
Delaware Register of Regulations

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Volume 26 - Issue 2, Pages 72 - 142



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Proposed
Final

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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, 2022.

Cover Photo
Lewes, Delaware

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 17	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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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 AGRICULTURE
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)
3 **DE Admin. Code** 501

ORDER**501 Harness Racing Rules and Regulations**

In Re: EMERGENCY RULE FOR HARNESS RACING COMMISSION - Final Order

WHEREAS, the Harness Racing Commission (the "Commission") has been charged by the Delaware legislature pursuant to 3 **Del.C.** §10005 with the powers and duties to regulate the conduct of all participants in any harness racing meet authorized by the Commission within this State and to promulgate and prescribe such rules and regulations as it may deem proper and necessary; and

WHEREAS, the Commission is developing proposed regulations (the "Proposed Regulations") for publication in the Register of Regulations to amend Rules 3.1, 3.10, 3.11, 4.3.3.1.8, 5.1.1.1.2, 8.2.2, 8.3, and 1.0 ("Definitions") to clarify veterinary staff who can administer Bleeder medication in light of an ongoing and nationwide shortage of veterinarians; and

WHEREAS, the Commission finds that adoption of an emergency regulation to clarify veterinary staff who can administer Bleeder medication must occur on an emergency basis in order to be in effect before the next meet on July 28, 2022 and allow that meet to go forward; and

WHEREAS, 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 Delaware Harness Racing Commission, 2320 South Dupont Highway, Dover, Delaware 19901; and

EMERGENCY REGULATIONS

WHEREAS, in accordance with the provisions of 29 **Del.C.** §10119(3), this 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 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 7th day of July, 2022 that the following "Amendment to Harness Racing Commission Rules" shall take effect immediately.

Delaware Harness Racing Commission
Mark A. Davis, Executive Director

***Please note: Due to the size of the emergency regulation, it is not being published here. A copy of the regulation as submitted with the Order is available at:**

[http://regulations.delaware.gov/register/august2022/emergency/Rule 501 Harness Racings and Regulations FINAL.pdf](http://regulations.delaware.gov/register/august2022/emergency/Rule_501_Harness_Racings_and_Regulations_FINAL.pdf)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 3 Delaware Code, Section 10081(c) (3 **Del.C.** §10081(c))
3 DE Admin. Code 502

PUBLIC NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

Summary

Pursuant to the authority granted by 3 **Del.C.** §10081(c) of the Delaware Code, the Department of Agriculture's Standardbred Breeders' Fund ("the Fund") proposes to amend its regulations. The purpose of the amended regulations is to address the fiduciary responsibility of "the Fund" to sustain the program into the future while maintaining the current status. This includes consolidating payment requirements to simplify process for eligible two year-olds participating in the Program. Additional technical changes are also being made.

The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the August 1, 2022, edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Delaware Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or hand deliver to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeder's Fund Program, written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** § 10118(a), public comments must be received on or before September 1, 2022. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after September 1, 2022, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Department of Agriculture, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

*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/august2022/proposed/26 DE Reg 81RFA 08-01-22.pdf>

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

[502 Delaware Standardbred Breeders' Fund Regulations](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))
14 DE Admin. Code 701

PUBLIC NOTICE

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

701 Unit Count

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. §122 (a), the Secretary of Education intends to amend 14 DE Admin. Code 701 Unit Count. The regulation is being amended to change the means by which schools are to notify each other of an intra-state student transfer from fax notification to email notification. Other changes are grammatical in nature and are made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before September 1, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

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 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/august2022/proposed/26 DE Reg 82RFA 08-01-22.pdf>

701 Unit Count

1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which allows for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three ~~(3)~~ years.
- 1.3 Records to substantiate students with disabilities included in the enrollment count shall contain a student Individualized Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as a child with a disability determined to be eligible for special education and related services under 14 **DE Admin. Code** 925.

2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 Students with disabilities included in the special education unit count under the placement provisions of Transfer Students or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.
- 2.3 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

PROPOSED REGULATIONS

3.0 Accounting for Students Not in Attendance the Last Ten Days in September

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:
- 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
 - 3.1.2 Reason to believe that student will be returning to school prior to November 1.
 - 3.1.3 District and charter schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or first-year charter agreement before enrolling the student. If an agreement exists, "good cause" pursuant to 14 **Del.C.** §402 and §506(d) respectively must be determined before the receiving district or charter school can enroll the student. District and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by ~~fax~~ electronic submission via email with a follow up letter to the previous district or charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the ~~fax transmittals~~ electronic submission via email and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
- 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
 - 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
 - 4.1.1.2 Students shall receive the level of special education service as defined by the current IEP.
 - 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
 - 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three (~~3~~) traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In ~~school~~ School Credit Program (14 **DE Admin. Code** 915, subsection 2.2) and students in the Advanced Placement Program shall be enrolled and attend at least one (~~1~~) full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
 - 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 1.
 - 4.1.4 Supportive Instruction (Homebound)
 - 4.1.4.1 Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.
 - 4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a special education student if, in the child's placement immediately preceding the homebound placement, the child had an IEP in effect during the last week of school in September.

- 4.1.5 Department of Services for Children, Youth and Their Families or Department of Correction Facilities: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1.
- 4.1.6 Consortium Discipline Alternative Program:
 - 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.
 - 4.1.6.2 Students shall receive the level of special education service as defined by the current IEP.
 - 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Except as provided in ~~Section~~ Sections 5.0 and 7.0, all pre-kindergarten children with disabilities shall be counted in the Preschool Pre-K to 12 Intensive Special Education (Intensive) or Pre-K to 12 Complex Special Education (Complex) units.
- 4.1.8 Students enrolled in residential facilities as of the last day of September are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.
- 4.1.9 Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects taken by most students.
- 4.1.10 Special education services include students who have been found eligible for special education and related services under 14 **DE Admin. Code** 925, Section 6.0 and have an IEP in effect during the last week of school in September. Students with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code** 925.
- 4.1.11 A maximum of 900 minutes of career and technical education time per week per student shall be credited toward the career and technical education unit determination. However, units shall be counted on the basis of one ~~(1)~~ unit for each 30 students for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

5.0 Programs and Situations that Do Not Qualify for the Unit Count

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
 - 5.1.1 Students who have not attended school during the last 10 days of September.
 - 5.1.2 Students who are enrolled in General Education Development (GED) programs.
 - 5.1.3 Students who are enrolled in other than Department of Education approved programs.
 - 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the district or charter school unless that district or charter school operates the facility's instructional program; otherwise the student must be treated as a withdrawal.
 - 5.1.5 Students enrolled in a homeschool as defined in 14 **Del.C.** §2703A.

6.0 Nontraditional High School Schedules

- 6.1 For unit count purposes, if a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week.
 - 6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year:

PROPOSED REGULATIONS

Fall and Spring Career Technical=	300 minutes per week
Spring and Fall Career Technical=	1500 minutes per week
1800 /2 =	900 minutes per week

- 6.2 For unit count purposes, a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30 unit count:
- 6.2.1 For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:
- 6.2.1.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program; or
- 6.2.1.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site; or
- 6.2.1.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in subsections 6.2.2 through 6.2.9;
- 6.2.2 Students and their parents or guardians must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.
- 6.2.3 Students must be enrolled for a minimum of three (3) courses.
- 6.2.4 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three (3) hours per week.
- 6.2.5 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.
- 6.2.6 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.
- 6.2.7 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their parents or guardians.
- 6.2.8 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.
- 6.2.9 An audit file containing information listed in subsection 6.2 and its subsections must be maintained on all students participating in the program and must be presented upon request to the Department of Education or the State Auditor's Office.

7.0 Charter Schools

Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any Pre-K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll Pre-K students.

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1726(b) (14 Del.C. §1726(b))

PUBLIC NOTICE

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

702 Education Opportunity Fund

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §1726(b), the Secretary of Education intends to create 14 DE Admin. Code 702 Education Opportunity Fund. This new regulation is created as required by Senate Bill 56 of the 151st General Assembly to identify the types of services and supports that may be funded with the per pupil funding money from the Opportunity Fund.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before September 1, 2022. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to help improve student achievement as measured against state achievement standards by ensuring local education agencies abide by processes that are scientific and evidence-based.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation intends to help ensure all students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address students' health and safety; however, students' behavioral, social and emotional skills are addressed.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation continues to help ensure that all student's legal rights are respected.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new 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 new regulation does not change the decision-making authority and accountability for addressing the subject to be regulated.

8. Will the new 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 new 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 regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no expected material costs to implementing this new 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/august2022/proposed/26 DE Reg 87RFA 08-01-22.pdf>

702 Education Opportunity Fund

1.0 Purpose

Pursuant to 14 **Del.C.** §1726(b), the purpose of this regulation is to identify the types of services and supports that may be funded with the per pupil funding from the Opportunity Fund.

2.0 Definitions

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

"English Learner" or **"EL"** means an individual who has English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware's standardized entrance and exit procedures.

"Low Income Students" means students within the statewide metric determined by the Department of Education utilizing direct certification for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).

"Mental Health Supports" means a variety of strategies and services that can support the social, emotional and behavioral wellbeing and mental health of students and their families. Supports of this type include, behavioral assessment and intervention, individual and group, family psychoeducation and support intervention, social and emotional learning, and mental health promotion, instruction and support, engagement strategies, assessment, screening, crisis management, suicide prevention and coordination of services.

"Opportunity Fund" means the fund containing monies appropriated in the Annual Appropriations Act, which are to be used to enhance services for English Learners and Low Income Students enrolled in public schools.

"Students with Interrupted Formal Educations" or **"SIFE"** means English Learners who have attended schools in the United States for less than twelve months and who, upon initial enrollment in such schools, are two or more years below grade level in literacy in their home language or two or more years below grade level in mathematics due to inconsistent or interrupted schooling prior to arrival in the United States.

"WIDA English Language Development Standards" means the state adopted standards used to plan and implement language instruction and assessment for English Learners in order to provide the social, instructional, and academic language that students need to engage with peers, educators, and curriculum in schools.

"Wrap-around Services" means a variety of strategies and services to support the needs of the student in the areas of attendance, academic engagement, behavior incidents or referral.

3.0 Types of Services and Supports

3.1 Services and supports identified for improving reading comprehension, math proficiency, wrap-around services and mental health supports for ELs and Low Income Students that may be funded by the Opportunity Fund include:

3.1.1 Employing additional personnel such as:

3.1.1.1 EL Teachers.

3.1.1.2 EL Coaches.

3.1.1.3 EL Paraprofessionals.

3.1.1.4 Reading Specialists.

- 3.1.1.5 Reading/Mathematics Interventionists.
- 3.1.1.6 Reading/Mathematics Coach.
- 3.1.1.7 Reading/Mathematics Paraprofessionals.
- 3.1.1.8 School Counselors.
- 3.1.1.9 School Social Workers.
- 3.1.1.10 School Psychologists.
- 3.1.1.11 Licensed Clinical Social Worker.
- 3.1.1.12 Other mental health personnel not limited by the Annual Appropriations Act.
- 3.1.2 Contractual services such as:
 - 3.1.2.1 Translation and interpretation services and applications.
 - 3.1.2.2 Professional learning services to build educator capacity to implement the WIDA English Language Development Standards.
 - 3.1.2.3 Professional learning services to build educator capacity to strengthen Tier 1 instruction for ELs and students experiencing poverty.
 - 3.1.2.4 Professional learning services to support educators in meeting the needs of unique populations ELs, including long-term ELs, SIFEs, newcomer students, students dually-identified as ELs and with disabilities, and ELs who are talented and gifted.
 - 3.1.2.5 Professional learning services to support personnel listed in subsection 3.1.1.
 - 3.1.2.6 Extended day learning experiences.
 - 3.1.2.7 Summer learning experiences.
 - 3.1.2.8 Contracted coaching and instructional support for installing and implementing interventions.
 - 3.1.2.9 Data systems to support instructional decisions.
 - 3.1.2.10 Contracted mental health supports.
- 3.1.3 Supplies and materials such as:
 - 3.1.3.1 Supplemental instructional materials for ELs with unique needs such as SIFEs, newcomer students, and long-term ELs.
 - 3.1.3.2 Support materials for content classrooms to meet the needs of ELs.
 - 3.1.3.3 Social and emotional learning, as well as mental health instructional materials to support ELs and Low Income Students.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 16 Delaware Code, Section 122 and 29 Delaware Code, Section 7909A(e)
(16 Del.C. §122 & 29 Del.C. §7909A(e))
16 DE Admin. Code 2100

PUBLIC NOTICE

2100 Eligibility Criteria

In compliance with 16 Del.C. §122 and 29 Del.C. §7909 A(e), Delaware Health and Social Services (DHSS)/ Division of Developmental Disabilities Services (DDDS) is proposing to amend the criteria for establishing eligibility for DDDS services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Applicant Services, Division of Developmental Disabilities Services, 1052 South Governor's Avenue, Suite 101, Dover, Delaware

19904, by email to Lynda.Lord@delaware.gov or by fax to 302-744-9711 by 4:30 p.m. on September 1, 2022. Please identify in the subject line: Regulation Governing DDDS Eligibility Criteria. The action concerning the determination of whether to adopt the proposed regulations 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 PROPOSED CHANGES

1. Provisional eligibility was added for applicants aged three through eight who may not have required assessment documentation to meet criteria
2. Updated terminology to clarify requirements for qualifying conditions, assessments, and the interpretation of assessment data
3. Added a criterion that addresses circumstances that allow eligibility without all required assessments
4. Detail added on citizenship
5. Clarified minimum age

***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/august2022/proposed/26 DE Reg 89RFA 08-01-22.pdf>

2100 Eligibility Criteria

~~4.0 The Division of Developmental Disabilities Services provides services to those individuals with a developmental disability who meet all of the following criteria:~~

- ~~4.1 citizen or a lawful alien of the United States;~~
- ~~4.2 a resident of the State of Delaware;~~
- ~~4.3 a disability/disorder attributed to one or more of the following:~~
 - ~~4.3.1 Mental Retardation; defined as a significant generalized limitation in intellectual functioning. Significant generalized limitation in intellectual functioning is defined as IQ scores approximately two standard deviations below the mean. (American Association on Intellectual and Developmental Disabilities; Classification Manual, 2002); and/or~~
 - ~~4.3.2 Autistic Disorder (299.00; American Psychiatric Association; Diagnostic & Statistical Manual—IV, 1994); and/or~~
 - ~~4.3.3 Asperger's Disorder (299.80; American Psychiatric Association; Diagnostic & Statistical Manual—IV, 1994); and/or~~
 - ~~4.3.4 Prader-Willi Syndrome (documented medical diagnosis; World Health Organization; International Classification of Diseases—9); and/or~~
 - ~~4.3.5 Brain injury or neurological condition related to mental retardation that meets: a) a significant generalized impairment in intellectual functioning (defined in 1.3.1); b) significant limitations in adaptive behavior functioning (defined in 1.4); and c) originates before age 22 (defined in 1.5);~~
- ~~4.4 significant limitations in adaptive behavior functioning;~~
 - ~~4.4.1 Significant limitations in adaptive behavior functioning is defined as performance that is at least two standard deviations below the mean of either:~~
 - ~~4.4.1.1 Score on a standardized measure of conceptual, social, or practical skills; or~~
 - ~~4.4.1.2 Overall score on a standardized measure of conceptual, social and practical skills~~
- ~~4.5 the disability originates before age 22;~~
- ~~4.6 Any individual who is receiving services on the effective date of these regulations who meets the requirements of 1.1 and 1.2 of this section and meets either the requirements of the regulations under which the individual initially established eligibility or the requirements of 1.3 through 1.5 shall be deemed eligible for services.~~

~~2.0 Intellectual functioning, adaptive behavior functioning, Autistic Disorder, and Asperger's Disorder shall be established and based on the use of standardized assessment instruments accepted by the Division.~~

1.0 Purpose

The purpose of the 16 DE Admin. Code 2100 Eligibility Criteria is to set forth standards to determine an applicant's eligibility for the Division of Developmental Disabilities Services (DDDS) supports and services.

