leashed dog should not cause any issues. If you don't like dogs, or have an allergy to dogs, you should eat inside or find another restaurant of your choice. Many families include their dogs in their family vacation. Restaurants that allow dogs in tourist areas are a welcome sight for these families. Most dogs that I have encountered in outdoor restaurants actually behave better than a lot of children.

The clear-cut bill proposed by Pete Schwartzkopf is the answer.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Eleanor Oudshoorn

I would prefer that dogs or other pets not be allowed in outdoor eateries unless separate servers are designated for the areas where dogs will be and where non-pet areas will be designated.

Even in outdoor areas, dog dander can be problematic.

Please consider all residents - not just dog owners.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Rich Parfitt

Although I was not able to find the draft proposed regulations online, I would like to comment on the proposal as I understand it from December 16 Cape Gazette article by Melissa Steele.

I thank the DHP for re-evaluating its position from last summer and now supporting dogs eating in outdoor area of restaurants, as has been the practice in many restaurants for several years.

People who for whatever reason object to the revised regulations still have the freedom to patronize dog friendly establishments through indoor eating. Likewise, they can patronize restaurants that are elect to not support outdoor dining with dogs.

But I think it's important to continue to allow people with dogs to patronize restaurants that choose to be dog friendly. People like myself sorely missed this perk when restaurants became frightened and changed their dog friendly policy last summer.

This new position of DHP now formalizes a long-standing practice that was enjoyed by many. Again I thank the DHP for their updated position.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Jacqueline Rifenberg

Enclosed please find an article about the dangers of retractable leashes. This is really pertinent to the issue of dogs at restaurants. Many people use retractable leashes, which do not allow for control of their dog.

My suggestion that dogs at outdoor eateries must be on a 4-foot or 6-foot leather or fabric leash (no chair or retractable leashes).

As the mom of five dogs, I enjoy having my dogs with me when possible. I hope a solution to the issue can be found.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Taylor

My complaint is in crowded areas the large dogs are on a leash but then they sprawl and lay down in the limited access between tables. They create a danger for servers and patrons trying to walk around. Maybe rule like on airplanes....dog must not be in aisle and remain under table or chair.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Anonymous, Lewes Resident (voicemail)

Summary of voicemail: Against proposed dog rule; allergic to dogs (dander and dog fur) and will not eat at restaurants that allow dogs; thinks it is unhealthy.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Stanley C. Dillon

I am writing to express my opposition to House Bill 275 that would allow dogs in outdoor spaces of restaurants. I think it is unsanitary and dangerous, especially if small children are present.

I have been at restaurants in Florida that allowed dogs on their patio and the dogs have jumped on our table as well as others. The dogs also pushed young children down. I have also seen "well-behaved and well-trained" dogs misbehave on sidewalks and the boardwalk in Rehoboth.

I could write several more examples of experiences that I have had, but just want the Legislature to know there

are people who are against this ridiculous bill.

- **Response:** The Department appreciates and acknowledges this comment. State law dictates the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio and therefore, no changes will be made.

Yum! Brands, Inc - Jessica Zetlau, Food Safety & Regulatory Affairs

I am writing on behalf of Yum! Brands, Inc., in regards to the proposed revisions to the 2020 Delaware Food Code. Yum! Brands has around 20,000 restaurant locations in the United States with approximately 35 restaurant locations in Delaware, the majority of which are owned and operated by local franchisees.

Yum! Brands is in support of Delaware repealing the current State of Delaware Food Code regulations and replacing in their entirety with the US FDAs 2017 Food Code to enforce food safety standards at retail food establishments such as restaurants like ours.

However, Yum! Brands does not agree with several proposed amendments to the code, including: (1) requiring operations that are ordered to cease and desist due to an imminent health hazard to remain closed for at least 24 hours; and (2) disallowing ill food employees from returning to work until 48 hours after being asymptomatic from an undiagnosed disease that resulted in vomiting and/or diarrhea.

(1) Requiring operations to be closed for at least 24 hours due to an imminent health hazard, such as an extended interruption of power or water, sewage backup or other restaurant emergency may not be warranted or necessary especially if the hazard and risk has been immediately identified and adequately managed by the restaurant. This requirement may also cause restaurants to not report or disclose imminent health hazards to the regulatory authority in fear that the restaurant may be closed for an extended period of time even if the hazard has been properly resolved within a few hours. Additionally, restaurants may lose business due to lengthy, unnecessary closures.

Yum! Brands recommends that this proposed amendment and specific wording regarding 24 hour closure be removed; if not, then Yum! Brands recommends allowing for flexibility in this proposed amendment with suggested or similar verbiage to ". . . remain closed up to 24 hours."

- **Response:** The Department appreciates and acknowledges this comment. This citation is in line with program needs/priorities and the protection of the public. It has been found that preemptive opening of an establishment that has been closed due to an imminent health hazard leaves risks in place and therefore additional program resources to conduct follow-up inspections. No changes will be made.

(2) Requiring ill food employees to remain off the work schedule for 48 hours after being asymptomatic deviates from the US FDA 2017 Food Code and current FDA recommendations. The recent 2017 publication in partnership with FDA and CDC titled, Quantitative Risk Assessment of Norovirus Transmission in Food Establishments: Evaluating the Impact of Intervention Strategies and Food Employee Behavior on the Risk Associated with Norovirus in Foods, concluded that the most important factors in reducing Norovirus transmission were removing ill team members from work and utilizing a combination of prevention strategies, including effective hand washing, implementation of glove use, no bare hand contact with ready-to-eat foods, and adequate cleaning and sanitizing of surfaces (food contact, restrooms, etc.). The authors of the risk assessment also concluded that an increase in the exclusion period from 24 to 48 hours only leads to a relatively small decrease in the estimated number of infected customers when compared with other prevention strategies (mentioned above), and may lead to an increase in infections and illness if compliance with the exclusion is not adhered to or reduced.

Ultimately, the FDA found that the results of the risk assessment did not warrant amending this section of the US Model Food Code from 24 hours to 48 hours. Yum! Brands recommends that this wording remain consistent at 24 hours with the US 2017 FDA Food Code.

- **Response:** The Department appreciates and acknowledges this comment. The Delaware Food Code requires removing ill food employees from work and utilizing a combination of prevention strategies, including effective hand washing, implementation of glove use, no bare hand contact with ready-to-eat (RTE) foods, and adequate cleaning and sanitizing of surfaces.

The additional 24-hour time (total of 48 hours post-symptoms) period for exclusion of food employees suffering from an undiagnosed gastrointestinal illness accounts for the fact that the U.S. Centers for Disease Control and Prevention estimates that norovirus is the leading cause of foodborne illness in the United States.¹ Transmission of norovirus has been shown to occur most commonly through the fecal-oral route, with contaminated food identified as a common

vehicle of transmission. Exclusion of food employees exhibiting or reporting diarrhea symptoms is an essential intervention in controlling the transmission of norovirus from infected food employees' hands to RTE food items.

Norovirus also has a high secondary attack rate (> 50%) via person-to-person contact. Norovirus has also been reported to cause infection by airborne transmission when individuals are in close physical proximity to an infected individual vomiting in the facility. Therefore, an infected individual vomiting in a food facility increases the risk of infecting employees and consumers. Foodborne illness outbreaks have occurred from consumers vomiting in the dining room, or employees vomiting on the premises. Removing food employees exhibiting or reporting vomiting symptoms from the food facility protects consumers and fellow employees from infection with norovirus. Incubation Period: Generally, between 24 and 48 hours (median in outbreaks 33 to 36 hours), but cases can occur within 12 hours of exposure.

Capece and Gignac note that many cases of norovirus go undiagnosed, as many patients do not seek medical attention for treatment.² The Delaware Food Code requires excluding a food employee that has been diagnosed with norovirus to be excluded for 48 hours after symptoms subside.³ Knowing that the leading cause of food borne illness is norovirus and that many cases go undiagnosed, the Department realizes that undiagnosed gastrointestinal illness may likely be norovirus and therefore, shall be excluded for 48 hours after symptoms subside. No changes will be made.

¹ - Estimates of Foodborne Illness in the United States. Available from: <https://www.cdc.gov/foodborneburden/questions-and-answers.html>

² - Capece G, Gignac E. Norovirus. [Updated 2019 Feb 28]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2020 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK513265/>

³ - Delaware Department of Health and Social Services, Regulation A to Z. Available from: <https://www.dhss.delaware.gov/dhss/dph/regs.html#F>

Adoption of the 2017 Model FDA Food Code in its entirety without modifications and amendments allows restaurant companies that operate nationally, including Yum! Brands, to universally adopt food safety standards based upon the most recent food code without making significant document and process changes to comply with state specific regulations. Delaware specific modifications will cost restaurants and franchisees money in regards to compliance and the creation of Delaware specific documents (such as Employee Health Procedures posters) and leads to confusion on food safety standards.

4458 State of Delaware Food Code Regulations (Break in Continuity of Sections)

1.0 State of Delaware Food Code

Name. These Regulations shall hereby be known as the "State of Delaware Food Code".

Effective Date. The State of Delaware Food Code shall be effective ~~March XX~~ **August 11**, 2020.

2.0 Adoption of United States Public Health Service 2017 Food Code

2.1 The State of Delaware Food Code adopts, as if fully set forth herein, the United States Public Health Service 2017 Food Code, available at <https://www.fda.gov/media/110822/download>, as amended herein:

(Break in Continuity Within Section)

2.1.3 Amend **Subpart 1-201.10(B)** Terms Defined

2.1.3.1 Amend Subpart **1-201.10(B)** by adding thereto-new defined terms:

(Break in Continuity Within Section)

["Private" means a use or function that is intended for a particular individual or group, such as a celebration of a birthday, wedding, anniversary or funeral, and that is not intended for consumers as members of the general public.]

*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2019 issue of the *Register* at page 432 (23 DE Reg. 432). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4458 State of Delaware Food Code Regulations

DIVISION OF SOCIAL SERVICES

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

ORDER

Determining Special Needs and Income Eligibility for Child Care

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 Child Care, specifically, to determine special needs and income eligibility for child care. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Purpose

The proposed rules explain technical and financial eligibility requirements for the Child Care Subsidy Program.

Statutory Authority

- 45 CFR 98.20 (a)
- 45 CFR 98.21 (c)

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policies so that the policies are easier for DSS staff, stakeholders, and the public to understand.

DSS is proposing to amend DSSM 11003.7.8 "Determining Special Needs for Child Care" to include the current process that DSS staff are to follow when determining eligibility for Special Needs Child Care. The policy explains the requirements and documentation needed in order to qualify for Special Needs Child Care. DSS added a section to the policy to provide direction to DSS eligibility workers on coding within the DSS eligibility system.

NOTE: Regulation 11003.7.8 is being published as final. Regulation 11003.7.8 was originally proposed with 11003.6, 11003.7.7 and 11003.9.1 in APA # 19-050 at 23 DE Reg. 531 (01/01/20) (Prop.). Regulations 11003.6, 11003.7.7 and 11003.9.1 will be republished at a later date.

Summary

Effective for services provided on and after August 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend section 11003.7.8 of the Division of Social Service Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2020.

