

---

# Delaware Register of Regulations

---

Issue Date: MARCH 1, 2018

Volume 21 - Issue 9, Pages 658 - 755

---



## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before February 15, 2018.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

659

## 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
April 1	March 15	4:30 p.m.
May 1	April 16	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.

---

## DIVISION OF RESEARCH STAFF

**Lori Christiansen**, Director; **Mark J. Cutrona**, Deputy Director; **Julia Dumas-Wilks**, Administrative Specialist II; **Julie Fedele**, Joint Sunset Research Analyst; **Bethany Fiske**, Assistant Registrar of Regulations; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Secretary; **Dawn Morales**, Graphics and Printing Technician I; **Kathleen Morris**, Human Resources/ Financial Manager; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Legislative Attorney; **Natalie White**, Administrative Specialist II; **Sara Zimmerman**, Legislative Librarian.

---

---

# TABLE OF CONTENTS

---

661

Cumulative Tables..... 663

---

## PROPOSED

**DEPARTMENT OF EDUCATION**  
**Professional Standards Board**  
1521 Elementary Teacher..... 669

**DEPARTMENT OF INSURANCE**  
**Office of the Commissioner**  
303 Supplement to Annual Statement of Property or Casualty Insurers..... 674

**DEPARTMENT OF JUSTICE**  
**Victims' Compensation Assistance Program Advisory Council**  
301 Victims' Compensation Assistance Program Rules and Regulations..... 678

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**Division of State Police**  
1300 Board of Examiners of Private Investigators & Private Security Agencies..... 679  
2400 Board of Examiners of Constables..... 681  
5500 Bail Enforcement Agents..... 683

**DEPARTMENT OF STATE**  
**Division of Professional Regulation**  
1700 Board of Medical Licensure and Discipline..... 684  
1770 Respiratory Care Practice Advisory Council..... 685  
1795 Midwifery Advisory Council..... 689  
2100 Board of Examiners in Optometry..... 690  
Uniform Controlled Substances Act Regulations..... 691

**DEPARTMENT OF TRANSPORTATION**  
**Division of Planning and Policy**  
2309 Development Coordination Manual..... 692  
**Division of Transportation Solutions**  
2402 Delaware Manual on Uniform Traffic Control Devices..... 695

---

## FINAL

**DELAWARE HEALTH INFORMATION NETWORK**  
104 Delaware Health Care Claims Database Data Access Regulation..... 712

**DEPARTMENT OF EDUCATION**  
**Office of the Secretary**  
1008 DIAA Junior High and Middle School Interscholastic Athletics..... 717  
1009 DIAA High School Interscholastic Athletics..... 719  
**Professional Standards Board**  
1515 Hearing Procedures and Rules..... 720

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**Division of Social Services**  
DSSM 2027 Disqualification of Individuals Convicted of Drug Related Offenses..... 722

# TABLE OF CONTENTS

## DEPARTMENT OF INSURANCE

### Office of the Commissioner

906 Use of Credit Information.....	723
1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions.....	724

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### Division of Air Quality

1123 Standards of Performance for Steel Plants: Electric Arc Furnaces.....	726
1136 Acid Rain Program.....	728
1140 Delaware Low Emission Vehicle Program.....	730

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### Division of State Police

1300 Board of Examiners of Private Investigators & Private Security Agencies.....	732
---	-----

## DEPARTMENT OF STATE

### Division of Professional Regulation

1725 Polysomnography Advisory Council.....	734
1900 Board of Nursing.....	735
3800 Board of Dietetics/Nutrition.....	738

## MERIT EMPLOYEES RELATIONS BOARD

### Merit Employees Relations Board

3001 Merit Employees Relations Board.....	739
---	-----

---

## GENERAL NOTICES

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### Division of Air Quality

State Implementation Plan (SIP) Final Revisions .....	741
---	-----

---

## CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Education, Notice of Monthly Meeting.....	751
Dept. of Insurance, Office of the Commissioner, Notice of Public Comment Period.....	751
Dept. of Justice, Victims' Compensation Assistance Program Advisory Council, Notice of Public Comment Period .....	752
Dept. of Safety and Homeland Security, Div. of State Police, Notices of Public Comment Periods .	752 - 753
Dept. of State, Division of Professional Regulation, Board of Medical Licensure and Discipline; Respiratory Care Advisory Council; Midwifery Advisory Council; Board of Examiners in Optometry; Controlled Substance Advisory Committee, Notices of Public Comment Periods and Public Hearings.....	753 - 754
Dept. of Transportation, Div. of Planning and Policy; Div. of Transportation Solutions, Notices of Public Comment Periods.....	754 - 755