2.0 Eligibility Requirements

2.1 Eligibility is established by the following criteria, all of which must be met except when explicitly stated otherwise:

2.1.1 Residency

2.1.1.1 The applicant must be a resident of the State of Delaware; and

2.1.1.2 The applicant must be a U.S. citizen or qualified alien according to DE Medicaid requirements (16 DE Admin. Code 14310).

2.1.2 Age

2.1.2.1 The applicant must have attained a minimum age of 3.

2.1.2.2 The applicant must have documented evidence that the disability originated prior to the age of 22.

2.1.2.3 DDDS may accept a comprehensive assessment and diagnosis of a qualifying condition by a licensed practitioner completed after age 22 after unsuccessful attempts to obtain assessments and records from the developmental period.

2.1.3 Clinical Requirements

2.1.3.1 The applicant must have a disabling condition that meets at least one of the following criteria:

2.1.3.1.1 Intellectual Disability (ID), which can be caused by a brain injury or other neurologically disabling condition. An intellectual disability is characterized by significantly below-average general intellectual functioning with a valid intelligence quotient (IQ) or IQ-equivalent score of approximately 70 or below on a normed and standardized assessment;

2.1.3.1.2 Autism Spectrum Disorder (ASD), as defined by the current version of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM) determined through a comprehensive evaluation by a licensed practitioner or school psychologist, including a detailed developmental history that documents behavioral characteristics of ASD based on the current version of the DSM;

2.1.3.1.3 Prader-Willi Syndrome diagnosis by a licensed practitioner.

2.1.3.2 The applicant must also have significant limitations in adaptive behavior functioning which includes conceptual, social, and practical skills that are learned and performed by people in their everyday lives, as established by the following:

2.1.3.2.1 Composite score of approximately 70 or below, or in at least one domain of a standardized adaptive behavior functioning assessment;

2.1.3.2.2 When there are ratings from two different respondents, scores from different raters should be consistent and approximately 70 or below as a composite score or in at least one domain.

2.1.4 Assessment Requirements

2.1.4.1 Assessments must be performed by a licensed practitioner or school psychologist using the most recent editions of standardized assessments for the period accepted by the Division. Accepted standardized assessments are published on the DDDS website. DDDS may accept other assessments if they are comprehensive, structured, and use instruments that are normed and standardized.

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2.1.4.2 The assessment for ASD must include a detailed developmental history with evidence that behavioral characteristics of ASD (based on the current DSM) were present during the developmental period. A detailed developmental history interview is necessary because standardized measures to diagnose ASD retrospectively do not exist.

3.0 Exception to Clinical Requirements for Applicants Aged Three Through Age Eight

- 3.1 If the requirements in subsection 2.1.3 cannot be met for an applicant aged three through eight, provisional eligibility may be granted with clinical documentation to support a minimum of one of the following conditions:
- 3.1.1 There exists the possibility of a qualifying condition listed in subsection 2.1.3, however, additional assessment is required; or
- 3.1.2 A minimum of two delays in the following developmental domains:
- 3.1.2.1 Cognition;
 - 3.1.2.2 Communication (expressive or receptive);
 - 3.1.2.3 Physical (gross or fine motor);
 - 3.1.2.4 Social;
 - 3.1.2.5 Emotional;
 - 3.1.2.6 Adaptive behavior; or
- 3.1.3 A diagnosed congenital or acquired condition with documentation that indicates that the condition results in a high probability of a future intellectual/developmental disability as an alternative to those described in subsection 2.1.3.
- 3.2 When the applicant reaches age 9, provisional eligibility ends and assessments must support a disabling condition as defined in subsection 2.1.3.

4.0 Eligibility Determined Without All Documentation

- 4.1 In cases of bona fide extraordinary or exigent circumstances, DDDS may determine eligibility without one or more of the required pieces of documentation.
- 4.2 If eligibility is determined without the required documentation, DDDS reserves the right to redetermine eligibility if such documentation becomes available later.

5.0 Review of Updated Assessments and Redetermination of Eligibility

Until an individual reaches the age of 22, DDDS reserves the right to review updated assessments and redetermine eligibility at any time, including requiring additional testing that must be completed prior to the age of 22.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 13000, 15000, 18000

PUBLIC NOTICE

Postpartum Continuous Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del. C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM), Title XIX Medicaid State Plan, and Title XXI Delaware Health Children's Program State Plan regarding Postpartum Continuous Eligibility and make a technical correction in the DE state plan to the medical assistance program Single State Agency name.

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 and Policy 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, 2022. Please identify in the subject line: Postpartum Continuous Eligibility.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM), Title XIX Medicaid State Plan, and Title XXI Delaware Health Children's Program State Plan regarding Postpartum Continuous Eligibility and make a technical correction in the DE state plan to the medical assistance program Single State Agency name.

Statutory Authority

42 C.F.R. § 435.116
(2105(a)(4)(A) of the SSA
42 CFR 457.342
435.926; 2107(e)(1)(J)
1902(e)(16) of the SOA

Background

Sections 9812 and 9822 of the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117-2) give states a new option to provide 12 months of extended postpartum coverage to pregnant individuals enrolled in Medicaid and CHIP beginning April 1, 2022. The newly extended postpartum coverage option offers states an opportunity to provide care that can reduce pregnancy-related deaths and severe maternal morbidity, and improve continuity of care for chronic conditions such as diabetes, hypertension, cardiac conditions, substance use disorder, and depression. More than half of pregnancy-related deaths occur in the 12-month postpartum period, and 12 percent occur after six weeks postpartum.

DMMA has elected to implement options which will allow extend postpartum coverage from 60 days to 12 months for Medicaid and DHCP recipients. The 12-month postpartum period will begin on the last day of a beneficiary's pregnancy and extend through the end of the month in which the 12-month period ends. Individuals will be entitled to the extended postpartum coverage regardless of the reason the pregnancy ends. Extending this benefit will provide needed medical services to Medicaid and DHCP recipients.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to implement postpartum continuous eligibility and make a technical correction in the DE state plan to the medical assistance program Single State Agency name.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2022 DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM), Title XIX Medicaid State Plan, and Title XXI Delaware Health Children's Program State Plan regarding Postpartum Continuous Eligibility and make a technical correction in the DE state plan to the medical assistance program Single State Agency name.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all

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stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on August 31, 2022.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

	Medicaid Federal Fiscal Year 2023	Medicaid Federal Fiscal Year 2024
Federal funds	\$ 2,898,000	\$ 3,042,900
General (State) funds	\$ 1,932,000	\$ 2,028,600

	SCHIP Federal Fiscal Year 2023	SCHIP Federal Fiscal Year 2024
Federal funds	\$ 5,533	\$ 11,620
General (State) funds	\$ 2,667	\$ 4,760

***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/august2022/proposed/26 DE Reg 92RFA 08-01-22.pdf>

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

Postpartum Continuous Eligibility

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(c) (16 Del.C. §122(3)(c))
16 DE Admin. Code 4462

PUBLIC NOTICE

4462 Public Drinking Water Systems

Pursuant to 16 Del.C. §122(3)(c), the Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On August 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions are a result of HB 8 (151st GA) and include specific definitions for "per- and polyfluoroalkyl substances," or "PFAS," and its compounds, and establishment of primary maximum contaminant levels and public notification requirements for PFAS.

Copies of the proposed regulations are available for review in the August 1, 2022 edition of the Delaware Register of Regulations, accessible online at: <https://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

NOTICE OF PUBLIC HEARING

The Division of Public Health will hold a public hearing on Thursday, August 25, 2022 at 5:00 p.m. The public hearing will be conducted remotely. Details about the remote platform and how to attend will be posted on the State Public Meeting Calendar at the following link:

<https://publicmeetings.delaware.gov/#/meeting/72440>.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, September 9, 2022, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

***Please Note:**

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

<http://regulations.delaware.gov/register/august2022/proposed/26 DE Reg 95RFA 08-01-22.pdf>

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

4462 Public Drinking Water Systems

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Sections 1790(a)(3) and 1904(c) (24 **Del.C.**
§§1790(a)(3) & 1904(c))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del. C.** §1904(c) and 24 **Del. C.** §1790(a)(3), proposes to revise its regulations to set forth the required qualification for and parameters under which a certified nurse midwife or certified nurse practitioner may perform medication and manual vacuum aspiration abortions.

The Board will hold a public hearing on the proposed regulation changes on September 14, 2022 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 29, 2022 pursuant to 29 **Del. C.** §10118(a).

The proposed rule changes are as follows, additions are indicated in underline and deletions in strikethrough:

***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/august2022/proposed/26 DE Reg 96RFA 08-01-22.pdf>

1900 Board of Nursing (Break in Continuity of Sections)

6.0 Requirements and Procedures for Licensure

(Break in Continuity Within Section)

6.6 Licensure: Biennial Renewal and Reinstatement

(Break in Continuity Within Section)

6.6.2 Reinstatement of Licensure

6.6.2.1 Reinstatement of a lapsed license is required after the expiration of the late renewal period. All applicants shall have a minimum of 1,000 hours of nursing practice within the previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing defined in Section 4.0.

6.6.2.2 The applicant shall file a ~~notarized~~ an online application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a current or previous employer, required continuing education documents, information related to the nurse's practice and demographics for the purpose of collecting nursing workforce data, a renewal fee and penalty fee.

(Break in Continuity Within Section)

6.9 Change of Name/address

6.9.1 Licensees who legally change their names and wish to change the name on the license, shall provide ~~notarized copies of~~ evidence, such as marriage licenses or court actions.

6.9.2 Notice of change of address shall be submitted online within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

(Break in Continuity of Sections)

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Registered Nurse in the State of Delaware

(Break in Continuity Within Section)

8.7 Generic Functions of the Advanced Practice Registered Nurse within the Specialized Scope of Practice include but are not limited to:

(Break in Continuity Within Section)

8.7.18 The certified nurse midwife (CNM) or certified nurse practitioner (CNP) may perform medication and manual vacuum aspiration (MVA) abortion to 12 weeks gestation.

8.7.18.1 Prior to performing MVA the CNM or CNP must:

8.7.18.1.1 Demonstrate knowledge and competence including the:

8.7.18.1.1.1 Knowledge of risks, benefits, alternatives, and client selection criteria.

8.7.18.1.1.2 Process for acquisition of required skills.

8.7.18.1.1.3 Identification and management of complications.

8.7.18.1.1.4 Process to evaluate outcomes and maintain competency.

8.7.18.1.1.5 Mechanism for obtaining medical consultation, collaboration, and referral related to these procedures.

8.7.18.1.1.6 Documentation of the process for obtaining the necessary knowledge, skills and ongoing competency which must be maintained by the nurse and employer.

8.7.18.2 Approved educational methods include successful completion of a training or a certificate of completion from:

8.7.18.2.1 The American College of Nurse-Midwives.

8.7.18.2.2 Planned Parenthood.

8.7.18.2.3 The Reproductive Health Access Project.

8.7.18.2.4 On the job training from an experienced provider with privileges to perform MVA.

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

1900 Board of Nursing

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 202A (14 Del.C. §202A)
14 DE Admin. Code 903

REGULATORY IMPLEMENTING ORDER

903 Best Interest Determination Process for School Placement - Students in Foster Care

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §202A, the Secretary of Education intends to amend 14 DE Admin. Code 903 Best Interest Determination Process for School Placement - Students in Foster Care. This regulation has been reviewed as required by 29 Del.C. §10407 which states regulations are to be reviewed every four years. While there are no content changes to this regulation, it is being amended 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, 2022. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2022, 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 903 Best Interest Determination Process for School Placement - Students in Foster Care as required by 29 Del.C. §10407 which states regulations are to be reviewed every four years. While there are no content changes to this regulation, it is being amended 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** 903 Best Interest Determination Process for School Placement - Students in Foster Care. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care 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** 903 Best Interest Determination Process for School Placement - Students in Foster Care amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 903 Best Interest Determination Process for School Placement - Students in Foster Care 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, 2022. 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 2022.
Department of Education

Mark A. Holodick, Ed.D., Secretary of Education
Approved this 6th day of July 2022

903 Best Interest Determination Process for School Placement - Students in Foster Care

1.0 Purpose

Under 14 **Del.C.** §202A, a student in the custody of ~~DSCYF~~ the Delaware Department of Services for Children, Youth and Their Families (DSCYF) who is in foster care must remain in the student's ~~School of Origin~~ school of origin unless a determination is made that it is not in the student's best interest to attend such school. The purpose of this regulation is to provide the process for the determination of best interest in school placement decisions for students in foster care.