Fiscal Impact Statement

DSS amended the eligibility policies to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. These policies are currently in place and there are no new financial responsibilities associated with the amended eligibility policies.

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period related to regulation 11003.7.8.

FINDINGS OF FACT:

The Department finds that the proposed changes to 11003.7.8 as set forth in the January 2020 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Child Care, specifically, to determine special needs and income eligibility for child care, is adopted and shall be final effective August 11, 2020.

6/23/2020

Date of Signature

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

POLICY – AMENDMENT

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

11003.7.8 Determining Special Needs for Child Care

45 CFR 98.20(a)

Eligibility

~~Families requesting Special Needs Child Care must be technically and financially eligible.~~

~~**EXCEPTION:** DFS referrals do not have to meet financial criteria.~~

~~The parent/caretaker must meet the need criteria as listed in 11003.8.~~

~~To be eligible for Special Needs care the parent/caretaker must meet the definition of need as explained below.~~

~~This policy applies to parents and caretakers requesting Special Needs Child Care for themselves or for their children.~~

- ~~**1. Families requesting Special Needs Child Care must meet the Special Needs eligibility requirements.**~~

~~**Adults with Special Needs:**~~

FINAL REGULATIONS

~~A parent/caretaker may be eligible for Special Needs Child Care services if the parent/caretaker has a condition which makes him/her unable to care for his/her child for some portion of the day.~~

~~Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.~~

- A. DSS will determine a parent or caretaker to be eligible for Special Needs Child Care if:
- i. The parent or caretaker has a condition that causes the parent or caretaker to be unable to care for his or her child for some portion of the day; and
 - ii. The parent or caretaker is financially eligible for child care assistance.

Children with Special Needs:

~~A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's parent/caretaker has a need and is financially eligible. The child's physical, medical or emotional condition must be such that the child is unable to care for himself or herself.~~

~~A child that is younger than 13 years of age who has a special need may be eligible for care if the child's parent/caretaker has a need and is financially eligible.~~

~~Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.~~

- B. DSS will determine a child to be eligible for Special Needs Child Care if:
- i. The child is under 19 years of age;
 - ii. The child is physically or mentally incapable of self-care; and
 - iii. The parent or caretaker has a need per DSSM 11003.8 and is financially eligible for child care assistance.
- C. DSS requires documentation of the special need.
- i. The family can verify the special need by submitting:
 - : DSS Form 611 "Child Care Medical Certification Form"; or
 - : Written **[correspondence documentation]** completed by a physician or medical professional that details the special need and the required care.

Families with Protective Child Care Needs:

~~Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.~~

~~A child that is active with and referred by DFS for child care:~~

- ~~1. is considered to have met the need criteria;~~
- ~~2. does not have to meet the financial criteria;~~
- ~~3. may receive child care regardless of citizenship status.~~

- D. DSS considers children who are active with and referred by the Division of Family Services (DFS) to have met the need criteria for Special Needs Child Care.
- i. Children referred by DFS:
 - : Are not required to meet the financial criteria for child care assistance; and
 - : May receive child care services regardless of their citizenship status.

Families with Transitional Work Program Needs:

~~Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.~~

~~A parent/caretaker that is active with and referred by TWP for child care:~~

- ~~1. is considered to have met the need criteria;~~
- ~~2. must have gross household income at or below 200% FPL;~~

3. ~~is not required to provide a Medical Certification Form or a Special Needs Form.~~

~~DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 41004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.~~

- E. DSS considers parents and caretakers who are active with the Transitional Work Program (TWP) to have met the need criteria for Special Needs Child Care.
- i. Parents and caretakers participating with TWP:
- Must be financially eligible for child care assistance; and
 - Are not required to submit documentation of a special need to DSS.
- ii. TWP staff will request child care for clients who are participating with the program and will determine the amount of care needed.

<p><u>Note: DSS case workers must select the individual approved for the Special Needs Child Care in the "Child Care Additional Demographics" screen in the eligibility system. Selection of the incorrect individual will result in an improper payment error.</u></p>

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3359A(c) (18 Del.C. §§311 & 3359A(c))

REGULATORY IMPLEMENTING ORDER

1411 Registration of Pharmacy Benefits Managers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the April 1, 2020 edition of the *Register of Regulations* at 23 DE Reg. 834, the Commissioner of the Delaware Department of Insurance (Commissioner), published a notice of intent to propose new Regulation 1411. The proposed new regulation requires all pharmacy benefits managers (PBMs) to:

- Register with the Commissioner before providing pharmacy benefits management services in Delaware to a "purchaser" (a "purchaser" is defined as an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity that: (1) provides prescription drug coverage or benefits in Delaware, and (2) enters into agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services); and
- To annually renew their registration on the May 1 after the initial date of registration and every May 1 thereafter.

The Delaware Code authority for the regulation is 18 Del.C. §§311 and 3359A(c).

The Department solicited written comments from the public for thirty (30) days as mandated by the Administrative Procedures Act at 29 Del.C. §10118(a). The Department published a written notice of a thirty-day comment period extension in the May 1, 2020 *Register of Regulations* (see 23 DE Reg. 947). The Department did not hold a public hearing on the proposal.

The Department received comments from five commenters which are on file with the Department.

Two commenters voiced strong support of the legislative and regulatory efforts to promote transparency in drug pricing and in the drug distribution system. However, one of the commenters believes that increased transparency and registration requirements are not enough. The commenter requested that the Commissioner and Delaware legislators consider legislation similar to that passed in Nevada that specifies that PBMs have a fiduciary duty to a third party with which the PBM has entered into a contract to manage that party's pharmacy benefits plan, opining that such legislation would require the PBM to act in the best interest of the pharmacies or consumers it

serves and would further protect the citizens of Delaware.

Two commenters requested that definitions of the terms "affiliate," and "GAAP" be stricken from subsection 2.0 of the proposed regulation, opining that these terms are not used in the text of the regulation.

Several commenters opined that the requirement of subsection 4.2.3 that PBMs file a business plan statement including staffing levels and details concerning the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping is not a statutory condition for registration and lacks a clear standard for measurement of sufficiency.

Two commenters objected to the requirement at subsection 4.2.4 that PBM applicants file a copy of a standard, generic contract template used with pharmacists, pharmacies or pharmacy services administrative organizations. The commenters opined that the statute does not require contracts to be filed and stated that it is unclear to the commenters how this requirement assists the Department in processing registrations of PBMs or what is the connection between filing a template and a claims handling requirement, concluding that the requirement should be stricken as, in the commenter's opinion, the requirement falls outside the scope of the law.

Two commenters pointed out that subsection 4.2.4.2 requires the filing of several policies and procedures within the scope of registration, stating that the commenters understand that if the Department should have a compliance issue, information related to such an issue can be requested. However, the commenters expressed that they did not understand why the requirement would be necessary for registration purposes and requested that it be stricken, or, in the alternative, that specifically subsection 4.2.4.2.2, regarding maximum allowable cost (MAC) pricing, be stricken because 18 **Del.C.** §3323A relates to specific requirements for a MAC list as opposed to policies and procedures.

Commenters also objected to the requirements in subsections 4.2.4.3 and 4.2.4.4 concerning reporting of the number of projected enrollees or beneficiaries in Delaware on an annual basis, and network service areas by county for an insurer, including the pharmacy directory list, because the commenters believe that this mandate is part of an insurer's network adequacy filing already required and maintained by the Department, and because the commenters believe that the requirement falls outside the scope of the statute.

Two commenters requested additional flexibility be added to the requirement at subsection 4.5 that PBM applicants notify the Commissioner of any material change in ownership within 10 days.

Several commenters objected to the requirement at subsection 4.6 that a PBM applicant make available for inspection by the Commissioner copies of all contracts with insurers, opining that the enabling statute does not require PBM-client contracts to be submitted, nor are PBM-client relationships the subject of this law.

Several commenters requested a clarification of the term "financially hazardous condition" as used in Section 5.0, which outlines application or renewal denials. These commenters opined that PBMs operate under the regulatory umbrella of a health insurance provider who accepts risk and follows the financial requirements for insurers. Two commenters raised concerns about subsection 5.3.1, as the standards used of "competent, trustworthy, financially responsible or of good personal and business reputation" are, in the commenters' opinion, vague and unsupported by the statute.

Subsection 6.1.3.4 authorizes the Commissioner to deny, suspend or revoke the certificate of registration of a PBM if the Commissioner finds the PBM has refused to pay clean claims or perform services arising under its contracts. Commenters objected to this provision, stating that compliance and enforcement of prompt pay laws are outside the scope of the enabling statute. Additionally, two commenters pointed out that contracts between PBMs and pharmacies set forth dispute resolution remedies in accordance with Delaware law, that those contract terms determine the rights and obligations of the parties, and that the parties to the contract are responsible for enforcing the terms if there has been a breach or another issue with the contract, such that this is not part of the Commissioner's enforcement authority.

Commenters also commented on subsection 6.1.4, which states that a PBM certificate of registration may be revoked if a PBM refuses to produce or allow examination of accounts, records and files of any individual responsible for the conduct of affairs of the PBM. The commenters opined that this provision appears to require examination of the individual's personal accounts and information, which is unnecessary and is outside the scope of the law, and requested that it be stricken, or in the alternative, that the section be limited to examination of records and files at issue to those relevant to the PBM's affairs.

Several commenters recommended that subsections 7.4 and 7.5 should be amended to include protection of proprietary and confidential information. Two commenters suggested that the language in subsection 7.5 be reconciled with the language in subsection 7.4 by amending subsection 7.5 to recognize that any information reported must not include proprietary/confidential information and is instead protected under the confidentiality

provisions referenced in 18 **Del.C.** §321(g).

Two commenters opined that subsection 7.6 grants the insurer or purchaser "ownership" of the records generated by the PBM pertaining to the insurer or purchaser, as applicable, and objected to this provision because the statute does not address a transfer of ownership of such information and therefore, goes beyond the statute and would interfere in existing contract terms with regard to client access to relevant records.

Finally, subsection 7.8 requires that a PBM who is applying for registration or is registered in the state to produce its accounts, records, and files for examination and make its officer available to give information as often as reasonably required by the Commissioner. Two commenters expressed concern about this provision because "as often as reasonably required" is, in their opinion, overly broad. These commenters recommended that subsection 7.8 be amended to tie frequency to an annual exam, official business, etc. Additionally, rather than broadly referencing "officers," the commenters suggested that this section be amended to be limited to a designated officer for simplifying such a request for information from the Commissioner.

II. FINDINGS OF FACTS

1. Proposed new Regulation 1411 Registration of Pharmacy Benefits Managers implements the registration requirements of HB 194/HA 1 (82 Del. Laws, c. 115 (2019)), promulgated at 18 **Del.C.** §3353A.

2. The Department acknowledges the comments in support of the regulation.

3. The Department agrees that the term "GAAP" is not used in the regulation and is therefore superfluous. The Department will delete this term and its definition upon adoption. However, the Department declines to delete the term "affiliate" from the definitions section as this term is used in the regulation at subsection 7.5.