2.0 Definitions

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

"Best Interest Meeting" means the convening of certain individuals as noted within this regulation to determine if the student should remain in the ~~"school of origin"~~ school of origin.

"Best Interest Meeting Determination Form (Foster Care)" means the document, which may be amended from time to time, approved by the Delaware Department of Education for use in the determination of best interest in school placement decisions for students in foster care.

"Charter School" means a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

~~"Child in DSCYF custody"~~ or ~~"student in foster care"~~ **"Student in Foster Care"** means a student in the custody of the Delaware Department of Services for Children, Youth and Their Families (DSCYF) pursuant to Chapter 25 of Title 13 of the Delaware Code.

"Court Appointed Special Advocate" or "CASA" means a volunteer authorized and appointed under 14 Del.C. §9010A, who is supervised by a coordinator and who works in conjunction with the child's attorney to accomplish the duties set forth in 29 Del.C. § 9007A(c).

"Department" means the Delaware Department of Education.

"DFS" means the Division of Family Services, a unit of the Delaware Department of Services for Children, Youth and Their Families.

"DFS Caseworker" means the caseworker assigned to the student in foster care.

"DSCYF" means the Delaware Department of Services for Children, Youth and Their Families.

"LEA Foster Care Liaison" means the ~~Local Educational Agency Liaison~~ local education agency liaison for students in foster care.

"Local School District" shall mean a reorganized school district or vocational technical school district established by 14 Del.C. Ch. 10.

"School of Origin" means the following:

- The school in which the student is enrolled at the time of entry into foster care;
- The school in which the student is enrolled at the time of change of placement while in foster care; or
- The school identified for the next grade level in the same local school district where the child in foster care is enrolled.

"Secretary" means the Secretary of the Delaware Department of Education.

"State Coordinator" means the Delaware Coordinator for Education of Students in Foster Care.

~~3.0~~ **School of Origin for Students in Foster Care**

~~3.1~~ **"School of Origin"** means the following:

- ~~3.1.1~~ the school in which the student is enrolled at the time of entry into foster care;
- ~~3.1.2~~ the school in which the student is enrolled at the time of change of placement while in foster care; or
- ~~3.1.3~~ the school identified for the next grade level in the same Local School District where the child in foster care is enrolled.

~~4.0~~ **3.0 Best Interest Meeting Timeline**

~~4.1~~ 3.1 A Best Interest ~~meeting~~ Meeting must occur within five ~~(5)~~ school days based on the School of Origin's school instructional calendar or seven ~~(7)~~ business days in the event of the summer recess:

- ~~4.1.1~~ 3.1.1 ~~when~~ When a student is placed into foster care;
- ~~4.1.2~~ 3.1.2 ~~when~~ When there is a change in foster care placement; or
- ~~4.1.3~~ 3.1.3 ~~when~~ When the student leaves the custody of DSCYF.

~~4.2~~ 3.2 If it is determined a Best Interest Meeting under subsection ~~4.1~~ 3.1 cannot occur within the specified time, documentation identifying the reason for the meeting delay shall be provided to the State Coordinator within ten ~~(10)~~ working days. This information shall be provided annually to the chief school officer of the local school district or charter school.

~~4.3~~ 3.3 If subsection ~~4.1~~ 3.1 is not applicable, a Best Interest ~~meeting~~ Meeting shall be held at least once a year, preferably within the last two ~~(2)~~ months of the school calendar.

~~5.0~~ **4.0 Process for the Determination of Best Interest**

~~5.1~~ 4.1 The DFS Caseworker and LEA Foster Care Liaison shall be responsible for the coordination of the date, time, and method for the Best Interest Meeting using available technology; however, in person attendance is preferred.

~~5.1.1~~ 4.1.1 The LEA Foster Care Liaison shall:

- ~~5.1.1.1~~ 4.1.1.1 ~~invite~~ Invite needed educationally related participants; and

~~5.1.2.2~~ ~~4.1.1.2~~ ~~invite~~ Invite the special education administrator or designee from the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, and the student's ~~School of Origin~~ school of origin, and the educational surrogate parent when applicable to participate in the Best Interest ~~meeting~~ Meeting if the student is eligible for or receiving special education services.

~~5.1.2~~ ~~4.1.2~~ The DFS Caseworker shall:

~~5.1.2.1~~ ~~4.1.2.1~~ ~~invite the parent(s) or legal guardian(s) or Relative Caregiver, foster care parent(s)~~ Invite the parents, legal guardian, or relative caregiver, foster care parents, attorney for the child or CASA, and educational decision maker, as applicable; and

~~5.1.2.2~~ ~~4.1.2.2~~ ~~invite~~ Invite the student to attend when it is determined to be developmentally appropriate by the DFS Caseworker.

~~5.2~~ ~~4.2~~ The Best Interest Meeting shall be conducted in a manner that results in the Best Interest Meeting Determination Form (Foster Care) being completed.

~~5.3~~ ~~4.3~~ The Best Interest determination shall be made by the following individuals:

~~5.3.1~~ ~~4.3.1a~~ A representative of DSCYF, preferably the DFS Caseworker,

~~5.3.2~~ ~~4.3.2a~~ A representative of the student's ~~School of Origin~~ school of origin, and

~~5.3.3~~ ~~4.3.3a~~ A representative of the student's school of residence based on the address of the DSCYF custody placement at the time of the meeting.

~~5.4~~ ~~4.4~~ If no agreement is reached by all of the representatives specified in subsection ~~5.3~~ ~~4.3~~ for changing the school placement from the ~~School of Origin~~ school of origin to the student's school of residence, based on the address of the DSCYF custody placement at the time of the meeting, then the student shall remain in the ~~School of Origin~~ school of origin pending finalization of any applicable dispute resolution process.

~~5.4.1~~ ~~4.4.1~~ Except in accordance with subsection ~~5.4.2~~ ~~4.4.2~~, a subsequent Best Interest Meeting shall not occur unless subsection ~~4.4~~ ~~3.1~~ or subsection ~~4.3~~ ~~3.3~~ applies.

~~5.4.2~~ ~~4.4.2~~ If exigent circumstances exist for a subsequent Best Interest Meeting to occur, an application shall be submitted on a form approved by the Department to the State Coordinator. The Secretary or designee will determine whether to approve the application for the requested subsequent Best Interest Meeting.

~~6.0~~ **5.0** Applicability

~~6.1~~ ~~5.1~~ Nothing in this regulation shall alter a ~~Local School District or Charter School's~~ local school district or charter school's duties under the ~~Individual~~ Individuals with Disabilities Education Act (IDEA) or 14 **DE Admin. Code** 922 through 929.

~~5.2~~ Nothing in this regulation shall prevent a ~~Local School District or Charter School~~ local school district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.

~~6.2~~ ~~5.3~~ Nothing in this regulation shall alter a ~~Local School District or Charter School's~~ local school district or charter school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a ~~Local School District or Charter School~~ local school district or charter school from providing supportive instruction to such students.

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 **Del.C.** §122(b)(18))
14 **DE Admin. Code** 915

ORDER

915 James H. Groves High School

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(18), the Delaware Department of Education ("Department") developed an amendment to 14 **DE Admin. Code** 915 James H. Groves High School. The regulation provides for the operation of James H. Groves High School, an adult education high school. In June 2021, subsection 2.2 of the regulation was amended concerning the age of a student in the In School Credit Program. The amendment specified that it would be in effect until June 30, 2022 as a result of the COVID-19 pandemic. The Department has determined that the change should remain in effect for the 2022-23 school year and, as a result, it has proposed to strike the date of "June 30, 2022" from subsection 2.2.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2022. The Department did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

The Department finds that the proposed amendment to the regulation is necessary for the operation of the adult education. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §122(b)(18), 14 **DE Admin. Code** 915 James H. Groves High School, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 915 James H. Groves High School adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 915 James H. Groves High School in the *Administrative Code of Regulations* for the Department.

V. 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 16th day of June, 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 16th day of June, 2022.

State Board of Education

Whitney Townsend Sweeney, President (absent) /s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham, Vice President /s/ Provey Powell, Jr.
/s/ Candice Fifer /s/ Wali W. Rushdan, II
/s/ Vincent Lofink

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

***Please note that no changes were made to the regulation as originally proposed and published in the May 2022 issue of the *Register* at page 992 (25 DE Reg. 992). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

915 James H. Groves High School

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A (14 Del.C. §3003A)
14 DE Admin. Code 934

REGULATORY IMPLEMENTING ORDER

934 Regulations for Family and Large Family Child Care Homes

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §3003A, the Secretary of Education intends to amend 14 DE Admin. Code 934 Regulations for Family and Large Family Child Care Homes. This regulation is being amended for the following reasons, as well as to comply with the *Delaware Administrative Code Drafting and Style Manual*:

- To provide a definition of blood lead screening;
- To comply with the Child Care and Development Block Grant by requiring adult volunteers who are present for at least five days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals (certificate required);
- To require a release of children procedure that includes monitoring the entrance of the home or phone, email, or other communication methods used by the home to ensure the child is released from care when requested by the parent, guardian, or authorized release person;
- Removing the requirement regarding completing the Department's approved developmental and social emotional screening tool until the legislation is clarified;
- To comply with Delaware's Lead Poisoning Prevention Act, to require blood lead screening for children at or around 24 months in addition to the screening at or around 12 months, and to require proof of single blood lead screening after age 24 months for all children including school-age, if blood lead tests were not conducted at or around age 12 months and at or around 24 months;
- To not allow semi-solid food to be introduced to an infant until the infant is at least 6 months old and developmentally ready, unless the infant's health care provider states otherwise; and
- To update the requirements for infant feedings to comply with recommendations of Caring for Our Children and the Centers for Disease Control and Prevention to include ready-to-feed formulas and concentrate, to require all bottles be labeled with the child's name, date, and time of preparation or opening, and to require that formula prepared using powder be discarded if not used within 24 hours of preparation.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2022. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2022, in the form hereto attached as *Exhibit "A"*. Two comments were received which were in support of the amendments to this

regulation. Additionally, it was recommended that the regulations for Family and Large Family Child Care Homes align with finalized Division of Public Health (DPH) regulations regarding lead testing and Regulation 933 DELACARE: Regulations for Early Care and Education and School Age Centers. The Department will ensure alignment of Regulations 933, 934 and DPH regulations. An additional comment was received providing clarification and requesting amendments to the definitions because Section 504 plans provide accommodations at school not in a child care setting, an Individualized Family Service Plan may not always include an identified disability, and an Individualized Educational Plan should be called an Individualized Education Plan. The Department made one nonsubstantive change to the proposed regulation in response to the comment: changing "Individualized Educational Plan" to Individualized Education Plan" and will propose the other recommended changes at a later date.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes This regulation is being amended for the following reasons, as well as to comply with the *Delaware Administrative Code Drafting and Style Manual*:

- To provide a definition of blood lead screening;
- To comply with the Child Care and Development Block Grant by requiring adult volunteers who are present for at least five days or 40 hours per year to complete OCCL's approved Health and Safety Training for Child Care Professionals (certificate required);
- To require a release of children procedure that includes monitoring the entrance of the home or phone, email, or other communication methods used by the home to ensure the child is released from care when requested by the parent, guardian, or authorized release person;
- Removing the requirement regarding completing the Department's approved developmental and social emotional screening tool until the legislation is clarified;
- To comply with Delaware's Lead Poisoning Prevention Act, to require blood lead screening for children at or around 24 months in addition to the screening at or around 12 months, and to require proof of single blood lead screening after age 24 months for all children including school-age, if blood lead tests were not conducted at or around age 12 months and at or around 24 months;
- To not allow semi-solid food to be introduced to an infant until the infant is at least 6 months old and developmentally ready, unless the infant's health care provider states otherwise; and
- To update the requirements for infant feedings to comply with recommendations of Caring for Our Children and the Centers for Disease Control and Prevention to include ready-to-feed formulas and concentrate, to require all bottles be labeled with the child's name, date, and time of preparation or opening, and to require that formula prepared using powder be discarded if not used within 24 hours of preparation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes 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** 934 Regulations for Family and Large Family Child Care Homes amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes 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, 2022. 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 7th day of July 2022.
Department of Education

Mark A. Holodick, Ed.D., Secretary of Education
Approved this 7th day of July 2022

934 Regulations for Family and Large Family Child Care Homes
(Break in Continuity of Sections)

3.0 Definition of Terms

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

(Break in Continuity Within Section)

"**Individualized [educational education] program**" or "**IEP**" means a document written at least yearly which describes the services and supports needed for a child identified for special education usually for a child age three years and older.

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2022 issue of the Register at page 1067 (25 DE Reg. 1067). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

934 Regulations for Family and Large Family Child Care Homes

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1553

ORDER

1553 Driver Education and Traffic Safety Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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** 1553 Driver Education and Traffic Safety Education Teacher. The regulation concerns the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising the title of the regulation; clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Driver and Traffic Safety Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Driver and Traffic Safety Education Teacher Standard Certificate in Section 4.0; specifying the requirements for reciprocity in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 8.0, which concerns the validity of a Driver and Traffic Safety Education Teacher Standard Certificate;

adding Section 9.0, which provides the requirements for retaining a Driver and Traffic Safety Education Teacher Standard Certificate; adding Section 10.0, which concerns disciplinary actions; adding Section 11.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 12.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On June 2, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher, 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** 1553 Driver Education and Traffic Safety Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1553 Driver and Traffic Safety Education Teacher in the Administrative Code of Regulations for the Department.

V. 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 16th day of June, 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 16th day of June, 2022.

State Board of Education

Whitney Townsend Sweeney, President (absent) /s/ Audrey J. Noble, Ph.D.

/s/ Shawn Brittingham, Vice President /s/ Provey Powell, Jr.

/s/ Candice Fifer /s/ Wali W. Rushdan, II

/s/ Vincent Lofink

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

*Please note that no changes were made to the regulation as originally proposed and published in the May 2022 issue of the *Register* at page 998 (25 DE Reg. 998). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1553 Driver Education and Traffic Safety Education Teacher

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Chapter 30A (16 **Del.C.** Ch. 30A)
16 **DE Admin. Code** 3220

ORDER

3220 Training and Qualifications for Certified Nursing Assistants

Nature of The Proceedings

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt revised Regulations Governing Training and Qualifications for Certified Nursing Assistants. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del. C.** Ch. 30A.

On June 1, 2022 (Volume 25, Issue 12), 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 July 1, 2022, after which time the DHSS would review information, factual evidence and public comment to the proposed regulations.