4. The Department declines to delete subsection 4.2.3. The Department interprets the comment as a challenge to the Department's authority to include within the application a statement describing the applicant's business plans, including staffing levels and proposed activities, capability to handle claims processing and record keeping.

The Department has broad authority under 18 **Del.C.** §3355A(a) to determine whether a registration should be denied, suspended or revoked, and the information requested will inform the grounds for which the Department makes such a determination. Information regarding the applicant's business plans will help the Department in its analysis of whether the PBM can comply with the requirements of Chapter 33A in the first instance. Accordingly, the Department necessarily needs to request enough information or documentation with the initial and renewal applications to make an informed determination on registration.

5. The Department declines to delete the requirement at subsection 4.2.4 that an applicant must supply a copy of the generic contract. Allowing the Department to review a template contract will help the Department ensure that the contract does not include Chapter 33A-proscribed contract provisions. Additionally, since violations of any provision of Chapter 33A and the commission of illegal activities constitute grounds for denial of registration, the contract is relevant in making that determination. However, the Department will revise the heading at subsection 4.2.4 to "information on the applicant's compliance with Chapter 33A requirements, including . . ." for clarity. This change is not substantive in nature and, therefore, may be made upon adoption.

6. The Department declines to delete the requirement at subsection 4.2.4.2 concerning the filing of several policies and procedures. The Department has the right to request information to confirm that the PBM is not in violation of any laws before a PBM is registered and it can be considered a conservation of regulatory resources and a matter of consumer protection to so confirm before, rather than waiting until after, any compliance issues arise. Moreover, to the extent that 18 **Del.C.** §3323A requires a PBMs to "maintain a procedure to eliminate products" from the MAC list, the Department is within its statutory authority to request procedures concerning the updating of an applicant's MAC lists.

7. Upon review and consideration of the comments received, the Department has determined to strike subsections 4.2.4.3 and 4.2.4.4 as being beyond the scope of the statute, as the statute does not give the Department the authority to regulate network adequacy standards for PBMs. A bill has recently been introduced in the General Assembly that would give the Department authority in this area and, therefore, the Department will revisit the inclusion of these provision into Regulation 1411 should those provisions become law. The Department will strike these subsections on adoption to conform the regulation to the statute.

8. The Department accepts the request to expand the 10-day timeframe within which a PBM must notify the Commissioner of any material change in ownership at subsection 4.5 and will expand the timeframe to within 15 days after the end of the calendar month in which any of the foregoing transactions occur. This change is procedural in nature and, therefore, the Department finds it is not a substantive change and it can therefore be

made upon adoption.

9. The Department will strike that portion of subsection 4.6 that requires PBMs to make available for inspection all contracts with insurers. The Department finds that this requirement is superfluous since 18 **Del.C.** § 3357A(a), as further reflected in subsection 7.3 of the regulation, authorizes the Commissioner to examine the affairs, books and records of a registered PBM. This change is not substantive in nature and, therefore, may be made upon adoption.

10. The Department agrees to strike the requirement at subsection 5.1.1 concerning the standard of review of an application regarding whether the PBM is operating in a financially hazardous condition. Since the Department is not requiring the submission of financial information in the application process, it would not be able to know that the PBM is operating in a financially hazardous condition. Striking this provision adds consistency to the regulation and is therefore non-substantive and technical in nature and may be made upon adoption.

11. The Department will strike the phrase "competent, trustworthy, financially responsible or of good personal and business reputation" at subsection 5.3.1. The Department finds that this requirement is superfluous since the grounds for denial, suspension or revocation of registration certificate are set forth with specificity at subsection 6.0. The Department is also striking the superfluous phrase "with respect to the pharmacy benefits manager" from the end of subsection 5.3.3. These changes are non-substantive and technical in nature and, therefore, may be made upon adoption. The Department is also striking the phrase "with respect to the pharmacy benefits manager" from the end of subsection 5.3.3. because it inadvertently restricts the scope of the authorizing statute and subsection 6.0.

12. At subsection 6.1.3.4., the Department recognizes that it did not define the term "clean claims" in the published draft of the regulation. The Department has determined to revise subsection 6.1.3.4 to clarify what it intended by its use of the term "clean claims" with respect to pharmacy reimbursements. The Department will clarify that instead of "clean claims," the statutorily relevant information is information concerning reimbursements in compliance with the PBM's contracts. Chapter 33A not only requires registration but also requires compliance with statutory mandates that dictate how PBMs may operate in the state. Moreover, the statute at 18 **Del.C.** §3355A(a)(3) specifically states that the Department may suspend or revoke a certificate if it finds that the PBM, "in connection with the administration of pharmacy benefits manager services, commits fraud or illegal or dishonest activities." The Department views this change as clarifying and therefore non-substantive in nature.

13. The Department agrees that subsection 6.1.4 could be further clarified to ensure that examination of accounts, records and files of any individual responsible for the conduct of affairs of the PBM do not require examination of the individual's personal accounts and information. The Department will add a clarifying phrase at the beginning of this subsection.

14. The Department declines to make the suggested change to subsections 7.4 and 7.5 concerning confidentiality. The Insurance Code at 18 **Del.C.** §321(g) relates to work papers and documents underlying a final order or report of the Department. Subsection 7.5 of the proposed regulation relates to a final adjudication itself (i.e. the final order or examination report), which is generally public pursuant to the Delaware Freedom of Information Act ("FOIA") and 29 **Del.C.** § 10112(a)(1). In addition, the language in subsection 7.5 is already qualified by the language "that are open to public inspection" under FOIA. The Department retains the ability to determine whether any document is subject to FOIA's disclosure requirements or constitutes a nonpublic document.

15. The Department agrees to delete subsection 7.6 regarding ownership of documents as outside the scope of the PBM registration statute. Title 18 **Del.C.** §3356A governs record retention requirements for PBMs. However, the statute does not discuss who owns the documents. Striking this provision comports the regulation to the statute. Therefore, this change is non-substantive and technical in nature and may be made upon adoption.

16. The Department declines to make the edits to subsection 7.8 suggested by the commenters. However, the Department is substituting the promulgated phrase "considered advisable" for the phrase "reasonably required" to track verbatim the statutory language establishing the frequency with which the Commissioner may conduct examinations under the statute. This is a change that is non-substantive and technical in nature and may be made upon adoption.

17. The Department is also addressing typographical errors as permitted under the Administrative Procedures Act at 29 **Del.C.** §10113(b)(4).

18. The Department met the public notice requirements of the Administrative Procedures Act.

19. The Commissioner finds that it is appropriate to adopt new 18 **DE Admin. Code** 1411 as proposed in the April 1, 2020 *Register of Regulations* with further amendments in accordance with this Final Order, for the reasons

set forth in this Final Order and in the proposal.

III. DECISION TO ADOPT PROPOSED NEW REGULATION 1411

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt proposed new 18 DE Admin. Code 1411 as further amended by this order.

IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 Del.C. §§311 and 3359A(c) on the date indicated below. The effective date of this Order and of the regulation shall be August 11, 2020.

IT IS SO ORDERED.

The 15th day of July, 2020.

Trinidad Navarro
Commissioner, Delaware Department of Insurance

1411 Registration of Pharmacy Benefits Managers

1.0 Scope and Authority

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §[§311 and] 3359A(c) and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

2.0 Definitions

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

(Break in Continuity Within Section)

~~["GAAP" means United States generally accepted accounting principles consistently applied.]~~

(Break in Continuity of Sections)

4.0 Pharmacy Benefits Manager Registration Requirements

(Break in Continuity Within Section)

- 4.2 An applicant who wishes to apply to be a pharmacy benefits manager in Delaware shall submit a Pharmacy Benefits Manager Registration Application to the Department, on which the applicant includes all of the following:

(Break in Continuity Within Section)

- 4.2.4 Information on ~~claims handling expertise~~ on the applicant's compliance with Chapter 33A requirements], including:

(Break in Continuity Within Section)

~~4.2.4.3 The number of projected enrollees or beneficiaries in Delaware to be serviced by the applicant on an annual basis for all contracted insurers. If applicable, provide the number of enrollees or beneficiaries administered by the applicant for each insurer during the previous year;~~

~~4.2.4.4 A copy of the applicant's network service areas by county in this State for an insurer and the applicant's pharmacy directory list. Please list mail order pharmacies separately, because they may not be included in determining the adequacy of a retail pharmacy network; and~~

(Break in Continuity Within Section)

- 4.5 A pharmacy benefits manager who is registered or who is applying for registration under Section 4.0 of this regulation shall, within ~~10 business days~~ 15 days after the end of the calendar month in

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which any of the foregoing transactions occur], notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a registration certificate in this state.

- 4.6 A pharmacy benefits manager who is applying for registration or who is registered under this Section shall make available for inspection by the Commissioner ~~[copies of all contracts with insurers, and]~~ copies of each permit issued to each nonresident pharmacy under 24 Del.C. §2535 that the pharmacy benefits manager uses to ship, mail, or deliver prescription drugs or devices in this state.

5.0 Standard of Review

- 5.1 The Commissioner shall deny an initial application or renewal application made under this regulation if the pharmacy benefits manager:

~~[5.1.1 Operates, or proposes to operate, in a financially hazardous condition relative to its financial condition and the services it administers, or proposes to administer for purchasers in Delaware;~~

~~5.1.2~~ 5.1.1] Has been determined by the Commissioner to be in violation or non-compliance with the requirements of this regulation or 18 Del.C. Ch. 33A; or

~~[5.1.3~~ 5.1.2] Has failed to timely submit information to complete review of the application or has failed to submit a renewal application and information under Section 4.0 of this regulation.