Summary of Proposal

The purpose of this notice is to advise the public that Delaware Health and Social Services / Division of Health Care Quality is proposing regulations governing Training and Qualifications for Certified Nursing Assistants.

Statutory Authority

16 **Del.C.** Ch.30A

Background

Newly enacted legislation affecting this regulation necessitates amendment.

Summary of Proposed Changes

The amendments update the regulatory language to incorporate legislative changes and updated standards of practice.

Fiscal Impact

N/A

Summary of Comments Received with Agency Responses

The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized comments:

Both groups support the proposed regulations. They also recommended increasing compensation for CNAs and private duty nurses (PDNs), as well as expanding the duties and responsibilities of the CNAs in order to make the field a more attractive profession.

Agency Response: DHCQ appreciates the Councils' support. No changes were made as a result of these comments.

DHCQ is appreciative of these comments from the Councils. DHCQ is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

Proposed amended regulation at 2.3.4.1.2 stated "Two (2) hours of resident/patient abuse/neglect/ maltreatment prevention training." DHCQ changed maltreatment to mistreatment.

Findings of Fact:

The Department finds that the proposed regulation, 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 Regulation Governing Training and Qualifications for Certified Nursing Assistants are adopted and shall become effective August 11, 2022, after publication of the final regulations in the *Delaware Register of Regulations*.

7/15/2022
Date

Molly K. Magarik, MS
DHSS Cabinet Secretary

3220 Training and Qualifications for Certified Nursing Assistants
(Break in Continuity of Sections)

2.0 Requirements and Procedures for CNA Certification

(Break in Continuity Within Section)

2.3 Certification Renewal

(Break in Continuity Within Section)

2.3.4 In order to qualify for recertification, a CNA must complete the following during each 24 month certification period and prior to certification expiration:

2.3.4.1 24 hours of Department approved continuing education which must include:

2.3.4.1.1 Six (6) hours of dementia training and

2.3.4.1.2 Two (2) hours of ~~resident/patient abuse~~ resident/patient abuse/neglect/[maltreatment mistreatment] prevention training.

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2022 issue of the *Register* at page 1102 (25 DE Reg. 1102). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

3220 Training and Qualifications for Certified Nursing Assistants

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20620

ORDER

Guardianship Fees - Post-Eligibility Protection of Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the June 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 2022 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after April 1, 2022, DHSS/DMMA proposes to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Post-Eligibility Treatment of Institutionalized Individuals, specifically, allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs.

Background

Medicaid recipients, institutionalized in long-term care facilities, are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only certain allowable amounts, such as a personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution.

Some institutionalized recipients may be appointed a guardian by the Court to make medical or financial decisions. There can be cost associated with services provided by the guardian. The services may include, but not be limited to, receiving and depositing income, paying bills, or maintaining accounts. 25 **DE Reg.** 866 (03/01/22) amended Title XIX Medicaid State Plan to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship not to exceed \$100.

Statutory Authority

§1902(a)(50)(q) of the Social Security Act
§1902(a)(14)(l) of the Social Security Act

Purpose

The purpose of the proposed is to align the Division of Social Services Manual (DSSM) with the amended Title XIX Medicaid State Plan changes allowing Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship fees not to exceed \$100 and to include the establishment of a guardianship (to include attorney's fees) not to exceed \$750 to both DSSM and Title XIX Medicaid State Plan.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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 July 1, 2022.

Centers for Medicare and Medicaid Services Review and Approval

The provisions of this state plan amendment (SPA) are subject to approval by the Centers for Medicare and Medicaid Services (CMS). The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$146,049	\$273,468
General (State) funds	\$82,438	\$192,882

No Comments Were Received

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the June 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs is adopted and shall be final effective August 11, 2022.

7/28/2022

Date of Signature

Molly K. Magarik, MS
DHSS Cabinet Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the June 2022 issue of the *Register* at page 1108 (25 DE Reg. 1108). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Guardianship Fees - Post-Eligibility Protection of Income

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)e and 7903 (16 **Del.C.** §§122(3)e and 7903)
16 **DE Admin. Code** 4455

ORDER**4455 Delaware Regulations Governing a Detailed Plumbing Code**NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing a Detailed Plumbing Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsections 122(3)(e) and 7903

On June 1, 2022 (Volume 25, Issue 12), 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 July 1, 2022, 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:

No changes were made to the regulations since publication as proposed. 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 Regulations Governing a Detailed Plumbing Code is adopted and shall become effective August 11, 2022 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

7/12/2022
Date

Molly K. Magarik, MS
DHSS Cabinet Secretary

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing a Detailed Plumbing Code were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (June 1, 2022 through July 1, 2022).

Entities offering written comments include:

- John Behornar, New Castle County

Comments

From New Castle County:

Subsection 2.5: On all commercial applications the BOH condition must be applied

Subsection 2.5.1: This change allows for replacement of water heaters without permit.

Subsection 2.8: This section should be given to the show cause hearing officers for their use.

Subsection 2.9: This section allows the appeal on Plumbing code violations to the Department of Public Health.

Subsection 2.12: This section is requiring that the division of public health inspect the initial backflow preventer install. Calls to question our inspection role and permit requirement if necessary.

Subsection 2.13.1: These changes will allow design professional a less stringent approach to the total calculation of fixtures per gender when applying the multi-user water closet to the total.

Subsection 2.33: This section though deleted, should have reference to New Castle County site plan requirements etc.

DPH response: The Division of Public Health appreciates the submission of comments regarding this regulation. DPH has reviewed these comments and has determined that no changes will be made to the proposed regulation at this time.

***Please note that no changes were made to the regulation as originally proposed and published in the June 2022 issue of the *Register* at page 1110 (25 DE Reg. 1110). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4455 Delaware Regulations Governing a Detailed Plumbing Code

FINAL REGULATIONS

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 2312 (18 Del.C. §§311 & 2312)
18 DE Admin. Code 902

REGULATORY IMPLEMENTATING ORDER

902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

A. Synopsis of Subject Matter of the Regulation and Proposed Amendments

In the May 1, 2020 edition of the *Register of Regulations*, the Department published a proposal to update and clarify requirements concerning prohibited unfair claim settlement practices that are set forth in Regulation 902 (see 23 DE Reg. 920 (05/01/2020)). In that proposal, the Department proposed adding new subsection 3.1.14, which included a failure to promptly pay a settled claim as required under Regulation 903 as an unfair claim settlement practice. The Department also took the opportunity of the proposal to make grammatical and formatting edits throughout the regulation. Upon further review, the Department determined not to proceed with proposed new subsection 3.1.14 and withdrew that proposal, as violations of Regulation 903 are already a defined unfair claims settlement practice.

Instead, in its first re-proposal of amendments to Regulation 902, the Department proposed to add new subsection 3.2 to Regulation 902, which would have specifically provided that three instances of an insurer's commission of a prohibited claim settlement practice within a 36-month period, as listed in subsection 1.2.1 (to be recodified at subsection 3.1), shall give rise to a rebuttable presumption that the insurer is in violation of this regulation and 18 Del.C. § 2304(16)f. This first re-proposal was published in the June 1, 2020 edition of the *Register of Regulations* (see 23 DE Reg. 997 (06/01/2020)). The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

In response to comments from the regulated community that are summarized in the second re-proposal, the Department determined to revise proposed new subsection 3.2 by raising the frequency of instances of commission of a prohibited claim settlement practice from three instances within a 36-month period to four percent of claims sampled.

This second re-proposal was published in the October 1, 2020 edition of the *Register of Regulations* (see 24 DE Reg. 330 (10/01/20)) and the Department held a public hearing on October 22, 2020. The Department again took the opportunity of the re-proposal to make grammatical and formatting edits throughout the regulation.

B. Summary of Comments Received on the Department's Second Re-proposal

All of the comments received on the second re-proposal came from members of the regulated community and their representatives. Some commenters appreciated the Department's clarification that the presumption is rebuttable. However, all commenters remained concerned about the amount of the threshold, the size of the sample population, and whether the threshold is applied on a per practice or combined practices basis. One commenter opined that the proposed amendments are arbitrary and exceed the Department's regulatory authority, and many reiterated the concern that the 4 percent threshold deviates from the 7-10 percent incident tolerance recommended in the National Association of Insurance Commissioners Market Conduct Examiners Handbook (not more than 7% when identifying a business practice for claims and 10% for other trade practices).

One commenter opined that the plural "unfair claims settlement practices" could be misinterpreted to "knit together" disparate acts to meet the threshold, suggesting that the Department limit the application of the threshold to a single behavior. Similarly, another commenter opined that if an exception rate is adopted, it should be tied to a specific prohibited practice rather than overall compliance so that a general business practice is not established cumulatively based on more than one prohibited practice from different sections of the Code.

Another commenter correctly pointed out that proposed new subsection 3.2 is not intended to create a separate violation in and of itself because such an expansion is expressly prohibited by 18 Del.C. § 2312, and

requested that the Department add clarifying language to that effect.

Commenters also pointed out that since the proposed language would create a prima facie determination of a general business practice that insurers would be able to rebut, a clarification is necessary to limit the findings to enforcement by the Commissioner, as opposed to creating a cause of action for any person or entity other than the Commissioner. The requested limitation would mimic a similar limitation codified in Regulation 903.

One commenter pointed out that the presumption should apply to all of 18 **Del.C.** § 2304(16), not just to 18 **Del.C.** § 2304(16)(f).

A representative of health insurance carriers raised a conflict between Regulation 1310 - Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services, which was adopted by the Commissioner pursuant to 18 **Del.C.** § 2304(16) and the new thresholds proposed at Regulation 902-3.2. The commenter pointed out that Regulation 1310 deems three instances of non-compliance with prompt pay guidelines within a 36 month time period to give rise to a rebuttable presumption of an unfair practice in violation of 18 **Del.C.** § 2304, which applies only to health plans, and which conflicts with the 4 percent of claims sampled as proposed in Regulation 902 and applies to all carriers.

C. Summary of the Department's Re-Notice and Public Comment for the Third Re-Proposal

In response to the comments received on the second re-proposal, the Department published a third re-proposal on August 1, 2021 (see 25 **DE Reg.** 156). The Department held a virtual and in-person meeting on Tuesday, October 26, 2021 at 10:00 a.m.

In the third re-proposal, the Department proposed new subparagraph 3.2 to clarify that:

- The four percent of claims found to be a prima facie evidence of a violative general business practice must fall within the same category of prohibited practices as listed in subsection 3.1 of the regulation;
- The violative general business practice must also fall within the same 12-month period;
- The presumption applies under all of 18 **Del.C.** § 2304(16); and
- The presumption does not apply to health care claims to which Regulation 1310 applies.

The Department also added new subsection 3.3 to clarify that the presumption that a general business practice violation occurred does not, in and of itself, create an additional and separate general business practice violation.

The Department also added new subsection 3.4 to set forth a procedure that an insurer may follow to rebut the presumption that a violative general business practice has occurred. This new subsection is modeled after a similar provision in the Code of Maryland Regulations at COMAR 31.15.07.09. The Department also added new subsection 3.5 that limits the cause of action afforded under the regulation to enforcement actions conducted by the Commissioner. Proposed new subsection 3.6 excepts from regulation under Section 3.0 those health care general business practice violations that are otherwise regulated by 18 **DE Admin. Code** 1310.

In addition to oral comments received during the public hearing, the Department received two sets of comments from the regulated community. One of the commenters was appreciative of the revisions made to the regulation and were particularly appreciative of the addition of the provisions concerning how to rebut the presumption.

However, the commenter continued to express concern that the four percent unfair claims sampled threshold in proposed new subsection 3.2 would disproportionately affect those lines of insurance that typically have low policy counts such as life insurers, smaller property and casualty carriers and large personal auto carriers, all of whom process claims less frequently than high volume lines of insurance.

Both commenters also reiterated the previously made objection that the threshold deviates from the standards in the NAIC Unfair Claim Settlement Practices Act ("Model Act") and Examiners Handbook. They also opined that the Department has not identified a need for the proposed amendments based on market analysis and data.

Both commenters also expressed concern that the proposed amendments are likely to discourage informal resolution of market conduct exam findings, as well as self-reporting and self-remediation of claims processing errors or violations and requested an exemption of any adverse findings on general business practices if violations are promptly remediated upon discovery and self-reported.

One commenter suggested that if the Department is unwilling to follow the seven percent threshold recommended in the Examiners Handbook, that the Department follow the six percent threshold for property and casualty carriers and five percent threshold set for life and annuity carriers set by Maryland in its regulation on general business practices. The commenters also suggested that the Department follow Maryland's lead by creating specific sampling sizes to accommodate the varying sizes of companies.

Lastly, the commenters requested amendatory language to proposed new subsection 3.4 to broaden the information an insurer may present to the Commissioner to overcome the presumption created under subsection 3.2. The commenters' noted that their suggested language "would bring Delaware in line with its neighboring state of Maryland" by citing to MD COMAR 31.15.07.09.

II. FINDINGS OF FACTS

1. The Commissioner finds that it is appropriate to amend 18 **DE Admin. Code** 902 as re-proposed and amended because it appropriately addresses the comments received from the regulated community, and the public was given proper notice and a chance to comment on the proposed amendments as required under the Administrative Procedures Act at 29 **Del.C.** § 10115.

2. The Commissioner declines to further amend the regulation to add thresholds for certain lines of business or to specify sampling sizes to accommodate varying sizes of companies, or to provide an exemption for issues that are resolved expeditiously, as such amendments are unnecessary. Proposed new subsection 3.4 broadly allows carriers to present relevant factors to rebut the presumption of an unfair trade practice, and the Department suggests that data concerning claims frequency by line of business and expeditious resolution may be presented by a carrier under proposed new subsection 3.4.

3. While the commenters suggested that adopting their proposed revisions to new subsection 3.4 would "bring Delaware in line with its neighboring state of Maryland" by citing to Maryland regulation 31.15.07.09, the Commissioner notes that new subsection 3.4 as contained in the third re-proposal is already *identical* to the language in Maryland regulation MD COMAR 31.15.07.09. Notwithstanding that new subsection 3.4 already tracks the Maryland regulation, the Commissioner agrees to move the language regarding insurers' ability to provide relevant evidence to rebut a presumed violative general business practice to the beginning of subsection 3.4. Moving the word "relevant" in proposed new subsection 3.4 from the end of this provision to the beginning of the provision will add clarity while not being violative of the Administrative Procedures Act prohibition against making substantive changes on adoption (see 29 **Del.C.** § 10118(c)). The provision on adoption will read as follows:

An insurer may overcome the presumption that a general business practice violation has occurred by presenting [any relevant] evidence to the Commissioner, [including evidence] relating to the harm to claimants caused by the violation, the nature of the violation, [and] the insurer's [intent, and other relevant factors.] [intent.]

III. DECISION TO ADOPT THE PROPOSED AMENDMENTS

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 902, as herein described.

IV. EFFECTIVE DATE OF ORDER

The effective date of the Regulation shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** § 10118 and 29 **DE Admin. Code** 101-5.1.

IT IS SO ORDERED.

The 15th day of July, 2022.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]

~~Claim Settlement Practices Which, When Committed Or Performed with Such Frequency as to Indicate a General Business Practice, Are Prohibited~~

1.0 Purpose

The purpose of this regulation is to set forth unfair claim settlement practices which, when committed or performed with such frequency as to indicate a general business practice, are prohibited.

2.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311 and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

4.0 Authority for Regulation; Basis for Regulation 3.0 Prohibited Unfair Claims Settlement Practices

4.1 ~~18 Del.C. §314~~ authorizes the Insurance Commissioner to "...make reasonable rules and regulations necessary for or as an aid to the administration or effectuation of any provision of this title."

4.2 ~~18 Del.C. Ch. 23~~ entitled "Unfair Business Practices in the Insurance Business," ~~18 Del.C. §2304(16)~~ Unfair Claim Settlement Practices; ~~18 Del.C. §2304(17)~~ Failure to Maintain Complaint Handling Procedures; and ~~18 Del.C. §2304(18)~~ Misrepresentation in Insurance Applications, provide the basis for this regulation.

~~4.2.1.3.1~~ The Following Claim Settlement Practices When Committed following unfair claim settlement practices when committed or Performed performed with such Frequency frequency as to indicate indicate a General Practice general business practice are Prohibited prohibited:

~~4.2.1.43.1.1~~ Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue.

~~4.2.1.23.1.2~~ Failing to acknowledge and respond within 15 working days, upon receipt by the insurer, to communications with respect to claims by insureds arising under insurance policies.

~~4.2.1.33.1.3~~ Failing to implement prompt investigation of claims arising under insurance policies within 10 working days upon receipt of the notice of loss by the insurer.

~~4.2.1.43.1.4~~ Refusing to pay claims without conducting an investigation based upon all available information when the notice of loss received by the insurer indicates that such an investigation is necessary to properly determine such a denial of payment.

~~4.2.1.53.1.5~~ Failing to affirm or deny coverage or a claim or advise the person presenting the claim, in writing, or other proper legal manner, of the reason for the inability to do so, within 30 days after proof of loss statements have been received by the insurer.

~~4.2.1.63.1.6~~ Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become clear.

~~4.2.1.73.1.7~~ Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts which they might be entitled to under normal fair claims evaluations.

~~4.2.1.83.1.8~~ Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

~~4.2.1.93.1.9~~ Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge of the insured.

~~4.2.1.403.1.10~~ Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which the payment has been made.

~~4.2.1.443.1.11~~ Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of a formal proof of loss form, both of which submissions contain substantially the same information, unless the formal proof of loss is required by law, prevailing rules, or the policy.

~~4.2.1.423.1.12~~ Failing to promptly settle claims, where liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

- ~~4.2.4.133.1.13~~ Failing when requested to promptly provide an explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement. Such explanation may be made verbally but when given, must be documented in the claims file.
- 3.2 It shall be considered prima facie evidence of a general business practice of committing an unfair claim settlement practice if the Department finds that, within a given sample of claims sampled by the Department during an investigation or examination of the insurer, the total number of unfair claims settlement practices exceeds four percent or more of claims, and the general business practice violation occurred within:
- 3.2.1 A single category of practices prohibited under subsection 3.1 of this regulation; and
- 3.2.2 A single 12-month period.
- 3.3 The presumption that a general business practice violation occurred pursuant to subsection 3.2 of this regulation is not, in and of itself, an additional general business practice violation.
- 3.4 An insurer may overcome the presumption that a general business practice violation has occurred by presenting [any relevant] evidence to the Commissioner[, including evidence] relating to the harm to claimants caused by the violation, the nature of the violation, [and] the insurer's [intent, and other relevant factors, intent.]
- 3.5 This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a person or the person's representative based upon a violation of 18 Del.C. §2304(16).
- 3.6 Section 3.0 of this regulation does not apply to general business practice violations if the general business practice is otherwise regulated under 18 DE Admin. Code 1310.

2.04.0 Violations; Penalties

- 2.4 Failure to comply will subject the violators to the provisions of ~~18 Del.C. §1732 (c)(2) and 18 Del.C. §2307(a)~~ 18 Del.C. §§1712, 2307(a) and 2308, which deals deal with hearings, license revocation, suspension or fine for non-compliance of any regulation.

3.05.0 Severability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

4.06.0 Effective Date

This Regulation ~~shall become~~ became effective August 1, 1977. The amendments to this Regulation shall become effective ten (10) days after publication of the final order adopting the amendments.

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 29 Delaware Code, Section 10113 (18 Del.C. §311 and 29 Del.C. §10113)
18 DE Admin. Code 1322

ORDER

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

The purpose of this Order is to update Department of Insurance (the "Department") Regulation 1322 to amend the definition of "Core CPI" in Section 4.0 and delete subsection 7.3 of Regulation 1322, which set forth the manner in which the Insurance Commissioner would determine the Core CPI percentage increase for the applicable rate filing year, as a result of later-enacted legislation which statutorily defined how Core CPI is to be determined.

This amendment is made under the Department's authority at 18 **Del.C.** § 311 and is exempt from the requirement of public notice and comment because it is required "to make [the existing regulations] consistent with changes in basic law but which [does] not otherwise alter the substance of the regulation" pursuant to 29 **Del.C.** § 10113(b)(5).

On May 11, 2022, Department Regulation 1322 (18 **DE Admin. Code** 1322) became effective. Regulation 1322, subsection 7.3, required the Commissioner to "annually determine the Core CPI percentage increase based on an average of the previous three years of United States Department of Labor data ending January 31st of the applicable rate filing year...." The Department adopted the three-year lookback period because "the General Assembly did not provide statutorily for the time period over which to measure the average change...." See 25 **DE Reg.** 830 (03/01/22).

Subsequent to the effective date of Regulation 1322, the General Assembly of Delaware introduced and passed, and the Delaware Governor signed into law, Senate Substitute 1 for Senate Bill 222, with House Amendment 2 ("SB 222"). 83 **DE Laws**, c. 322 (151st GA). SB 222 amended Delaware law to revise the definition of Core CPI to require the use of regional data and to provide statutory reference to the relevant lookback period to be used by the Commissioner in determining carrier compliance with 18 **Del.C.** § 2503(a)(12). As a result of SB 222, the definition of "Core CPI" in Section 4.0 of Regulation 1322 will be updated to track the definition contained in SB 222. In addition, subsection 7.3 of Regulation 1322 is obsolete and will be deleted.

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED,

The 28th day of June, 2022.

Trinidad Navarro, Commissioner
Delaware Department of Insurance

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance *(Break in Continuity of Sections)*

4.0 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)

"Core CPI" means ~~the Consumer Price Index for All Urban Consumers, All Items Less Food & Energy as developed by the United States Bureau of Labor Statistics~~ the average of the 12 preceding bimonthly indices calculating the over-the-year changes of the Consumer Price Index for All Urban Consumers in the Philadelphia-Camden-Wilmington Area. All Items Less Food & Energy, developed by the United States Bureau of Labor Statistics.

(Break in Continuity of Sections)

7.0 Price Growth Limits for Non-Professional Services

- 7.1 No carrier shall submit a rate filing for a health benefit plan that includes aggregate unit price growth for nonprofessional services that exceeds the following:
- 7.1.1 In 2022, the greater of 3 percent or Core CPI plus 1 percent;
 - 7.1.2 In 2023, the greater of 2.5 percent or Core CPI plus 1 percent; and
 - 7.1.3 In 2024, 2025, and 2026, the greater of 2 percent or Core CPI plus 1 percent.
- 7.2 Each carrier rate filing for a health benefit plan for each plan year shall be based on fee schedules and reimbursement structures that include increases that are no greater than the limits set forth in subsection 7.1 of this regulation.
- 7.3 ~~The Commissioner shall annually determine the Core CPI percentage increase based on an average of the previous three years of United States Department of Labor data ending January 31st of the~~

~~applicable rate filing year and shall communicate this determination annually to carriers by Bulletin or other form of notice.~~

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

1322 Requirements for Mandatory Minimum Payment Innovations in Health Insurance

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c); (7 Del.C. §6010(a) & (c))
7 DE Admin. Code 1102

Secretary's Order No.: 2022-A-0010

RE: Approving Final Regulations to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*

Date of Issuance: June 27, 2022

Effective Date of the Amendment: August 11, 2022

1102 Permits

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 Del.C. §§6003-6004, 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 regulatory amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: Permits ("Amendments"). The Department's Division of Air Quality ("DAQ") is proposing to amend the aforementioned subsections of 7 DE Admin. Code 1102 to update the public notice requirements for general permits.

The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 Del.C. §§6003-6004.

In 2016, the United States Environmental Protection Agency ("EPA") issued a final rule (81 FR 71613), subsequently codified at 40 CFR 70.7(h)(2), that updated the list of contents to be identified in the public notices for Title V facilities. The proposed Amendments to 7 DE Admin. Code 1102 will ensure consistency with both the specific wording of EPA's updated final rule referenced above and the regulatory language found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*.

Delaware law requires a DAQ Natural Minor permit for equipment that has the potential to discharge air contaminants into the atmosphere. Specifically, 7 DE Admin. Code 1102 establishes the permitting procedures and requirements for Delaware's Natural Minor permits, issued to all sources whose uncontrolled emissions exceed ten (10) pounds per day. Sources whose total uncontrolled emissions exceed Major Source emission levels require an additional permit called a Title V Operating permit.

The objective of the proposed Amendments is to update the public notice requirements for Natural Minor permits, in order to maintain consistency with the language of the EPA's updated final rule and Delaware's language found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*." As noted above, the EPA recently updated the list of contents to be identified in public notices for Title V permits, see 81 FR 71613, 40 CFR 70.7(h)(2).

Section 12.0 of 7 DE Admin. Code 1102 was adopted by the Department to implement public notification

requirements for Natural Minor Permits. The regulation requires the DAQ to provide for public participation and comment when reviewing and issuing permits. There is also a requirement to advertise permit application information in at least two (2) Delaware newspapers, in accordance with 7 *Del.C.* §§6003-6004. Members of the public also have an opportunity to request a hearing regarding the permit application if one has not already been scheduled by the Department.

The Department's proposed Amendments to subsections 12.3.2 and 12.4.2 will now require the following additional information to be included for all public notices for Natural Minor permits, in order to standardize Delaware's public notice requirements for both Title V Operating permits and Natural Minor permits:

- The name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information; and
- The time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations* ("*Register*"). Subsequent to publication of the proposed Amendments in the Register, but prior to the public hearing, the DAQ discovered minor clerical errors in the Department's proposed Exhibit 1. The errors were corrected by DAQ staff, and the existing language in Exhibit 1 regarding applicability for a natural minor permit was clarified.

The corrected proposed Exhibit 1 was then posted on the DNREC hearing web page dedicated to this hearing matter. Accordingly, the Department held the public hearing regarding this regulatory action on October 27, 2021, at which time the corrective action taken by staff regarding DNREC's proposed Exhibit 1 was explained for the benefit of the hearing record ("*Record*") being generated in this matter.

Only one member of the public (Emily Rodden from the New Castle Prevention Coalition) offered comments at the time of the hearing regarding the proposed Amendments to 7 DE Admin. Code 1102, and those comments were supportive in nature. 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. Following her review of the Record, Hearing Officer Vest prepared her Hearing Officer's Report, dated March 10, 2022 ("*Report*"), which expressly incorporated into the Record the Department's proposed Amendments, attached to her Report as Appendix "A." The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed Amendments, as attached to the Report as Appendix "A."

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed amendments to 7 DE Admin. Code 1102, *Permits*. As noted previously, the proposed Amendments will update the Department's DAQ regulations regarding public notice publication requirements for Natural Minor permits, in order to maintain consistency with the specific wording of EPA's final rule and Delaware's public notice publication requirements found in 7 DE Admin. Code 1130, *Title V State Operating Permit Program*."

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the proposed Amendments, which will enable the Department to ensure consistency regarding DNREC public notice publication requirements, update current regulatory language to mirror that of EPA's final rule and federal regulations regarding public notice publication requirements, and provide greater clarity and understanding to the regulated community regarding general permits that are pending before the Department.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*, be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1102, subsections 12.3.2 and 12.4.2: *Permits*, pursuant to 7 *Del.C.* §§6003-6004;
2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;

3. The Department provided adequate public notice of the 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 subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed Amendments will enable the Department to ensure consistency regarding DNREC public notice publication requirements, update current regulatory language to mirror that of EPA's final rule and federal regulations regarding public notice publication requirements, and provide greater clarity and understanding to the regulated community regarding general permits that are pending before the Department;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as published in the October 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

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

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving as final the proposed 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, as the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

1102 Permits

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c); (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1103

Secretary's Order No.: 2022-A-0011

RE: Approving Final Regulations to 7 DE Admin. Code 1103: *Ambient Air Quality Standards*

Date of Issuance: June 27, 2022

Effective Date of the Amendment: August 11, 2022

1103 Ambient Air Quality Standards

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §6010(a) and (c), 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 regulatory amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards* ("Amendments"). The Department's Division of Air Quality ("DAQ") is proposing to amend 7 DE Admin. Code 1103 to (1) update the National Ambient Air Quality Standards ("NAAQS") for ground level ozone; (2) update the Code of Federal Regulations ("CFR") reference dates for all NAAQS; and to (3) remove the sulfur dioxide ("SO₂") 24-hour and annual primary standards that have been revoked by the United States Environmental Protection Agency ("EPA").