(Break in Continuity Within Section)

- 5.3 The Commissioner may refuse to issue a certificate of registration if the Commissioner determines that the pharmacy benefits manager, or any individual responsible for the conduct of affairs of the pharmacy benefits manager:

~~[5.3.1 Is not competent, trustworthy, financially responsible or of good personal and business reputation; or~~

~~5.3.2~~ 5.3.1] Has had an insurance or a pharmacy benefits manager certificate or license denied or revoked for cause by any jurisdiction; or

~~[5.3.3~~ 5.3.2] If the Commissioner determines that any of the grounds set forth in Section 6.0 of this regulation ~~[exists with respect to the pharmacy benefits manager exists].~~

6.0 Grounds for Denial, Suspension or Revocation of Registration Certificate

- 6.1 The Commissioner may deny, suspend or revoke the certificate of registration of a pharmacy benefits manager if the Commissioner finds that the pharmacy benefits manager ~~[or an officer, director, or employee of the pharmacy benefits manager]~~ has engaged in any of the following:

6.1.1 A material misstatement, misrepresentation, or omission in a registration or registration renewal application, including but not limited to:

(Break in Continuity Within Section)

6.1.1.4 Failure to disclose that individuals who are responsible for the conduct of the affairs of the pharmacy benefit manager have been convicted of, or ~~[has have]~~ entered a plea of guilty or *nolo contendere* ~~[to, to]~~ a felony without regard to whether adjudication was withheld;

6.1.2 Fraudulently or deceptively obtaining or attempting to obtain a registration or renewal of a registration;

6.1.3 In connection with the administration of pharmacy benefits ~~[manager management]~~ services, fraud or illegal or dishonest activities, including but not limited to:

(Break in Continuity Within Section)

6.1.3.4 Without just cause, refusing to ~~[pay clean claims or perform services arising under make reimbursements in compliance with]~~ its contracts ~~[or, without just cause, causing covered individuals to accept less than the amount due them or causing covered individuals to employ attorneys or bring suit against the pharmacy benefits manager to secure full payment or settlement of such claims]~~ and as required by law]; or

6.1.4 A violation of any provision of 18 Del.C. Ch. 33A or this regulation, including but not limited to:

6.1.4.1 ~~[Refusing~~ In connection with the affairs of the pharmacy benefits manager, ~~refusing]~~ to be examined or to produce ~~[pharmacy benefits manager-related]~~ accounts, records and files for examination, of any individual responsible for the conduct of affairs of the pharmacy benefits manager, including:

7.0 Maintenance of Information – Examination by Commissioner

(Break in Continuity Within Section)

~~[7.6 The insurer or purchaser, as applicable, shall own the records generated by the pharmacy benefits manager pertaining to the insurer or purchaser, as applicable; however, the pharmacy benefits manager shall retain the right to continuing access to books and records to permit the pharmacy benefits manager to fulfill all of its contractual obligations to insured parties, claimants, and the insurer or purchaser, as applicable.~~

~~7.7~~ 7.6] In the event the insurer or purchaser, as applicable, and the pharmacy benefits manager cancel their agreement, notwithstanding the provisions of subsection 7.1 of this regulation, the pharmacy benefits manager may, by written agreement with the insurer or purchaser, as applicable, transfer all records to a new pharmacy benefits manager rather than retain them as is required under subsection 7.1 of this regulation. In such cases, the new pharmacy benefits manager shall acknowledge, in writing, that it is responsible for retaining the records of the prior pharmacy benefits manager as required in subsection 7.1 of this regulation.

~~[7.8~~ 7.7] A pharmacy benefits manager who is applying for registration or who is registered under this Section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as ~~[reasonably required considered advisable]~~ by the Commissioner.

~~[7.9~~ 7.8] A pharmacy benefits manager shall be subject to assessment for all fees, costs, experts and related expenditures with respect to any examination or enforcement action undertaken by the Commissioner pursuant to 18 Del.C. Ch. 33A and this regulation.

(Break in Continuity of Sections)

10.0 Effective Date

This Regulation shall become effective ~~[June- August]~~ 11, 2020.

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 834 (23 DE Reg. 834). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1411 Registration of Pharmacy Benefits Managers

DEPARTMENT OF LABOR

DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Sections 3122 and 3317(a) (19 Del.C. §§3122 & 3317(a))

19 DE Admin. Code 1202

ORDER

1202 Unemployment Insurance Regulations

In accordance with 29 Del. C. § 10118, and for the reasons set forth herein, the Delaware Department of Labor, Division of Unemployment Insurance (hereinafter “the Division”) enters this Order adopting the Division of Unemployment Insurance Revised Regulation 5.0 on Posting of Placards and Notice to Employee Required in all

Separations.

NATURE OF THE PROCEEDINGS

Pursuant to its authority under 19 *Del. C.* §§ 3122 and 3317(a), the Division proposes to adopt a revised regulation to establish procedures for employers to provide notice to claimants at the time the individual becomes unemployed of their rights to file an unemployment claim.

The Division gave notice of its intent to adopt the proposed revised regulation by publication in the June 1, 2020 issue of the *Delaware Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 *Del. C.* Ch. 104. The Division solicited written comments from the public concerning the proposed revised regulation allowing the period of time for such submissions to remain open for the thirty (30) days mandated by 29 *Del. C.* § 10118(a).

The Division received no written comments from the public in response to the notice of intention to adopt the proposed revised regulation. Therefore, no evaluation or summarization of comments is presented in the "Summary of Evidence" section herein.

SUMMARY OF EVIDENCE

In accordance with Delaware law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. A Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. The public comment period was open from June 1, 2020 through July 1, 2020.

The Division received no written comments in response to the notice of intention to adopt the proposed revised regulation during the public comment period.

FINDINGS OF FACT

The public was given the required notice of the Division's intention to adopt the proposed revised regulation and was given ample opportunity to provide the Division with comments opposing the Division's adoption of the proposed revised regulation. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No public comments were received. Thus, the Division finds that the proposed revised regulation, as set forth in the attached copy, which adds section 5.2, should be adopted as in the best interest of the general public of the State of Delaware.

TEXT AND CITATION

The text of the proposed revised regulation 5.0 remains as published in the *Delaware Register of Regulations*, Volume 23, Issue 12 on June 1, 2020, and is attached hereto as Exhibit A.

THEREFORE, IT IS SO ORDERED, this 7th day of July, 2020, that the proposed Division of Unemployment Insurance Revised Regulation 5.0 on Posting of Placards and Notice to Employee Required in all Separations is adopted and shall become effective ten (10) days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 *Del. C.* § 10118(e) and (g).

By: Darryl Scott, Director
Division of Unemployment Insurance

***Please note that no changes were made to the regulation as originally proposed and published in the June 2020 issue of the *Register* at page 1000 (23 DE Reg. 1000). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1202 Unemployment Insurance Regulations

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

Statutory Authority: 7 Delaware Code, Sections 901(b), (c) and (d); 903(a), (b) and (e)(2)b. (7 Del.C. §§901(b), (c) and (d); 903(a), (b) & (e)(2)b.)
7 DE Admin. Code 3503 & 3504

Secretary's Order No: 2020-F-0024

RE: Approving Final Amendments to 7 DE Admin. Code 3503 - *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit* and 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*

Date of Issuance: July 15, 2020

Effective Date: August 11, 2020

**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit
3504 Striped Bass Possession Size Limit; Exceptions**

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

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3503 - *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit* and 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions* ("Amendments"). The Department proposes revisions for Delaware to remain compliant with Addendum VI to Amendment 6 of the Atlantic States Marine Fisheries Commission's ("ASMFC") Fishery Management Plan ("FMP") for Atlantic Striped Bass ("Addendum"). The proposed Amendments, as required by the aforementioned Addendum, would enact an 18% reduction of Striped Bass removals for proper management of this species.

In 2018, the ASMFC conducted a benchmark stock assessment of Striped Bass. The assessment indicated that the striped bass stock is overfished and experiencing overfishing. In October 2019, the ASMFC's striped Bass Management Board implemented Addendum VI to Amendment 6 of the FMP, in order to retain management measures for the striped bass population. The mandatory provisions of the Addendum require a coastwide 18% reduction in striped bass removals (landings + discard mortality). The ASMFC adopted specific, prescribed coastwide management measures to meet the required 18% reduction, however these measures are not preferred for Delaware.

The Department then developed two management alternatives for the review of the ASMFC. One alternative (Option 1) provides a recreational possession limit of one striped bass and an allowable striped bass size limit of not less than 28-inches or more than 35-inches in total length; except, in the Delaware Bay, Delaware River and their tributaries during July and August, the allowable size limit is not less than 20-inches or greater than 25-inches. Delaware's authorized commercial striped bass quota is established as 142,474 pounds. The result of Option 1 measures a 1.8% reduction in commercial removals and a 20.4% reduction in recreational removals.

The other alternative (Option 2) provides a recreational possession limit of one striped bass and an allowable striped bass size limit of not less than 28-inches or more than 38-inches in total length; except, in the Delaware Bay, Delaware River and their tributaries during July and August, the allowable size limit is not less than 20-inches or greater than 25-inches. Delaware's authorized commercial striped bass quota would be 118,969 pounds. The result of Option 2 measures an 18% reduction in commercial removals and an 18.18% reduction in recreational removals.

The ASMFC's Striped Bass Management Board approved both alternatives for use at their February 4, 2020 meeting; however, there was insufficient time to promulgate regulations for either alternative through standard

administrative procedures by the required April 1, 2020 implementation date. There was also a need to implement management measures by the February 15, 2020 opening of Delaware's commercial striped bass fishery to avoid jeopardizing the welfare of the striped bass resource and its dependent commercial and recreational fisheries.

In accordance with the procedures set forth in 29 *Del.C.* §10119 and pursuant to 7 *Del.C.* §903(h), the Department implemented Emergency Order No. 2020-F-0002 ("EO") on February 12, 2020. The EO enacted measures to adopt Option 1 management alternatives that were preferred by Delaware's Advisory Council on Tidal Finfisheries until both alternatives were vetted through the standard administrative procedures. The EO went into effect on February 15, 2020, thereby meeting the opening date of Delaware's commercial striped bass fisheries to ensure the welfare of the striped bass resource and its dependent commercial and recreational fisheries. Compliant with the Addendum, the EO was expected to reduce Delaware's total striped bass removals by 18.4%.

The EO remained in effect for 120 days, expiring June 14, 2020. Pursuant to 29 *Del.C.* §10119(3) the Department renewed the EO for an additional 60 days through Secretary's Order No. 2020-F-0016 (expiring August 14, 2020), in order to retain its provisions while the amendments were being finalized pursuant to the Administrative Procedures Act.

It should be noted that the emergency regulations, as contained in the EO and its' extension, were intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §901 (b), (c) & (d); §903 (a), (b) & (e)(2) b. The Department published its initial proposed regulation Amendments in the June 1, 2020 *Delaware Register of Regulations*. Pursuant to the State of Emergency declared by Governor Carney, dated March 13, 2020, the State of Emergency mandated all public meetings of executive branch public bodies governed by 29 *Del. C.* §§10001 et. seq. to be conducted electronically, either by means of telephone conference call or video-conference call, to prevent unnecessary public gatherings due to the public threat of COVID-19. A virtual public hearing regarding this matter was held on June 25, 2020 via the Webex virtual platform. There were 2 members of the public in attendance at the virtual public hearing.

Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of written comment for 15 days following the virtual public hearing. The Record formally closed for comment in this matter, at close of business on July 10, 2020, with 4 written comments received by the Department for the formal promulgation.

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

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department's Division of Fish and Wildlife staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion with regard to concerns of the Striped Bass population and the impact to recreational and commercial fisheries.

The Department's experts in the Division of Fish and Wildlife have concluded that Option 1 reduces the financial impact of the proposed Amendments to commercial fishermen. Option 1 also retains recreational size, season and possession limits that are either identical or close to the recreational regulations of our surrounding states, such that recreational fisheries are not at a competitive disadvantage. In addition, the Delaware's Advisory Council on Tidal Finfisheries, comprised of equal numbers of commercial and recreational councilors, recommended that the Department implement Option 1 at their November 20, 2019 meeting.

Following receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing Officer's Report dated June 13, 2020 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the aforementioned Amendments to 7 **DE Admin. Code** 3504, as attached to the Report as Appendix "A," and as set forth in Option 1 previously referenced herein.

Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments are well-supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed

Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* §901 (b), (c) & (d); §903 (a), (b) & (e)(2) b;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on June 25, 2020, and during the 15 days subsequent to the hearing (through July 10, 2020), before making any final decision;
4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 3503 - *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit* and 7 **DE Admin. Code** 3504 - *Striped Bass Possession Size Limit; Exceptions*, will enable the Department to remain compliant with Addendum VI to Amendment 6 of the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Atlantic Striped Bass. The proposed Amendments, as required by the aforementioned Addendum, would enact an 18% reduction of striped bass removals for proper management of this species;
5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's proposed regulatory Amendments, as initially published in the June 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Shawn M. Garvin
Secretary

**3500 Tidal Finfish
Bass (Striped Bass; Black Sea Bass)**

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

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

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

- 5.0 Notwithstanding 7 Del.C. §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.

3504 Striped Bass Possession Size Limit; Exceptions.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than ~~twenty-eight (28)~~ 28 inches in total length or any striped bass that measures greater than ~~thirty-seven (37)~~ or equal to ~~[[TBD from Table] 35]~~ inches in total length but less than ~~forty-four (44)~~ inches in total length, except that a recreational hook and line fisherman may only take ~~two (2)~~ one striped bass measuring not less than ~~twenty (20)~~ 20 inches in total length and not greater than ~~twenty-five (25)~~ 25 inches in total length from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.

[Table. Legal recreational striped bass lengths options in proposed amendments to 7 DE Admin. Code §3504 (1.0):

<u>Option</u>	<u>Minimum Length (inches)</u>	<u>Length not to be equaled or exceeded (inches)</u>
<u>1</u>	<u>28</u>	<u>35</u>
<u>2</u>	<u>28</u>	<u>38</u>

- 1
- 2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than ~~twenty-eight (28)~~ 28 inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than ~~twenty (20)~~ 20 inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through ~~the month of~~ March 31.
- 3.0 It is unlawful for any person to possess a striped bass except in accordance with Section 1.0 or 2.0 of this section or unless said striped bass is in one or more of the following categories:
- 3.1 It has affixed a valid strap tag issued by the Department to a commercial food fisherman and was legally taken and tagged by said commercial food fisherman; or
- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 3.4 It was legally taken and reduced to possession in another state for noncommercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It is unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 The words "take and reduce to possession" shall mean the removal of any striped bass from Delaware waters with the intent to keep or harvest the striped bass.
- 7.0 It is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than ~~twenty (20)~~ 20 inches in total length.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1305 (24 Del.C. §1305)
24 DE Admin. Code 1300

ORDER

1300 Board of Examiners of Private Investigators & Private Security Agencies

Pursuant to the Guidelines in 29 Del. C. Section 10118(b)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. The proposed change was published in the *Delaware Register of Regulations* on December 1, 2019 (Vol. 23, Issue 6). Following notice and a public hearing on the proposed adoption of amendments to Rule 1.0 *Firearm's Policy*, and Rule 4.0 *Training Requirements*, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendments to *require the agencies to maintain and monitor all firearm certification and recertification of their employees; and to require grandfathered security guard trainers to retake the Instructor Certification Course by January 2021, and take refresher course every 5 years or sooner as needed.*

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will *require the agencies to maintain and monitor all firearm certification and recertification of their employees; and to require grandfathered security guard trainers to retake the Instructor Certification Course by January 2021, and take refresher course every 5 years or sooner as needed.*
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to *require the agencies to maintain and monitor all firearm certification and recertification of their employees; and to require grandfathered security guard trainers to retake the Instructor Certification Course by January 2021, and take refresher course every 5 years or sooner as needed.*

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 Del. C. Section 1305 et seq. and, in particular, 24 Del. C. Section 1305(b)).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del. C. Section 1305 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 Del. C. Section 1305(b)) and guidelines of 29 Del. C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be *August 11, 2020.*
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed

simultaneously on the 21st day of May, 2020.

Lt. Colonel Melissa A. Zebley
 Director Robert J. Irwin
 Vacant - Public Member
 Mrs. Sandra C. Taylor
 Mr. Mark W. Rainford

Vacant - Private Investigative Agency
 Ms. Kelly R. Jansen
 Vacant - Private Security Agency
 Vacant - Armored Car Agency

***Please note that no changes were made to the regulation as originally proposed and published in the December 2019 issue of the *Register* at page 440 (23 DE Reg. 440). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1300 Board of Examiners of Private Investigators & Private Security Agencies

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

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

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 Del. C. Section 10118(b)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. The proposed change was published in the *Delaware Register of Regulations* on April 1, 2020 (Vol. 23, Issue 10). Following notice and a public hearing on the proposed adoption of amendments to rule 7.0 *Conducted Electrical Weapon (CEW)*, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to *require training for a conducted electrical weapon to be consistent with manufacturer recommendations, and to have records maintained by the Constable's entity.*

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will *require training for a conducted electrical weapon to be consistent with manufacturer recommendations, and to have records maintained by the Constable's entity.*
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to *require training for a conducted electrical weapon to be consistent with manufacturer recommendations, and to have records maintained by the Constable's entity.*

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 Del. C. §2701 et seq. and, in particular, 10 Del. C. §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 Del. C. §2701 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of

Delaware.

10. The Board therefore adopts this amendment pursuant to 10 **Del. C.** §2702(b) and guidelines of 29 **Del. C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

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

12. The effective date of this Order shall be *August 11, 2020*.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the *21st day of May, 2020*.

Lt. Colonel Melissa A. Zebley

William H. Leonard, Esquire

Captain Diane Smith

Mr. Jeffrey Horvath

Mr. John F. Tharan

May 21, 2020

***Please note that no changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 842 (23 DE Reg. 842). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2400 Board of Examiners of Constables

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 **Del.C.** §1106(a)(1))
24 **DE Admin. Code** 1100

ORDER

1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene pursuant to 24 *Del. C.* § 1106(a)(1), proposed to revise its regulations. The proposed amendments to Regulation 6 seek to allow the Board to grant continuing education credits to dentists and dental hygienists who perform volunteer clinical work and add American Academy of Dental Hygiene to the list of approved dental hygiene CE providers.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on April 1, 2020, a public hearing was held on May 14, 2020, at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene to receive verbal comments regarding the Board's proposed amendments to its regulations. No comments were submitted at that time.

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*;

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 May 14, 2020. No written comments were received by the Board during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen-day 29 *Del. C.* § 10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 *Del. C.* § 1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments to Regulation 6 seek to allow the Board to grant continuing education credits to dentists and dental hygienists who perform volunteer clinical work and add American Academy of Dental Hygiene to the list of approved dental hygiene CE providers.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 *Del. C.* § 1106(a)(1) and for the reasons set forth above, the Board of Dentistry and Dental Hygiene does hereby ORDER that the regulations be, adopted and promulgated as set forth in the *Delaware Register of Regulations*. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 *Del. C.* § 10118(g). The new regulations are attached hereto as Exhibit A.

SO ORDERED this 14th day of July, 2020.

BOARD OF DENTISTRY AND DENTAL HYGIENE

/s/ Bruce Matthews, DDS, President	Ryan Barhart, DDS, Secretary (present)
Erin Cox, DDS (present)	/s/ Michael Nies, DDS
/s/ Anthony Vattilana, DDS	/s/ Buffy Parker, RDH,
/s/ Joseph Stormer, Public Member	/s/ June Ewing, Public Member
/s/ Carla Rawheiser, RDH, Hygiene Advisory	/s/ Bonnie Thomas, RDH, Hygiene Advisory
/s/ Tammy Beebe, RDH, Hygiene Advisory	

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***Please Note: No changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 844 (23 DE Reg. 844). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 Del.C. §§6010(a) & 6010(c))

REGISTER NOTICE

Delaware 2017 Base Year State Implementation Plan (SIP) Emissions Inventory under the 2015 Ozone National Ambient Air Quality Standard (NAAQS)

1. TITLE OF SIP REVISION:

Delaware 2017 Base Year State Implementation Plan (SIP) Emissions Inventory under the 2015 Ozone National Ambient Air Quality Standard (NAAQS)

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

This document contains Delaware's SIP revision for meeting the Clean Air Act (CAA) requirements for the 8-hour ozone NAAQS set forth by US Environmental Protection Agency (EPA) in 2015.

According to Section 182(a)(1) of CAA and EPA's implementation rule for the 2015 ozone standard (Final Rule, December 6, 2018, 83 FR 62998), Delaware is required to submit to EPA in August 2020 a SIP revision which compiles Delaware 2017 emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx) from four source sectors: stationary point sources, stationary non-point sources, nonroad mobile sources, and onroad mobile sources. The subject document contains Delaware's base year emission inventory SIP revision under the 8-hour ozone NAAQS set forth by EPA in 2015.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60 Environmental Control, Sections 6010(a) and 6010(c).

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

N/A

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket #2020-R-A-0011) on the proposed SIP revision will be held on August 26, 2020 beginning at 6:00PM. For additional information on this proposed regulatory promulgation, visit <https://de.gov/dnrehearings>. Please note that live comments will not be accepted during the virtual hearing. Persons wishing to comment on the proposed amendment may do so in written form. Written comment may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to Theresa Newman, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. The Department will accept public comment through the close of business on Thursday, September 10, 2020.

7. PREPARED BY:

Jacquelyn L. Cuneo jacquelyn.cuneo@delaware.gov (302) 739-9402

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

[DNREC 2017 Base Year SIP Emissions Inventory - Proposal.pdf](#)

http://regulations.delaware.gov/register/august2020/general/DNREC_2017_Base_Year_SIP_Emissions_Inventory_-_Proposal.pdf

GENERAL NOTICES

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 Del.C. §§6010(a) & 6010(c))

Secretary's Order No.: 2020-A-0021

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
*Certification that Delaware's Emission Statement Program, under
7 DE Admin. Code 1117, meets the "Emissions Statement"
requirement under the 2015 National Ambient Air Quality
Standard ("NAAQS") for Ground-Level Ozone***

Date of Issuance: July 14, 2020

Effective Date of the Amendment: July 14, 2020

State Implementation Plan (SIP) Revision to certify that Delaware's Emission Statement program meets all 2015 Ozone National Ambient Air Quality (NAAQS) requirements

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to the Delaware State Implementation Plan ("SIP"), specifically, to provide the U.S. Environmental Protection Agency ("EPA") with its Certification that Delaware's Emission Statement Program, as set forth under 7 DE Admin. Code 1117, meets the "Emissions Statement" requirement under the 2015 National Ambient Air Quality Standard ("NAAQS") for Ground-Level Ozone. Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to EPA a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality non-attainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

On October 1, 2015, the EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation.

New Castle County, Delaware, was designated as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2015 Ozone NAAQS, effective August 3, 2018. Delaware's Kent and Sussex Counties were designated as attainment areas for the same 2015 Ozone NAAQS. Depending on the classification of nonattainment counties within a state, states are required to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas under the CAA.

With each new NAAQS, the EPA summarizes the plan requirements to implement the provisions of the CAA which are applicable to attainment and nonattainment areas, or Implementation Plan Requirements ("IPR"), as these are more commonly known. The EPA finalized the IPR for the 2015 Ozone NAAQS on December 6, 2018. As a marginal nonattainment area, Delaware's New Castle County is subject to specific requirements in this final rule. However, as Delaware is part of the Ozone Transport Region (a group of states identified under the CAA for the purposes of addressing interstate transport), all counties in Delaware are subject to certain IPRs.