Each of the above-referenced regulatory updates is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations. The Department has the statutory basis and legal authority to promulgate these proposed Amendments, pursuant to 7 *Del.C.* §§6010(a) and (c).

The NAAQS are established by the EPA for six "criteria air pollutants:" ground-level ozone, SO₂, particulate matter, nitrogen oxide, carbon monoxide, and lead. The NAAQS have both primary and secondary standards. Primary standards are required to protect public health, while secondary standards protect the environment.

The Clean Air Act ("CCA") requires states to implement standards and determine whether they are in compliance with the NAAQS. The CCA also requires the EPA to periodically review the science upon which the standards are based and the standards themselves, to determine whether the standards should be revised.

In 2015 the EPA promulgated revised primary and secondary ozone NAAQS for ground-level ozone via the EPA's final rule, published on October 26, 2015, as set forth in Volume 80 of the Federal Register ("FR"), beginning on page 65,292. In 2010, the EPA reviewed the NAAQS for SO₂ and determined that the available science showed that a shorter-term one-hour average measurement of SO₂ would be more protective of human health. Consequently, the EPA revoked the SO₂ 24-hour primary standard and the SO₂ annual primary standard. The final rule was published on June 22, 2010, in Volume 75 of the FR, beginning on Page 35,520.

The above changes were subsequently codified in Title 40 of the CFR, Sections 50.19 and 50.17, respectively. In addition to updating these standards, the proposed regulatory Amendments also include updating the federal reference dates, so that Delaware's regulation references the most current methodologies set by the EPA for measuring criteria pollutant levels.

Currently, the primary and secondary ozone NAAQS as set forth in 7 DE Admin. Code 1103, Section 6.0, reflect an outdated standard of 0.075 parts per million ("ppm"). The federal regulatory standards, established by EPA in 2015, are set at 0.070 ppm. This proposed regulatory action will amend the current ozone standards in Delaware's regulations to 0.070 ppm to mirror that of EPA's current regulations and will update the CFR reference dates throughout the rule to July 1, 2019, to ensure references to methodologies for measuring criteria pollutant levels are the most recent.

Lastly, as noted above, the Department also proposes to remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA. Again, each update referenced above is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations (40 CFR 50.19: 80 FR 65292 and 40 CFR 50.17: 75 FR 35520).

The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations* ("Register"). Accordingly, the Department held the public hearing regarding this regulatory action on October 27, 2021. It should be noted that the Department received no comments regarding this proposed regulatory action. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Following her review of the hearing record ("Record"), Hearing Officer Vest prepared her Hearing Officer's Report, dated March 10, 2022 ("Report"), which expressly incorporated into the Record the Department's proposed Amendments, attached to her Report as Appendix "A." The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed Amendments, as attached to the Report as Appendix "A."

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed amendments to 7 DE Admin. Code 1103, *Ambient Air Quality Standards*. As noted previously, the proposed Amendments will update the Department's DAQ regulations regarding (1) the NAAQS for ground level ozone; (2) the CFR reference dates for all NAAQS; and will (3) remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA.

Each update is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the proposed Amendments, which will enable the Department to ensure consistency regarding the EPA's current federal regulations.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards*, be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1103: *Ambient Air Quality Standards*, pursuant to 7 *Del.C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed Amendments as final;
3. The Department provided adequate public notice of the 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 subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;
4. Promulgation of the proposed Amendments will enable the Department to update the Department's DAQ regulations regarding the NAAQS for ground level ozone and the CFR reference dates for all NAAQS, and will also remove the SO₂ 24-hour and annual primary standards that have been revoked by the EPA, so that Delaware's regulations maintain consistency with the EPA's current federal regulations;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. The Department's proposed Amendments, as published in the October 1, 2021, *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;
7. The Hearing Officer's Report, including its established Record and the recommended proposed Amendments, as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
9. The Department shall submit this Order approving as final the proposed 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, as the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

1103 Ambient Air Quality Standards

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** § 6010(a) & (c))
7 **DE Admin. Code** 1130

Secretary's Order No.: 2022-A-0012

RE: Approving Final Regulations to 7 DE Admin. Code 1130: Title V State Operating Permit Program

Date of Issuance: June 27, 2022

Effective Date of the Amendment: August 11, 2022

1130 Title V State Operating Permit Program

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §6010(a) and (c), 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 *revised* regulatory amendments to 7 DE Admin. Code 1130: *Title V State Operating Permit Program* ("Amendments"). The Department's Division of Air Quality ("DAQ") is proposing to amend 7 DE Admin. Code 1130 to (1) update the public notice publishing requirements; (2) update the affirmative defense requirements; and to (3) update the list of greenhouse gases ("GHGs") and their global warming potential ("GWP") values to maintain consistency with the current federal regulations of the United States Environmental Protection Agency ("EPA").

Each of the above-referenced regulatory updates is being proposed by the Department so that Delaware's regulations maintain consistency with the EPA's current federal regulations. The Department has the statutory basis and legal authority to promulgate these proposed *revised* Amendments, pursuant to 7 *Del.C.* §§6010(a) and (c).

Title V of the federal *Clean Air Act* requires the EPA to implement air quality operating permits called Title V Permits. Title V Permits apply to sources whose emissions meet or exceed Major Source levels. These sources are typically large stationary sources such as power plants, refineries or manufacturing plants.

The Department's DAQ adopted 7 DE Admin. Code 1130 to implement the federal requirements for Title V Permits in Delaware and establish the permitting procedures and requirements for the above-referenced sources. The objective of the proposed *revised* Amendments, as noted above, is to effectuate various updates to Delaware's existing regulations to maintain consistency with the EPA's current federal regulations. The affirmative defense requirement updates were precipitated by the EPA's final rule published on July 21, 1992, in Volume 57 of the Federal Register, beginning on Page 32,250. That rule is codified in Title 40 of the Code of Federal Regulations, Section 70.6(g).

The Department's proposed updates to GHG and GWP follow the EPA's updates to Title 40 of the Code of Federal Regulations, Section 98, Table A-1. The final rules that precipitated these amendments were published on November 29, 2013 in Volume 78 of the Federal Register, beginning on Page 71,903 and on December 11, 2014 in Volume 79 of the Federal Register, beginning on Page 73,749.

Similarly, updates to the public notice publishing requirements for Title V Permits were the result of the EPA's final rule published on October 18, 2016 in Volume 81 of the Federal Register, beginning on Page 71,613. These changes were codified in Title 40 of the Code of Federal Regulations, Section 70.7.

With regard to the proposed revised Amendments related to affirmative defense requirements, Title V Permits require facilities to have specific emission monitoring and reporting requirements to demonstrate compliance, so that their emissions are below the allowable limits. Understanding that deviations in operation are possible from failure in emission control equipment, the EPA included a provision in their July 21, 1992 final rule to allow for some operational flexibility. That final rule provides an affirmative defense in the event where permit limits have been

exceeded due to an emergency. EPA defines an "emergency" as a reasonably unforeseeable event beyond the control of the source that requires immediate corrective action to restore normal operation, and that is not due to certain factors specified in the rule.

The affirmative defense clause for Title V Permits is currently included in Delaware's existing 7 DE Admin. Code 1130, specifically, Section 6.0. It also includes the affirmative defense case for "emergencies" and "malfunctions." "Malfunction," as defined in by Delaware in that regulation, means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the malfunction. Since the EPA's Title V Operating Permit regulation only describes affirmative defense provisions in the case of any emergency (and not malfunctions), the DAQ has proposed to remove all references to "malfunction" from Section 6.0 to maintain consistency with the current federal requirements for affirmative defense.

The second set of the Department's proposed *revised* Amendments relates to Section 2.0, "Definitions." The definition of "subject to regulation" sets the criteria for which air pollutants are required to be permitted through Delaware's Title V Program. Specifically, this definition lists the criteria for which GHGs shall be subject to, based on the potential GHG emissions for a given source. Potential emissions are calculated using the GWP values for GHG pollutants, based on the values used in the Intergovernmental Panel on Climate Change Report. The EPA issued a final rule on November 29, 2013, that revised the GWP values for 23 of the 32 compounds listed in Table 2-1 of Delaware's regulation. On December 11, 2014, the EPA issued a separate final rule that added 30 new compounds to the list of GHG compounds. The proposed *revised* Amendments include updating the "subject to regulation" definition as found in 7 DE Admin. Code 1130 to reflect the most current federal description of GHGs and GWP values and revising the GHG compounds and their GWPs, located in Table 2-1 of Delaware's regulation, to be consistent with the EPA's current regulations.

Additionally, the Department proposes to amend Section 7.0 of 7 DE Admin. Code, "Permit Issuance, Renewal, Reopening, and Revisions." Subsection 7.10.2 was adopted to implement public notification requirements for Title V Operating Permits. The regulation requires the DAQ to provide for public participation and comment when reviewing and issuing permits. There is also a requirement to publish permit application information in Delaware newspapers, in accordance with 7 *Del.C.* §§6003-6004. Members of the public also have the opportunity to request a public hearing for the permit application if one has not already been scheduled. The Department's proposed *revised* Amendments update the list of required components for public notice publications in subsection 7.10.2 of 7 DE Admin. Code 1130, again, to be consistent with the EPA's 2016 final rule.

The Department published the initial proposed Amendments in the October 1, 2021, *Delaware Register of Regulations* ("*Register*"). Subsequent to publication of the initial proposed Amendments in the *Register*, but prior to the public hearing held regarding this matter by the Department on October 27, 2021, the DAQ discovered minor clerical errors contained therein. The errors were corrected by DAQ staff, and then the proposed *revised* Amendments were fully explained at the aforementioned public hearing for the benefit of the hearing record ("*Record*") being generated in this matter.

Only one member of the public offered comments at the time of the hearing regarding the proposed *revised* Amendments to 7 DE Admin. Code 1130, and those comments requested clarifications with regard to some of the regulatory language being proposed by the Department at this time. Accordingly, the DAQ subsequently provided to Hearing Officer Lisa A. Vest a Technical Response Memorandum ("*TRM*") dated November 30, 2021, which is discussed in more detail below. 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.

Following her review of the hearing record ("*Record*"), Hearing Officer Vest prepared her Hearing Officer's Report, dated March 10, 2022 ("*Report*"), which expressly incorporated into the Record both the Department's proposed *revised* Amendments and the DAQ's TRM, attached to her Report as Appendices "A" and "B," respectively. The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed *revised* Amendments as referenced above.

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed *revised* amendments to 7 DE Admin. Code 1130, *Title V Operating Permit Program*. The proposed revised Amendments will update the

public notice publishing requirements, affirmative defense requirements, and list of GHGs and their GWP values to maintain consistency with the current federal regulations of the EPA.

As noted above, the Department received only one comment on this proposed promulgation. That comment, received at the time of the public hearing, requested clarification on the difference between the terms "emergencies" and "malfunctions" as set forth in the proposed *revised* Amendments, and inquired as to why the Department has proposed to remove the term "malfunction" from 7 DE Admin. Code 1130.

In response to this commenter (and for further clarification for the benefit of the Record being developed in this matter), the DAQ's experts provided to Hearing Officer Vest a TRM dated November 30, 2021. This TRM offers the formal definitions for the terms "emergencies" and "malfunctions," and explains that 7 DE Admin. Code 1130 currently allows for an affirmative defense to enforcement actions when noncompliance with certain emission limitations in operating permits occurs because of qualifying emergency or malfunction events. The EPA's current federal regulation found at 40 CFR 70.6(g) governs state operating permit programs and provides for states to develop and submit to the EPA programs for issuing operating permits for major and certain other stationary sources of air pollution.

The DAQ's TRM further explains that 40 CFR 70.6(g) provides four provisions that need to be met in order for a facility to claim affirmative defense for an "emergency". The EPA's regulation does not, however, provide affirmative defenses for a "malfunction." Therefore, to prevent confusion for Title V facilities and to provide consistency with the EPA's current federal regulation, the Department has proposed to remove the term "malfunction" from Regulation 1130. It should be noted that no additional adjustments or edits were made to the proposed *revised* Amendments as a result of the questions posed at the public hearing of October 27, 2021, and that the TRM exists to provide clarity and a greater understanding to the regulated community with regard to this proposed promulgation.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed *revised* Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the proposed *revised* Amendments, which will enable the Department to update the public notice publishing requirements, affirmative defense requirements, and list of GHGs and their GWP values to maintain consistency with the current federal regulations of the EPA and provide greater clarity and understanding to the regulated community moving forward with regard to Title V Permits that are pending before the Department.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* Amendments to 7 DE Admin. Code 1130: *Title V State Operating Permit Program*, be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 DE Admin. Code 1130: *Title V State Operating Permit Program*, pursuant to 7 *Del.C.* §6010(a) and (c);

2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed *revised* Amendments as final;

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed *revised* Amendments subsequent to the time of the public hearing (through November 11, 2021), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed *revised* Amendments will enable the Department to ensure consistency regarding updates to the public notice publishing requirements, affirmative defense requirements, and list of GHGs and their GWP values to maintain consistency with the current federal regulations of the EPA and provide greater clarity and understanding to the regulated community moving forward with regard to Title V Permits that are pending before the Department;

5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as initially published in the October 1, 2021, *Delaware Register of Regulations*, and then *revised* and fully vetted to the public at the aforementioned public hearing held on October 27, 2021, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and

regulations. Consequently, the same should be approved as final revised Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

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

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving as final the proposed *revised* 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, as the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

1130 Title V State Operating Permit Program

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

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

NOTICE OF PUBLIC COMMENT

Proposed Payment Rate Updates for Substance Use Disorder Services

Notice of Public Comment: Proposed Payment Rate Updates for Substance Use Disorder Services, Effective January 1, 2023

Background. In October of 2019, Delaware's Division of Medicaid and Medical Assistance (DMMA) was one of 15 states nationally to be awarded a planning grant from the Centers for Medicare and Medicaid Services (CMS) under section 1003 of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. DMMA was also one of five state Medicaid agencies to be awarded the SUPPORT Act Demonstration Project, which is a 36-month initiative that began September 30, 2021, and runs through September 30, 2024.