To provide clarity for the benefit of the hearing record (“Record”) generated in this matter, it should be noted that the Department is currently proposing three specific SIP revisions to address EPA’s requirements for incorporation into Delaware’s SIP document. Accordingly, a virtual public hearing was held by the Department on Wednesday, March 25, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform to receive comment on all three proposed revisions to Delaware’s SIP document, as follows: (1) Certification of Delaware’s Emission Statement Program, specifically, under 7 DE Admin. Code 1117; (2) Certification of Delaware’s Nonattainment New Source Review (“NNSR”) Program, specifically, under 7 DE Admin. Code 1125; and (3) Certification of Delaware’s Requirements for Reasonably Available Control Technology (“RACT”), as codified in the Department’s DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*. While all three of these proposed SIP revisions were presented at the aforementioned hearing, EPA has requested that a separate Secretary’s Order be issued for each proposed SIP revision, so that EPA may reference individual, independent SIP documents for each certification matter referenced above. Thus, this Order only addresses the proposed SIP revision for the Certification of Delaware’s Emission Statement Program, as set forth under 7 DE Admin. Code 1117. The remaining proposed SIP revisions, as referenced above, will be addressed in separate Orders specifically dedicated to those revisions.

As noted above, the proposed SIP revision which is the subject of this Order concerns the Certification of Delaware’s Emission Statement Program, to include rules which establish annual reporting requirements for certain stationary sources. As an option allowed by the EPA, where an air agency (such as DNREC) determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements, that air agency’s SIP revision may provide a written statement certifying that determination in lieu of promulgating new, revised regulations (December 6, 2018, 83 FR 63001). Since DNREC is choosing to provide written certification in lieu of submitting new or revised regulations, the certification must be provided to EPA as a SIP revision to its SIP document, in accordance with CAA Section 110 and 40 CFR 51.102, 103 and Part 51, Appendix V.

The State of Delaware’s finalized SIP document serves as the formal certification that DNREC is relying upon its existing regulations to meet EPA’s “Emission Statement” requirement. The proposed SIP revision serves as the mechanism by which the Department will incorporate that formal certification into its SIP document, thereby providing EPA with its Certification that Delaware’s Emission Statement Program, under 7 DE Admin. Code 1117, meets the “Emissions Statement” requirement under the 2015 Ozone NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision concerning the incorporation of the Certification of Delaware’s Emission Statement Program, under 7 DE Admin. Code 1117, into its SIP document, pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the March 25, 2020 public hearing held in this matter, in the March 1, 2020 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through April 9, 2020. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated June 22, 2020 (“Report”). The Report documents the proper completion of the required SIP revision process (as it relates to all three proposed SIP revisions noted above), establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware’s SIP document, thus enabling Delaware to provide EPA its Certification of Delaware’s Emission Statement Program, under 7 DE Admin. Code 1117, as attached to the Report as Appendix “A.”

Reasons and Conclusions

Based on the Record developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the Department’s proposed revision to Delaware’s SIP document concerning the Certification of Delaware’s Emission Statement Program under 7 DE Admin. Code 1117 is well-supported. I further find that the Department’s experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;

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

3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through April 9, 2020), consistent with Delaware law, in order to consider the same before making any final decision;

4. The Department's Hearing Officer's Report, including its established Record and this recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of this proposed SIP revision will enable the Department to provide EPA with its Certification that Delaware's Emission Statement Program, as set forth under 7 DE Admin. Code 1117, meets all the requirements under the 2015 Ozone NAAQS;

6. The Department's proposed SIP revision, as published in the March 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

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

Shawn M. Garvin
Secretary

**Delaware State Implementation Plan Revision
Under the 2015 Ozone National Ambient Air Quality Standard**

Certification of Delaware's Non-attainment New Source Review (NNSR) and Emissions Statement Programs

~~[PROPOSAL]~~ **FINAL REPORT**

Submitted to:

**U.S. Environmental Protection Agency
Region 3 – Philadelphia, PA**

Prepared by:

**Department of Natural Resources & Environmental Control
Division of Air Quality
Emission Inventory Development Program**

State Street Commons
100 W. Water Street, Suite 6A
Dover, DE 19904

~~[March, August]~~ **2020**

1. Introduction

On June 4, 2018, EPA issued final designations under the 2015 ozone National Ambient Air Quality Standards (NAAQS) for Delaware counties. EPA included New Castle County in the marginal Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area. The area was classified as a Marginal nonattainment area which became effective on August 3, 2018.

When new NAAQS are promulgated, states must submit certifications of adequacy for their Non-attainment New Source Review (NNSR) and Emissions Statement Programs as part of the required State Implementation Plan (SIP) elements. The purpose of this document is to certify that Delaware's NNSR and Emission Statement

Programs satisfy the requirements of the CAA for the 2015 ozone NAAQS.

In addition, Delaware is required to submit two additional elements as part of the new 2015 NAAQS promulgation: 1) a base year inventory of ozone precursors to EPA for New Castle and 2) a Reasonably Available Control Technology (RACT) SIP revision certifying that Delaware, as part of the Ozone Transport Region, meets its obligation to establish RACT controls for VOC and NOx. Delaware plans to submit these required elements of the SIP to EPA in conjunction with the NNSR and Emission Statement Program certifications discussed below.

2. Certification of NNSR program

EPA previously approved a state-wide NNSR SIP revision on August 12, 2019 (84 FR 39758) which covered the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Seaford, DE nonattainment areas for the 2008 ozone NAAQS. EPA published a proposed amendment to the NNSR program in Delaware’s approved SIP on February 10, 2020 to update a reference to the current version of EPA’s modeling guidance. Delaware does not believe that this amendment will affect 2015 ozone NAAQS implementation. Upon review of the SIP-approved NNSR program, Delaware finds and certifies that no changes are necessary to comply with the 2015 ozone NAAQS NNSR requirements.

The State of Delaware is certifying that its existing NNSR program is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2015 National Ambient Air Quality Standard for Ozone: Nonattainment Area State Implementation Plan Requirements* (83 FR 62998, December 6, 2018).

Note that the emission offset provisions of 7 DE Admin. Code 1125 approved by EPA into Delaware’s SIP on October 2, 2012 (77 FR 60053) continue to apply to Delaware sources in nonattainment areas. EPA did not approve into the SIP the provisions in 7 DE Admin. Code 1125 that DE adopted on December 11, 2016. Thus the provisions in the approved Delaware SIP remain applicable requirements, and offsets can only be obtained from the expanded area identified in the December 11, 2016 adoption if the offsets also meet the provisions in the SIP (i.e., they are generated in an area of equal to or higher nonattainment classification, and they are shown to directly impact the nonattainment area where the offsets are being used.) The requirements necessary to appropriately implement Delaware’s NNSR program are included in Table 1.

3. Certification of Emission Statement Program

Section 182(a)(3)(B) of the Clean Air Act (CAA) requires states with ozone nonattainment areas to develop emission statement programs for VOC and NOx sources. The required state program and associated regulation defines how states obtain emissions data directly from facilities and report it to the EPA. On July 5, 2019 (84 FR 32068) EPA approved Delaware’s certification that its existing Emission Statement program satisfies the emissions statements requirements of the CAA for the 2008 ozone NAAQS. The approved emission statement rule, in force for the 1997 ozone NAAQS and the 1-hour ozone NAAQS, covers all portions of Delaware’s nonattainment areas for the 2015 ozone NAAQS, and is sufficient for purposes of the emissions statement requirements for the 2015 ozone NAAQS.

The State of Delaware is certifying that its existing emission statement rule meets the emission statement requirements for the 2015 ozone NAAQS. The requirements necessary to appropriately implement Delaware’s Emission Statement program are included in Table 1.

Table 1: 2015 Ozone NAAQS SIP Requirements	
Non-attainment New Source Review	
40 CFR 51.165	Delaware Requirements
(a)(1)(iv)(A)(1)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	7 DE Admin. Code 1125 Section 2.2.
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	7 DE Admin. Code 1125 Section 2.2.3.

GENERAL NOTICES

(a)(1)(v)(E): Significant net emissions increase of NO _x is significant for ozone	7 DE Admin. Code 1125 Section 1.9, Definitions – “Major Modification” .
(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	Not applicable since no Delaware nonattainment area is or has previously been designated as Extreme.
(a)(1)(x)(A)-(C) and (E): Significant emissions rates for VOC and NO _x as ozone precursors	7 DE Admin. Code 1125 Section 1.9, Definitions – “Significant” .
(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits	7 DE Admin. Code 1125 Section 2.5 as approved into Delaware’s SIP on October 2, 2012. These SIP-approved provisions continue to apply to Delaware sources in nonattainment areas.
(a)(8): Requirements for VOC apply to NO _x as ozone precursors	7 DE Admin. Code 1125 Section 2.2.4.
(a)(9)(i)-(iii): Offset ratios for VOC and NO _x for ozone nonattainment areas <i>[subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)]</i>	7 DE Admin. Code 1125 Section 2.4.3.
(a)(12): Anti-backsliding provision(s), where applicable	Sources in Kent and New Castle Counties remain subject to requirements and major source thresholds based on the Severe designation for the 1-hour ozone standard. Sussex County remains subject to requirements and major source thresholds based on the Moderate designation as part of an ozone transport region.
Emission Statement Program	
CAA Section 182(a)(3)(B)	Delaware Requirements
182(a)(3)(B)(i) – Submit an emissions statement	7 DE Admin. Code 1117 Section 7.1 – Emissions statement requirements apply to all stationary sources located in an ozone nonattainment area that emit NO _x and VOC.
182(a)(3)(B)(i) –Emission statement requirements	7 DE Admin. Code 1117 Section 7.2 – Emissions statements are required to include the following information: Source identification information, operating data, actual emissions data, control equipment information, and process rate information.
182(a)(3)(B)(i) – Submit yearly	7 DE Admin. Code 1117 Section 7.3. Annual emission statements due April 30 for the preceding calendar year.
182(a)(3)(B)(i) – Source certification	7 DE Admin. Code 1117 Section 7.2. Certification statement contained on the Emission Statement to be signed by the Responsible Official.
182(a)(3)(B)(ii) – Reporting thresholds	7 DE Admin. Code 1117 Section 7.1. Annual emissions of 25 tons/year of NO _x or VOCs in nonattainment areas.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 **Del.C.** §§6010(a) & 6010(c))

Secretary's Order No.: 2020-A-0022

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
Certification that Delaware's Requirements for Reasonably Available Control
Technology ("RACT") meets all requirements of the 2015 National Ambient
Air Quality Standard ("NAAQS") for Ground-Level Ozone**

Date of Issuance: July 14, 2020

Effective Date of the Amendment: July 14, 2020

State Implementation Plan Revision to certify that Delaware requirements for Reasonably Available Control Technology (RACT) meets all 2015 Ozone NAAQS requirements

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to the Delaware State Implementation Plan ("SIP"), specifically, to provide the U.S. Environmental Protection Agency ("EPA") with its Certification that Delaware's Requirements for Reasonably Available Control Technology ("RACT"), as codified in the Department's Division of Air Quality ("DAQ") Regulations set forth in Title 7 of the *Delaware Administrative Code*, meets the requirements under the 2015 National Ambient Air Quality Standard ("NAAQS") for Ground-Level Ozone.

Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to EPA a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS. A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality non-attainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

On October 1, 2015, the EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation.

New Castle County, Delaware, was designated as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2015 Ozone NAAQS, effective August 3, 2018. Delaware's Kent and Sussex Counties were designated as attainment areas for the same 2015 Ozone NAAQS. Depending on the classification of nonattainment counties within a state, states are required to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas under the CAA.

With each new NAAQS, the EPA summarizes the plan requirements to implement the provisions of the CAA which are applicable to attainment and nonattainment areas, or Implementation Plan Requirements ("IPR"), as these are more commonly known. The EPA finalized the IPR for the 2015 Ozone NAAQS on December 6, 2018.

As a marginal nonattainment area, Delaware's New Castle County is subject to specific requirements in this final rule. However, as Delaware is part of the Ozone Transport Region (a group of states identified under the CAA for the purposes of addressing interstate transport), all counties in Delaware are subject to certain IPRs.

To provide clarity for the benefit of the hearing record (“Record”) generated in this matter, it should be noted that the Department is currently proposing three specific SIP revisions to address EPA’s requirements for incorporation into Delaware’s SIP document. Accordingly, a virtual public hearing was held by the Department on Wednesday, March 25, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform to receive comment on all three proposed revisions to Delaware’s SIP document, as follows: (1) Certification of Delaware’s Emission Statement Program, specifically, under 7 DE Admin. Code 1117; (2) Certification of Delaware’s Nonattainment New Source Review (“NNSR”) Program, specifically, under 7 DE Admin. Code 1125; and (3) Certification of Delaware’s Requirements for RACT, as codified in the Department’s DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*. While all three of these proposed SIP revisions were presented at the aforementioned hearing, EPA has requested that a separate Secretary’s Order be issued for each proposed SIP revision, so that EPA may reference individual, independent SIP documents for each certification matter referenced above. Thus, this Order only addresses the proposed SIP revision for the Certification of Delaware’s Requirements for RACT. The remaining proposed SIP revisions, as referenced above, will be addressed in separate Orders specifically dedicated to those proposed revisions.

As noted above, the proposed SIP revision which is the subject of this Order concerns the Certification of Delaware’s Requirements for RACT. Delaware is required to demonstrate that all major sources of nitrogen oxide and volatile organic compound emissions are required to implement controls which represent RACT, as well as all sources and source categories covered by Control Technique Guidelines and Alternate Control Techniques issued by the EPA. As noted previously, RACT is required statewide, since Delaware is in the Ozone Transport Region.

As an option allowed by the EPA, where an air agency (such as DNREC) determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements, that air agency’s SIP revision may provide a written statement certifying that determination in lieu of promulgating new, revised regulations (December 6, 2018, 83 FR 63001). Since DNREC is choosing to provide written certification in lieu of submitting new or revised regulations, the certification must be provided to EPA as a SIP revision to its SIP document, in accordance with CAA Section 110 and 40 CFR 51.102,103 and Part 51, Appendix V.

The State of Delaware’s finalized SIP document serves as the formal certification that DNREC is relying upon its existing regulations to meet EPA’s RACT requirements. The proposed SIP revision serves as the mechanism by which the Department will incorporate that formal certification into its SIP document, thereby providing EPA with its Certification that Delaware’s Requirements for RACT, as codified in the Department’s DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*, meet EPA’s requirements for RACT under the 2015 Ozone NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision concerning the incorporation of the Certification of Delaware’s Requirements for RACT into its SIP document, pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the March 25, 2020 public hearing to be held in this matter, in the March 1, 2020 *Delaware Register of Regulations*.

The Record remained open for comment subsequent to the aforementioned public hearing through April 9, 2020. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated June 22, 2020 (“Report”). The Report documents the proper completion of the required SIP revision process (as it relates to all three proposed SIP revisions noted above), establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware’s SIP document, thus enabling Delaware to provide EPA its Certification that Delaware’s Requirements for RACT, as codified in the Department’s DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*, and as attached to the Report as Appendix “A,” meet EPA’s requirements for RACT under the 2015 Ozone NAAQS.

Reasons and Conclusions

Based on the Record developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the Department’s proposed revision to Delaware’s SIP document concerning the Certification of Delaware’s Requirements for RACT is well-supported. I further find that the Department’s DAQ experts fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through April 9, 2020), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of this proposed SIP revision will enable the Department to provide EPA with its Certification that Delaware's Requirements for RACT, as codified in the Department's DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*, meet EPA's requirements for RACT under the 2015 Ozone NAAQS;
6. The Department's proposed SIP revision, as published in the March 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall submit this Order approving as final the proposed Delaware SIP document to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

[DNREC DE RACT SIP - Final.pdf](#)

<http://regulations.delaware.gov/register/august2020/general/DNREC DE RACT SIP - Final.pdf>

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c) (7 **Del.C.** §§6010(a) & 6010(c))

Secretary's Order No.: 2020-A-0023

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
*Certification that Delaware's Nonattainment New Source Review ("NNSR")
Program, under 7 DE Admin. Code 1125, meets all requirements of
the 2015 National Ambient Air Quality Standard
("NAAQS") for Ground-Level Ozone***

Date of Issuance: July 14, 2020

Effective Date of the Amendment: July 14, 2020

State Implementation Plan Revision to certify that Delaware's Nonattainment New Source Review program meets all 2015 Ozone NAAQS requirements

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

Background, Procedural History and Findings of Fact

This Order relates to the Department’s proposed revision to the Delaware State Implementation Plan (“SIP”), specifically, to provide the U.S. Environmental Protection Agency (“EPA”) with its Certification that Delaware’s Nonattainment New Source Review (“NNSR”), as set forth under 7 DE Admin. Code 1125, meets the requirements under the 2015 National Ambient Air Quality Standard (“NAAQS”) for Ground-Level Ozone. Delaware is required by Section 110 of the federal Clean Air Act (“CAA”) to submit to EPA a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality non-attainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

On October 1, 2015, the EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation.

New Castle County, Delaware, was designated as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2015 Ozone NAAQS, effective August 3, 2018. Delaware’s Kent and Sussex Counties were designated as attainment areas for the same 2015 Ozone NAAQS. Depending on the classification of nonattainment counties within a state, states are required to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas under the CAA.

With each new NAAQS, the EPA summarizes the plan requirements to implement the provisions of the CAA which are applicable to attainment and nonattainment areas, or Implementation Plan Requirements (“IPR”), as these are more commonly known. The EPA finalized the IPR for the 2015 Ozone NAAQS on December 6, 2018. As a marginal nonattainment area, Delaware’s New Castle County is subject to specific requirements in this final rule. However, as Delaware is part of the Ozone Transport Region (a group of states identified under the CAA for the purposes of addressing interstate transport), all counties in Delaware are subject to certain IPRs.

To provide clarity for the benefit of the hearing record (“Record”) generated in this matter, it should be noted that the Department is currently proposing three specific SIP revisions to address EPA’s requirements for Delaware’s SIP document. Accordingly, a virtual public hearing was held by the Department on Wednesday, March 25, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform to receive comment on all three proposed revisions to Delaware’s SIP document, as follows: (1) Certification of Delaware’s Emission Statement Program, specifically, under 7 DE Admin. Code 1117; (2) Certification of Delaware’s NNSR Program, specifically, under 7 DE Admin. Code 1125; and (3) Certification of Delaware’s Requirements for Reasonably Available Control Technology (“RACT”), as codified in the Department’s DAQ Regulations set forth in Title 7 of the *Delaware Administrative Code*. While all three of these proposed SIP revisions were presented at the aforementioned hearing, EPA has requested that a separate Secretary’s Order be issued for each proposed SIP revision, so that EPA may reference individual, independent SIP documents for each certification matter referenced above. Thus, this Order only addresses the proposed SIP revision for the Certification of Delaware’s NNSR Program, as set forth under 7 DE Admin. Code 1125. The remaining proposed SIP revisions, as referenced above, will be addressed in separate Orders specifically dedicated to those proposed revisions.

As noted above, the proposed SIP revision which is the subject of this Order concerns the Certification of Delaware’s NNSR Program. The NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. This NNSR requirement is statewide, due to Delaware being geographically located in the Ozone Transport Region. As an option allowed by the EPA, where an air agency (such as DNREC) determines that an existing regulation is

adequate to meet applicable nonattainment area planning requirements, that air agency's SIP revision may provide a written statement certifying that determination in lieu of promulgating new, revised regulations (December 6, 2018, 83 FR 63001). Since DNREC is choosing to provide written certification in lieu of submitting new or revised regulations, the certification must be provided to EPA as a SIP revision to its SIP document, in accordance with CAA Section 110 and 40 CFR 51.102, 103 and Part 51, Appendix V.

The State of Delaware's finalized SIP document serves as the formal certification that DNREC is relying upon its existing regulations to meet the EPA requirements referenced above. The proposed SIP revision serves as the mechanism by which the Department will incorporate that formal certification into its SIP document, thereby providing EPA with its Certification that Delaware's NNSR Program, under 7 DE Admin. Code 1125, meets the requirements under the 2015 Ozone NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision concerning the incorporation of the Certification of Delaware's NNSR Program under 7 DE Admin. Code 1125, into its SIP document, pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the March 25, 2020 public hearing to be held in this matter, in the March 1, 2020 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through April 9, 2020. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated June 22, 2020 ("Report"). The Report documents the proper completion of the required SIP revision process (as it relates to all three proposed SIP revisions noted above), establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware's SIP document, thus enabling Delaware to provide EPA its Certification of Delaware's NNSR Program, specifically, under 7 DE Admin. Code 1125, as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP document concerning the Certification of Delaware's NNSR Program under 7 DE Admin. Code 1125 is well-supported. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through April 9, 2020), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of this proposed SIP revision will enable the Department to provide EPA with its Certification that Delaware's NNSR Program, as set forth under 7 DE Admin. Code 1125, meets all requirements under the 2015 Ozone NAAQS;
6. The Department's proposed SIP revision, as published in the March 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

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

Shawn M. Garvin
Secretary

**Delaware State Implementation Plan Revision
Under the 2015 Ozone National Ambient Air Quality Standard**

Certification of Delaware's Non-attainment New Source Review (NNSR) and Emissions Statement Programs

~~[PROPOSAL]~~ FINAL REPORT]

Submitted to:
**U.S. Environmental Protection Agency
Region 3 – Philadelphia, PA**

Prepared by:
**Department of Natural Resources & Environmental Control
Division of Air Quality
Emission Inventory Development Program
State Street Commons
100 W. Water Street, Suite 6A
Dover, DE 19904
~~[March, August]~~ 2020**

1. Introduction

On June 4, 2018, EPA issued final designations under the 2015 ozone National Ambient Air Quality Standards (NAAQS) for Delaware counties. EPA included New Castle County in the marginal Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area. The area was classified as a Marginal nonattainment area which became effective on August 3, 2018.