DMMA is using this funding to increase the treatment capacity of Medicaid providers to deliver substance use disorder (SUD) treatment and recovery services. As part of this work, DMMA has conducted a comprehensive assessment of the existing SUD payment rates and the underlying costs associated with delivering SUD services across different levels of care. Based on this research and feedback collected from stakeholders, DMMA is proposing to update payment rates for selected SUD services. For details about previous iterations of the draft rate models and underlying assumptions, please see the "*Medicaid SUD Rate Study*" section of DMMA's SUPPORT Act Planning Grant and Demonstration Project webpage, available at: https://dhss.delaware.gov/dhss/dmma/sud_initiatives.html.

DMMA plans to institute proposed rate changes within the Medicaid fee-for-service program and plans to raise managed care organizations' (MCOs') capitation payments in alignment with Medicaid FFS rate changes; however, DMMA will **not** require MCOs to pay providers the specified amount through a state directed payment as allowed under 42 C.F.R. § 438. Instead, DMMA will monitor claims and encounter data to determine whether MCOs have adjusted payment rates where needed to align with DMMA's minimum expectations. DMMA plans to use a portion of Delaware's enhanced federal match for home- and community-based services (HCBS) to fund rate increases through at least July 2023, and rate increases are thus contingent upon CMS' approval. Details about this funding is available at: <https://dhss.delaware.gov/dhss/arpa/hcbs.html>.

Notice of Public Comment.

DMMA is announcing the publication of final draft payment rates for selected SUD services, effective January 1, 2023 (see Appendix I below). DMMA is not proposing any changes to the underlying reimbursement methodology as currently outlined in the Delaware Medicaid State Plan, and therefore public participation requirements are not required. However, Delaware is publishing the draft rates to ensure all interested stakeholders have the opportunity to review and comment on the proposed rates before they are finalized. The assumptions that informed development of the updated rates are available at [link to attached Excel doc]

***Please note: Due to the size and formatting of the notice documents, they are being attached as a PDF document:**

http://regulations.delaware.gov/register/august2022/general/SUD_Rate_Models_2022JUN22_for_Public_Notice.pdf

The draft rates will be available for public review and comment for 30 days beginning September 1, 2022 through October 3, 2022.

Comments will be accepted from the general public during this time period, including providers, provider associations, advocacy groups, consumers, and other interested stakeholders in the state. Comments may be provided directly to jacob.bowling@delaware.gov; respondents must include their name, title, and organizational affiliation (if any). Responses to individual questions and comments will not be provided; however, DMMA will review and consider all comments and make any modifications to the proposed rates that are deemed necessary. Comments must be submitted no later than July 30, 2022.

Appendix I: List of Proposed Updates to Delaware Medicaid Substance Use Disorder Payment Rates, Effective January 1, 2023

***Please note: Due to the size and formatting of the Appendix table, it is being attached as a PDF document:**

<http://regulations.delaware.gov/register/august2022/general/Appendix I.pdf>

Stephen Groff
Director
Division of Medicaid and Medical Assistance

7/8/2022 | 2:34 PM EDT
Date

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c); (7 **Del.C.** §6010(a) & (c))

Secretary's Order No.: 2022-A-0013

Approving Final Revisions to Delaware's State Implementation Plan ("SIP") Addressing Regional Haze

Date of Issuance: July 13, 2022

Effective Date of the Amendment: August 11, 2022

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §6010(a) and (c), 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 revisions to Delaware's State Implementation Plan ("SIP") addressing Regional Haze. The federal Clean Air Act ("CAA") mandates protection of visibility in Class 1 federal areas, such as national parks, forests, and wilderness areas. Under the 1999 Regional Haze Rule of the United States Environmental Protection Agency ("EPA"), states are required to develop a series of SIPs to reduce visibility impairment, with the express intent that, by 2064, the visibility in national parks and wilderness areas (federally designated as "Class 1" areas) will be returned to natural conditions. States are required to develop a series of SIPs to address visibility impairment in Class 1 areas and make reasonable progress toward achieving natural visibility conditions. The Department's proposed revisions to Delaware's Visibility SIP cover the second implementation period of 2018 - 2028.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to federal requirements. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972 and is compiled in Title 40 of the Code of Federal Regulations ("CFR") at Part 52, Subpart I.

The Department periodically submits revisions to Delaware's SIP as required by the CAA to address air quality nonattainment 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.

"Regional Haze" is defined as visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographical area. These emissions are transported over large regions and impact areas that include the entire State of Delaware. The CAA mandates protection of visibility in Class 1 areas through the EPA's Regional Haze Program. As noted above, the purpose of this program is to return the visibility conditions in Class 1 areas to natural conditions by 2064.

Class 1 areas are specifically defined as national parks exceeding 6,000 acres, wilderness areas, national memorial parks exceeding 5,000 acres, on international parks that were in existence before 1977. Visibility impairing pollutants include sulfur dioxide ("SO₂"), nitrogen oxides ("NO_x"), particulate matter ("PM"), volatile organic compounds ("VOCs"), and ammonia.

In 1999, and in various revisions that extend through 2017, the EPA finalized the Regional Haze Rule. This rule calls for state, tribal and federal agencies to work together to improve visibility in 156 national parks and wilderness areas. As noted previously, under the Regional Haze Rule, states are required to develop a series of SIPs to address visibility impairment in Class 1 areas and make reasonable progress toward achieving natural visibility conditions. Each plan covers a ten-year period. On September 25, 2008, Delaware submitted its Visibility SIP to the EPA. That SIP, covering the first implementation period of 2008 - 2018, was approved on July 19, 2011. The currently proposed Visibility SIP covers the second implementation plan of 2018 - 2028.

To aid states in their efforts to develop a technical basis for their SIPs, five multistate regional planning organizations have been established. These organizations provide a forum for state air control administrators to develop regional strategies to address regional haze and to coordinate with other regions.

Delaware's proposed Visibility SIP was developed based on consultations and work products of the Mid-Atlantic Northeast Visibility Union Regional Planning Organization, of which Delaware is a member. There are seven Class 1 areas located in the Mid-Atlantic and Northeast corridor: Brigantine Wilderness, New Jersey; Lye Brook Wilderness, Vermont; Presidential Range-Dry River Wilderness, New Hampshire; Acadia National Park, Maine; Roosevelt Campobello International Park, New Brunswick; and Moosehorn Wilderness, Maine. Delaware does not have any Class 1 areas within its boundaries.

The main components of Visibility SIPs for states without Class 1 areas include a long-term strategy, enforceable emission limitations, compliance schedules, and other measures necessary to make reasonable progress toward visibility improvement in affected Class 1 areas, such as emission trends, analysis of trends in emissions of visibility impairing pollutants, and emission reduction strategies. The states within the Mid-Atlantic Northeast Visibility Union Regional Planning Organization work together to develop coordinated strategies that will help Class 1 states improve visibility.

The Department has the statutory basis and legal authority to develop Delaware's proposed Visibility SIP, pursuant to 7 *Del. C.* §6010(a) and (c), and published the General Notice of this proposed SIP revision, and of the public hearing to be held in this matter on December 29, 2021, in the December 1, 2021, edition of the *Delaware Register of Regulations*. No members of the public attended that hearing. The hearing record ("Record") remained open for receipt of public comment through January 13, 2022. 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 aforementioned public hearing, but prior to the close of the public comment period referenced above, the Department received written comments regarding Delaware's proposed Visibility SIP, from both the Sierra Club, et al. ("Sierra Club"), and from Michael Gordon, Chief, Planning and Implementation Branch, Air and Radiation Division, Region III, EPA ("EPA"). Accordingly, the Department's Division of Air Quality ("DAQ") subsequently provided to Hearing Officer Lisa A. Vest a Technical Response Memorandum ("TRM") to provide a summary of the comments received, and the DAQ's response to the same. The TRM is discussed in more detail below.

Following her review of the Record, Hearing Officer Vest prepared her Hearing Officer's Report, dated July 5, 2022 ("Report"), which expressly incorporated into the Record both the Department's proposed *revised* Visibility SIP and the DAQ's TRM, attached to her Report as Appendices "A" and "B," respectively. The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed revised Visibility SIP, as referenced above.

GENERAL NOTICES

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned *revised* Visibility SIP regarding Regional Haze. Specifically, this SIP addresses visibility impairment in Class 1 areas, makes reasonable progress toward achieving natural visibility conditions, and covers the second implementation period of 2018 - 2028.

Ten comments in total were received by the Department in this matter, six from Sierra Club and four from EPA. As noted above, the Department's TRM acknowledges each of those comments, and thoroughly responds to the concerns voiced by both the Sierra Club and the EPA. For brevity's sake (given that the TRM is over forty pages in length), Hearing Officer Vest's Report defers to the DAQ's TRM in its entirety for a comprehensive understanding of the comments received by the Department in this matter, as well as the DAQ's formal responses to the same.

The following section of this Order serves as a summary of the DAQ's responses to the comments received regarding Delaware's proposed Visibility SIP from both Sierra Club and EPA.

SIERRA CLUB:

1. Sierra Club commented that the Department relied on "... unenforceable and unverifiable emission reductions..." from the anticipated retirement of the Indian River Generating Station ("Indian River") in Sussex County, Delaware, rather than conduct a four-factor analysis for that facility. In response, the Department explains that, because of the low modeled visibility impact of Indian River as a whole, Delaware chose not to perform a four-factor analysis on that facility, as it was not necessary to ensure reasonable further progress during the second implementation period (2018 - 2028).

2. In response to Sierra Club noting that DNREC must "...ensure the most effective use of control technologies on a year-round basis to consistently minimize emissions of haze precursors, or obtain equivalent alternative emission reductions," the Department believes that proper maintenance of the boiler/control units and the inspection of reports/data and relative accuracy test audits ("RATA") submitted by Indian River have shown continued compliance with the permitted emission limit rates. Further, Delaware does not believe that EPA's Clean Air Markets Division ("CAMD") data is an accurate indicator of boiler performance for determining compliance with the permitted emission rates.

3. Sierra Club states that DNREC must include an enforceable retirement date for Indian River Unit 4 (the boiler) and must strengthen the emission limits applicable to the facility prior to that date. In response, the Department notes that since an exact expected shutdown for the boiler has not yet been determined by that facility, Delaware is unable to include an enforceable retirement date in its SIP. Additionally, because the low modeled visibility impact of that facility was determined to have a low impact on visibility impairment, the Department does not believe that it necessary to strengthen the emission limits for Unit 4 in order to make further reasonable progress.

4. In response to Sierra Club stating that DNREC's Visibility SIP must include a thorough review of the Delaware City Refinery ("DCR"), including a four-factor analysis under the reasonable progress criteria, the Department disagrees, noting that Delaware chose not to perform such an analysis on that facility because its impact on visibility impairment was low. Additionally, Delaware believes the DCR is currently well controlled through existing State regulations and several Consent Decrees.

5. Sierra Club states that the Department's Visibility SIP provides no indication that all of the DCR's Consent Decree limits were incorporated into enforceable permits, or that the Consent Decree itself still binds that facility. In response, the Department disagrees with this statement. The TRM notes that the DCR's Consent Decree is still binding for the current owners of that facility, PBF Energy. The DAQ further notes in the TRM that the DCR has had many owners since going on-line in 1956. Since PBF Energy has not filed any Motion to Terminate Consent Decree with the court, the termination order referenced by Sierra Club applies to Motiva Enterprises, LLC (a previous owner of that facility), and not the current owner.

6. Referencing EPA's July 2021 "Clarification Memo," Sierra Club alleges that certain aspects of Delaware's Visibility SIP are "fundamentally flawed" and cannot be approved, specifically noting that "... EPA made clear that States must secure additional emissions reductions that build on progress already achieved; there is an expectation that reductions are additive to ongoing and upcoming reductions under other CAA programs." In response, the Department notes that the proposed Visibility SIP details several "new" control measures and one facility shutdown (McKee Run) that have been adopted since 2007. The DAQ believes that the implementation of these new control measures (as detailed in the TRM), along with the shutdown of McKee Run, will build upon the

progress that Delaware has already achieved in improving visibility in Class I areas. Additionally, Delaware has provided federal register notice citations regarding EPA's approval of regulatory amendments into Delaware's SIP for reference.

It should be noted that the Department's experts in DAQ made minor, non-substantive changes to the language contained in Delaware's proposed Visibility SIP in order to provide additional clarification with regard to the terms "old" versus "new" control measures or shutdowns. The DAQ's TRM notes that "new" control measures or shutdowns are those that were in place as of 2008 and later. These later measures or shutdowns were not included in Delaware's first Regional Haze SIP (submitted to EPA on September 24, 2008), since that SIP was well into development by 2008. Thus, they are considered "new" to Delaware's Regional Haze SIP, post-2007.

Sections 8.6.1, 8.6.2, 8.6.3 and 8.6.5 of the proposed Visibility SIP describe "Delaware-specific measures." The TRM notes that control measures that had been accepted into Delaware's SIP and were also included in Delaware's first Regional Haze SIP (in 2008, as noted above) were originally referred to as "existing." Since the DAQ now believes that the use of the word "existing" may be unclear, Delaware has revised the proposed Visibility SIP text in the above referenced sections to list the aforementioned "Delaware-specific measures" as "old." These changes are specifically set forth in the Department's TRM, and are reflected in the proposed revised Visibility SIP, which again is attached hereto as Appendix "A" and expressly incorporated herein.

EPA - REGION III:

The Department's responses to EPA's comments received in this matter provide various clarifications to the information contained in the proposed *revised* Visibility SIP and point the reader to specific sections of the document that address those concerns. The DAQ's TRM is self-explanatory with regard to those responses, however, the following is a brief summary of the same:

1. Section 8.6, pages 76-81, of the proposed Visibility SIP includes a list of regulatory amendments ("control measures") that Delaware is relying on to make reasonable progress. Those regulatory amendments have been accepted into Delaware's SIP. As previously noted above, Delaware has also added federal register notice citations regarding EPA approval of regulatory amendments into Delaware's SIP for reference. Further, Delaware included in Attachment 10-2 to the SIP copies of the three Calpine Title V permits that had new nitrogen oxide ("NOx") emission limits added (see Section 10.1 and 10.5 of the SIP).

2. EPA commented that, if Delaware concludes that the existing controls at a selected source are necessary to make reasonable progress, then Delaware must adopt emissions limits based on those controls as part of its long-term strategy for the second planning period and include those limits in its SIP (to the extent they do not already exist in the SIP). In response, the Department notes that Delaware had several sources for which it conducted a four-factor analysis, but did not identify any new/upgraded control measures that were reasonable to implement (see Section 10.0 of the SIP). Further, Delaware's existing regulations include enforceable emission limits applicable to the facilities, and the limits are codified in the Title V permits for each of the facilities.