When new NAAQS are promulgated, states must submit certifications of adequacy for their Non-attainment New Source Review (NNSR) and Emissions Statement Programs as part of the required State Implementation Plan (SIP) elements. The purpose of this document is to certify that Delaware's NNSR and Emission Statement Programs satisfy the requirements of the CAA for the 2015 ozone NAAQS.

In addition, Delaware is required to submit two additional elements as part of the new 2015 NAAQS promulgation: 1) a base year inventory of ozone precursors to EPA for New Castle and 2) a Reasonably Available Control Technology (RACT) SIP revision certifying that Delaware, as part of the Ozone Transport Region, meets its obligation to establish RACT controls for VOC and NOx. Delaware plans to submit these required elements of the SIP to EPA in conjunction with the NNSR and Emission Statement Program certifications discussed below.

2. Certification of NNSR program

EPA previously approved a state-wide NNSR SIP revision on August 12, 2019 (84 FR 39758) which covered the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Seaford, DE nonattainment areas for the 2008 ozone NAAQS. EPA published a proposed amendment to the NNSR program in Delaware's approved SIP on February 10, 2020 to update a reference to the current version of EPA's modeling guidance. Delaware does not believe that this amendment will affect 2015 ozone NAAQS implementation. Upon review of the SIP-approved NNSR program, Delaware finds and certifies that no changes are necessary to comply with the 2015 ozone NAAQS NNSR requirements.

The State of Delaware is certifying that its existing NNSR program is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2015 National Ambient Air Quality Standard for Ozone: Nonattainment Area State Implementation Plan Requirements*

(83 FR 62998, December 6, 2018).

Note that the emission offset provisions of 7 DE Admin. Code 1125 approved by EPA into Delaware’s SIP on October 2, 2012 (77 FR 60053) continue to apply to Delaware sources in nonattainment areas. EPA did not approve into the SIP the provisions in 7 DE Admin. Code 1125 that DE adopted on December 11, 2016. Thus the provisions in the approved Delaware SIP remain applicable requirements, and offsets can only be obtained from the expanded area identified in the December 11, 2016 adoption if the offsets also meet the provisions in the SIP (i.e., they are generated in an area of equal to or higher nonattainment classification, and they are shown to directly impact the nonattainment area where the offsets are being used.) The requirements necessary to appropriately implement Delaware’s NNSR program are included in Table 1.

3. Certification of Emission Statement Program

Section 182(a)(3)(B) of the Clean Air Act (CAA) requires states with ozone nonattainment areas to develop emission statement programs for VOC and NOx sources. The required state program and associated regulation defines how states obtain emissions data directly from facilities and report it to the EPA. On July 5, 2019 (84 FR 32068) EPA approved Delaware’s certification that its existing Emission Statement program satisfies the emissions statements requirements of the CAA for the 2008 ozone NAAQS. The approved emission statement rule, in force for the 1997 ozone NAAQS and the 1-hour ozone NAAQS, covers all portions of Delaware’s nonattainment areas for the 2015 ozone NAAQS, and is sufficient for purposes of the emissions statement requirements for the 2015 ozone NAAQS.

The State of Delaware is certifying that its existing emission statement rule meets the emission statement requirements for the 2015 ozone NAAQS. The requirements necessary to appropriately implement Delaware’s Emission Statement program are included in Table 1.

Table 1: 2015 Ozone NAAQS SIP Requirements	
Non-attainment New Source Review	
40 CFR 51.165	Delaware Requirements
(a)(1)(iv)(A)(1)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	7 DE Admin. Code 1125 Section 2.2.
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	7 DE Admin. Code 1125 Section 2.2.3.
(a)(1)(v)(E): Significant net emissions increase of NOx is significant for ozone	7 DE Admin. Code 1125 Section 1.9, Definitions – “Major Modification” .
(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	Not applicable since no Delaware nonattainment area is or has previously been designated as Extreme.
(a)(1)(x)(A)-(C) and (E): Significant emissions rates for VOC and NOx as ozone precursors	7 DE Admin. Code 1125 Section 1.9, Definitions – “Significant” .
(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits	7 DE Admin. Code 1125 Section 2.5 as approved into Delaware’s SIP on October 2, 2012. These SIP-approved provisions continue to apply to Delaware sources in nonattainment areas.
(a)(8): Requirements for VOC apply to NOx as ozone precursors	7 DE Admin. Code 1125 Section 2.2.4.
(a)(9)(i)-(iii): Offset ratios for VOC and NOx for ozone nonattainment areas [subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)]	7 DE Admin. Code 1125 Section 2.4.3.

GENERAL NOTICES

(a)(12): Anti-backsliding provision(s), where applicable	Sources in Kent and New Castle Counties remain subject to requirements and major source thresholds based on the Severe designation for the 1-hour ozone standard. Sussex County remains subject to requirements and major source thresholds based on the Moderate designation as part of an ozone transport region.
Emission Statement Program	
CAA Section 182(a)(3)(B)	Delaware Requirements
182(a)(3)(B)(i) – Submit an emissions statement	7 DE Admin. Code 1117 Section 7.1 – Emissions statement requirements apply to all stationary sources located in an ozone nonattainment area that emit NOx and VOC.
182(a)(3)(B)(i) –Emission statement requirements	7 DE Admin. Code 1117 Section 7.2 – Emissions statements are required to include the following information: Source identification information, operating data, actual emissions data, control equipment information, and process rate information.
182(a)(3)(B)(i) – Submit yearly	7 DE Admin. Code 1117 Section 7.3. Annual emission statements due April 30 for the preceding calendar year.
182(a)(3)(B)(i) – Source certification	7 DE Admin. Code 1117 Section 7.2. Certification statement contained on the Emission Statement to be signed by the Responsible Official.
182(a)(3)(B)(ii) – Reporting thresholds	7 DE Admin. Code 1117 Section 7.1. Annual emissions of 25 tons/year of NOx or VOCs in nonattainment areas.

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, August 12, 2020** beginning at 1:30 p.m. In light of COVID-19 mitigation measures in effect for DRBC member states, the Commission will conduct the public hearing by telephone. Please check the Commission's website, www.drbc.gov, on or after July 29, 2020 for details regarding the resolutions and draft docket decisions that will be subjects of the public hearing, and information on how to attend and participate in the public hearing by telephone.

The Commission's quarterly business meeting will be held the following month, on **Wednesday, September 10, 2020**, beginning at **10:30 a.m.** COVID-19 mitigation measures currently in effect compel the Commission to plan to meet remotely. Please check the Commission's website, www.drbc.gov, on or after July 29, 2020 for details about the meeting format and how to attend.

For additional information, please visit the DRBC website at www.drbc.gov or contact Denise McHugh at denise.mchugh@drbc.gov or Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on August 20, 2020 at a location to be determined.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Application Processing and Copay for the Child Care Subsidy Program**

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on August 31, 2020. Please identify in the subject line: Application Processing and Copay for the Child Care Subsidy Program.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES****PUBLIC NOTICE****1302 Regulations Governing Hazardous Waste**

To provide greater environmental protection and to reduce human health risks, the Compliance and Permitting Section (CAPS) proposes to modify the DRGHW to incorporate federal amendments into Delaware's hazardous

waste management program. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act (RCRA) program delegation and remain current with the federal hazardous waste program.

A virtual public hearing on the proposed amendments to DRGHW (Docket #2020-R-WH-0020) will be held on Thursday, August 27, 2020, beginning at 6:00 PM. A web link to the virtual hearing will be posted on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use iUp5w2XNns3. To access the audio-only portion of the virtual hearing, dial in at 1-408-418-9388 and enter event code 129 301 6372. Closed-captioning available by request if made at least 7 days before the event.

The proposed amendments may be inspected online as of August 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person by appointment only by contacting contact Melissa Ferree by phone at 302-739-9403; or by email at Melissa.Ferree@delaware.gov.

The hearing record will remain open for at least 15 days following the date of the hearing. The Department will accept public comment through the close of business on Friday, September 11, 2020 and comments pertaining to the above regulations will only be accepted in written form via:

Email: DNRECHearingComments@delaware.gov

Online Form: <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>

or via USPS to the following address:

Theresa Newman, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway
Dover, DE 19901

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2900 REAL ESTATE COMMISSION
PUBLIC NOTICE

Pursuant to 24 **Del.C.** § 2906(a)(1), the Delaware Real Estate Commission ("Commission") has proposed revisions to its rules and regulations.

On December 1, 2019, proposed revisions to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 23, Issue 6. Specifically, the Commission's proposed regulations included a new subsection 8.5 which set forth requirements for real estate "teams." New Section 9.0 addressed the scope of permissible activities under the property management licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shortened the late renewal period from 60 to 30 days and clarified that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement were amended. As set forth in the new subsection 14.13, new licensees would be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve hours were to be completed within 90 days after the date of initial licensure and would not count towards the continuing education required for license renewal. New licensees would also be required to complete the continuing education applicable to all licensees pursuant to the pro-ratio schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 would be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 would be imposed for a second finding of unjustified noncompliance.

A public hearing was held on January 9, 2020. The Commission deliberated on February 13, 2020, and based on those deliberations, made substantive revisions to the proposed rules and regulations. Pursuant to a Public Notice published in the March 1, 2020 *Register of Regulations*, Vol. 23, Issue 9, the Commission struck the rules and regulations as proposed in the December 1, 2019 *Register of Regulations* and proposed further revisions. A hearing was scheduled for April 9, 2020. However, due to the State of Emergency related to COVID-19, the hearing was canceled.

The revised rules and regulations, as set forth in the March 1, 2020 *Register of Regulations*, are attached hereto as Exhibit A. Any person wishing to submit written suggestions, testimony, briefs or other written materials concerning the proposed rules and regulations should submit such comments no later than **August 31, 2020** to:

Danielle Cross, Administrative Specialist III
Delaware Real Estate Commission
Delaware Division of Professional Regulation
Cannon Building, Suite 203
861 Silver Lake Boulevard
Dover, Delaware 19904
Email: danielle.cross@delaware.gov
Fax: (302) 739-2711

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PUBLIC NOTICE

2222 School Bus Driver Qualifications and Endorsements

Pursuant to the authority provided by 21 *Del. C.* §302 and 29 Delaware Code, Section 8404(8), the Delaware Division of Motor Vehicles (DMV), adopted the School Bus Driver Qualifications and Endorsements.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the School Bus Driver Qualifications and Endorsements, to address procedural changes. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through these regulations.

DMV will take written comments on these proposed general revisions to Regulation 2222 of Title 2, Delaware Administrative Code, from August 1, 2020 through August 31, 2020. The public may submit their comments to:

Rick Cesta, Chief of Driver Services, Division of Motor Vehicles
(rick.cesta@delaware.gov) or in writing to his attention,
Delaware Department of Transportation (DelDOT)
Division of Motor Vehicles
PO BOX 698
Dover, DE 19903