3. In response to EPA's statement that the Title V permits for Delaware City Energy Center and West Energy Center were not included in the SIP, the Department notes that the same are located in Appendix 10-2 of the SIP, pages 43 and 75, respectively.

4. The EPA states that the proposed Visibility SIP would benefit from additional information and context to support its conclusions, specifically, regarding dollars-per-ton cost estimates in the Cost of Compliance analysis and offering explanations as to why some such estimates are deemed to be economically infeasible. In response, the Department points to specific sections and pages of the proposed Visibility SIP that contain cost analyses for Christiana Calpine, Edgemoor Calpine, Christiana Energy Center Calpine, Delaware City Energy Center Calpine, and West Energy Center Calpine. Further information regarding Technologically Infeasible Controls and Economically Infeasible Controls are provided therein as well.

Again, the only changes made to Delaware's proposed Visibility SIP during the post-hearing phase of this promulgation were non-substantive in nature, and the minor clerical corrections (changing the word "existing" to "old" as noted above) were made to provide additional clarification to the language already contained therein.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed revised Visibility SIP regarding Region Haze, and that the same is well-supported, as it addresses visibility impairment in

GENERAL NOTICES

Class 1 areas, makes reasonable progress toward achieving natural visibility conditions, and covers the second implementation period of 2018 - 2028. I further find that the Department's experts fully developed the Record to support adoption of the proposed *revised* Visibility SIP as final.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that Delaware's proposed *revised* Visibility SIP be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* Visibility SIP regarding Regional Haze, pursuant to 7 *Del.C.* §6010(a) and (c);

2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed *revised* Visibility SIP regarding Regional Haze as final;

3. The Department provided adequate public notice of the proposed Visibility SIP regarding Regional Haze, 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, both at the time of the public hearing held on December 29, 2021 and subsequent to the time of the public hearing (through January 13, 2022), in order to consider all public comment on the same before making any final decision;

4. The adoption of the proposed *revised* Visibility SIP regarding Regional Haze will enable the Department to address visibility impairment in Class 1 areas, make reasonable progress toward achieving natural visibility conditions, and cover the second implementation period of 2018 - 2028;

5. The Department's proposed Visibility SIP regarding Regional Haze, as initially published in the December 1, 2021, *Delaware Register of Regulations*, vetted to the public at the aforementioned public hearing held on December 29, 2021, and then non-substantively *revised* to provide grammatical clarification to the language contained therein, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, Delaware's proposed *revised* Visibility SIP regarding Regional Haze should be approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;

6. The Hearing Officer's Report, including its established Record and the recommended proposed *revised* Visibility SIP regarding Regional Haze, as set forth therein in Appendix "A," is hereby adopted to provide additional reasons and findings for 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 *revised* Visibility SIP regarding Regional Haze to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.

Lisa Borin Ogden, Deputy Sec., as Acting Sec.

Shawn M. Garvin
Secretary

***Please Note: Due to the size and formatting requirements of the notice documents, they are being attached here as a series of PDF documents:**

<http://regulations.delaware.gov/register/august2022/general/DE DRAFT 2018 Regional Haze SIP 7-12-22 Bold-Bracketed.pdf>

<http://regulations.delaware.gov/register/august2022/general/Appendix 1-1 Selection of States for MANE-VU RH Consultation.pdf>

<http://regulations.delaware.gov/register/august2022/general/Appendix 3-1 Final Interim Principles for Regional Planning.pdf>

<http://regulations.delaware.gov/register/august2022/general/Appendix 4-1 Federal Land Manager Comments and Delaware Response.pdf>

<http://regulations.delaware.gov/register/august2022/general/Appendix 7-1 MARAMA Inventory TSD 2011>

Gamma Emissions Inventory.pdf

[http://regulations.delaware.gov/register/august2022/general/Appendix 7-2 OTC MANE-VU 2011 Based Modeling Platform Support Document.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%207-2%20OTC%20MANE-VU%202011%20Based%20Modeling%20Platform%20Support%20Document.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-1 Nature of Fine Particle and RH Air Quality Problems.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-1%20Nature%20of%20Fine%20Particle%20and%20RH%20Air%20Quality%20Problems.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-2 Contributions to RH in the NE and Mid-Atlantic.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-2%20Contributions%20to%20RH%20in%20the%20NE%20and%20Mid-Atlantic.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-3 MANE-VU Updated QC over d Contribution Assessment - Final.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-3%20MANE-VU%20Updated%20QC%20over%20d%20Contribution%20Assessment%20-%20Final.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-4 2016 Updates to the Assessment of Reasonable Progress.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-4%202016%20Updates%20to%20the%20Assessment%20of%20Reasonable%20Progress.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-5 2016 MANE-VU CALPUFF Modeling Report.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-5%202016%20MANE-VU%20CALPUFF%20Modeling%20Report.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-6 RH Metrics Trends and HYSPLIT Trajectory Analyses.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-6%20RH%20Metrics%20Trends%20and%20HYSPLIT%20Trajectory%20Analyses.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-7 McKee Run Permit Cancellation Letter.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-7%20McKee%20Run%20Permit%20Cancellation%20Letter.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-8 Recommendation on Approaches to Selecting 20 Percent Most Impaired Days.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-8%20Recommendation%20on%20Approaches%20to%20Selecting%2020%20Percent%20Most%20Impaired%20Days.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-9 Analysis of Speciation Trends Network Data for Delaware.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-9%20Analysis%20of%20Speciation%20Trends%20Network%20Data%20for%20Delaware.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-10 Inter-RPO StateTribal and FLM Consultation Framework.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-10%20Inter-RPO%20StateTribal%20and%20FLM%20Consultation%20Framework.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-11 MANE-VU RH Consultation Plan.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-11%20MANE-VU%20RH%20Consultation%20Plan.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-12 MANE-VU Regional Haze Consultation Report.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-12%20MANE-VU%20Regional%20Haze%20Consultation%20Report.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-13 National Park Service Letters.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-13%20National%20Park%20Service%20Letters.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 8-14 Agreement-Governing-the-Acquisition-and-Operation-of-Delaware-City-Refinery.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%208-14%20Agreement-Governing-the-Acquisition-and-Operation-of-Delaware-City-Refinery.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 9-1 MANE-VU Intra-Regional Ask.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%209-1%20MANE-VU%20Intra-Regional%20Ask.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 9-2 Inter-RPO Consultation Briefing Book.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%209-2%20Inter-RPO%20Consultation%20Briefing%20Book.pdf)

[http://regulations.delaware.gov/register/august2022/general/Appendix 9-3 Intra-Regional Ask.pdf](http://regulations.delaware.gov/register/august2022/general/Appendix%209-3%20Intra-Regional%20Ask.pdf)

<http://regulations.delaware.gov/register/august2022/general/Appendix 9-4 MANE-VU FLM Ask.pdf>

<http://regulations.delaware.gov/register/august2022/general/Appendix 10-1 Facility Responses to Ask Information Requests.pdf>

<http://regulations.delaware.gov/register/august2022/general/Appendix 10-2 Calpine Title V Operating Permits.pdf>

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Sections 4006(h) and (i) and 6004 (7 **Del.C.** §§4006(h)&(i) & 6004)

NOTICE**5101 Sediment and Stormwater Regulations**

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released a regulatory guidance document titled "[Regulatory Guidance Memorandum RGM-3](https://documents.dnrec.delaware.gov/Watershed/Sediment-Stormwater/Regulatory-Guidance/RGM-3-Appoquinimink-Plan-Recission.pdf)" (<https://documents.dnrec.delaware.gov/Watershed/Sediment-Stormwater/Regulatory-Guidance/RGM-3-Appoquinimink-Plan-Recission.pdf>) for public review. This document supports **Regulation No. 5101 Sediment and Stormwater Regulations**, as set forth at 7 *Del.C.* §4006(h) and (i).

A synopsis of RGM-3 is as follows: The Sediment and Stormwater Program rescinds the adoption of the Appoquinimink River Watershed Stormwater Management Plan's standards and criteria for stormwater control, as they have been deemed redundant with the 2019 Sediment and Stormwater Regulations. Projects within the boundaries of the Appoquinimink Watershed will no longer be required to comply with the Appoquinimink River Watershed Stormwater Management Plan Standards and Criteria for Stormwater Control. Projects within the Appoquinimink Watershed shall comply with the stormwater management criteria contained in the 2019 Sediment and Stormwater Regulations.

The DNREC Sediment and Stormwater Program hereby provides notice of this regulatory guidance document, pursuant to 7 *Del.C.* §4006(i), which incorporates the provisions of 7 *Del.C.* §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending August 16, 2022. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

This document may be reviewed at the following link: <https://de.gov/sedimentandstormwater>

Questions regarding the revised regulatory guidance documents may be directed to Elaine Webb, elaine.webb@delaware.gov.

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

elaine.webb@delaware.gov

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Evanson Road (N285)

July 13, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Evanson Road (N285) between Valley Road (N294) and Mill Creek Road (N282)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

DIVISION OF TRANSPORTATION SOLUTIONS Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Lynnbury Woods (K152)/Messina Hill Road (K102)

July 13, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Lynnbury Woods Road (K152) between a point 590 feet east of Farnham Street (K200633) and Messina Hill Road (K102)

"No Trucks Over 2 Axles Except Local Services" on Messina Hill Road (K102) between a point 575 feet north of Carlton Lane (K200607) and a point 1,560 feet south of Lynnbury Woods Road (K152)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Woodland Church Road (S79)

June 27, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Woodland Church Road (S79) between Bowman Road (S540) and Woodland Ferry Road (S78).

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Woodland Ferry Road (S78)

June 27, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Woodland Ferry Road (S78) between Woodland Road (S536) and Woodland Church Road (S79).

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, August 10, 2022** commencing at **1:30 p.m.** The public hearing will be conducted remotely. Any draft dockets and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

The Commission's quarterly business meeting will be held the following month, on **Thursday, September 8, 2022** commencing at **10:30 a.m.** The business meeting will be conducted remotely. Details about the remote platform and an agenda will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

For additional information, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF AGRICULTURE
DELAWARE STANDARDBRED BREEDERS' FUND
PUBLIC NOTICE**502 Delaware Standardbred Breeders' Fund Regulations****Summary**

Pursuant to the authority granted by Title 3 **Del.C.** §10081(c) of the Delaware Code, the Department of Agriculture's Standardbred Breeders' Fund ("the Fund") proposes to amend its regulations. The purpose of the amended regulations is to address the fiduciary responsibility of "the Fund" to sustain the program into the future while maintaining the current status. This includes consolidating payment requirements to simplify process for eligible two year-olds participating in the Program. Additional technical changes are also being made.

The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the August 1, 2022, edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the Delaware Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or hand deliver to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeder's Fund Program, written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** § 10118(a), public comments must be received on or before September 1, 2022. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

Meeting information can be accessed via the public meeting calendar.

Meeting materials available on the State Board of Education's eBoard site (https://simbli.eboardsolutions.com/SB_Meetings/SB_MeetingListing.aspx?S=190001). (If you are having technical difficulties accessing the site, please try a different browser.)

The next meeting is scheduled for August 18, 2022.

CALENDAR OF EVENTS/HEARING NOTICES

Information regarding special meetings or Committee meetings of the State Board will be posted on the public meeting calendar.

Minutes from recent State Board of Education meetings can be found on the public meeting calendar.

Audio recordings are available after every Board meeting (<https://www.doe.k12.de.us/domain/225>).

Public meeting calendar: <https://publicmeetings.delaware.gov/#/search?anyall=any&agencyid=22&startdateinclusive=2019-01-01>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

PUBLIC NOTICE

2100 Eligibility Criteria

In compliance with 16 **Del.C.** §122 and 29 **Del.C.** §7909 A(e), Delaware Health and Social Services (DHSS) Division of Developmental Disabilities Services (DDDS) is proposing to amend the criteria for establishing eligibility for DDDS services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Applicant Services, Division of Developmental Disabilities Services, 1052 South Governor's Avenue, Suite 101, Dover, Delaware 19904, by email to Lynda.Lord@delaware.gov or by fax to 302-744-9711 by 4:30 p.m. on September 1, 2022. Please identify in the subject line: Regulation Governing DDDS Eligibility Criteria. The action concerning the determination of whether to adopt the proposed regulations 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 PROPOSED CHANGES

1. Provisional eligibility was added for applicants aged three through eight who may not have required assessment documentation to meet criteria
2. Updated terminology to clarify requirements for qualifying conditions, assessments, and the interpretation of assessment data
3. Added a criterion that addresses circumstances that allow eligibility without all required assessments
4. Detail added on citizenship
5. Clarified minimum age

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Postpartum Continuous Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del. C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM), Title XIX Medicaid State Plan, and Title XXI Delaware Health Children's Program State Plan regarding Postpartum Continuous Eligibility and make a technical correction in the DE state plan to the medical assistance program Single State Agency name.

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 and Policy 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, 2022. Please identify in the subject line: Postpartum Continuous Eligibility.

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.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 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, 2022.

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4462 Public Drinking Water Systems

Pursuant to 16 **Del.C.** §122(3)(c), the Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On August 1, 2022, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions are a result of HB 8 (151st GA) and include specific definitions for "per- and polyfluoroalkyl substances," or "PFAS," and its compounds, and establishment of primary maximum contaminant levels and public notification requirements for PFAS.

Copies of the proposed regulations are available for review in the August 1, 2022 edition of the Delaware Register of Regulations, accessible online at: <https://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

NOTICE OF PUBLIC HEARING

The Division of Public Health will hold a public hearing on Thursday, August 25, 2022 at 5:00 p.m. The public hearing will be conducted remotely. Details about the remote platform and how to attend will be posted on the State Public Meeting Calendar at the following link:

<https://publicmeetings.delaware.gov/#/meeting/72440>.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, September 9, 2022, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING
PUBLIC NOTICE
1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del. C.** §1904(c) and 24 **Del. C.** §1790(a)(3), proposes to revise its regulations to set forth the required qualification for and parameters under which a certified nurse midwife or certified nurse practitioner may perform medication and manual vacuum aspiration abortions.

The Board will hold a public hearing on the proposed regulation changes on September 14, 2022 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written

comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 29, 2022 pursuant to 29 **Del. C.** §10118(a).