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

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

**DELAWARE HEALTH INFORMATION NETWORK**

103 Delaware Health Care Claims Database Data Collection Regulation.....	21 <b>DE Reg.</b> 9 (Prop.)
	21 <b>DE Reg.</b> 293 (Final)
104 Delaware Health Care Claims Database Data Access Regulation.....	21 <b>DE Reg.</b> 463 (Prop.)

**DELAWARE RIVER BASIN COMMISSION**

Proposed Amendments to the Administrative Manual and Special Regulations Regarding Natural Gas Development Activities; Additional Clarifying Amendments.....	21 <b>DE Reg.</b> 526 (Prop.)
--	-------------------------------

**DELAWARE STATE FIRE PREVENTION COMMISSION**

710 Ambulance Service Regulations.....	21 <b>DE Reg.</b> 529 (Prop.)
--	-------------------------------

**DEPARTMENT OF AGRICULTURE**

**Delaware Forest Service**

402 State Forest Regulations.....	21 <b>DE Reg.</b> 521 (Emer.)
	21 <b>DE Reg.</b> 604 (Prop.)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations.....	21 <b>DE Reg.</b> 261 (Prop.)
	21 <b>DE Reg.</b> 563 (Final)
502 Delaware Standardbred Breeders' Fund Regulations.....	21 <b>DE Reg.</b> 146 (Final)
	21 <b>DE Reg.</b> 173 (Prop.)
	21 <b>DE Reg.</b> 564 (Final)

**Office of the Secretary**

1201 Nutrient Management Certification Regulations.....	21 <b>DE Reg.</b> 10 (Prop.)
	21 <b>DE Reg.</b> 175 (Prop.)
	21 <b>DE Reg.</b> 623 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

103 Accountability for Schools, Districts and the State.....	21 <b>DE Reg.</b> 363 (Prop.)
106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	21 <b>DE Reg.</b> 37 (Final)
107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	21 <b>DE Reg.</b> 38 (Final)
108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised.....	21 <b>DE Reg.</b> 40 (Final)
225 Prohibition of Discrimination.....	21 <b>DE Reg.</b> 364 (Prop.)
290 Approval of Educator Preparation Programs.....	21 <b>DE Reg.</b> 262 (Prop.)
	21 <b>DE Reg.</b> 565 (Final)
292 Post Secondary Institutions and Degree Granting Institutions of Higher Education.....	21 <b>DE Reg.</b> 11 (Prop.)
	21 <b>DE Reg.</b> 208 (Final)
501 State Content Standards.....	21 <b>DE Reg.</b> 468 (Prop.)
	21 <b>DE Reg.</b> 625 (Final)
613 Uniform Procedures for Processing Attorney General's Reports.....	21 <b>DE Reg.</b> 41 (Final)
728 Graduate Level Salary Increments.....	21 <b>DE Reg.</b> 76 (Prop.)

# CUMULATIVE TABLES

728 Graduate Level Salary Increments.....	21 DE Reg. 300 (Final)
729 School Custodians.....	21 DE Reg. 2 (Prop.) 21 DE Reg. 209 (Final)
734 District School Board and Charter School Board Member Financial Responsibility Training.....	21 DE Reg. 210 (Final)
736 Local School District and Charter School Citizen Budget Oversight Committees.....	21 DE Reg. 213 (Final)
903 Best Interest Determination Process for School Placement - Students in Foster Care.....	21 DE Reg. 176 (Prop.) 21 DE Reg. 420 (Final)
925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	21 DE Reg. 372 (Prop.) 21 DE Reg. 626 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	21 DE Reg. 530 (Prop.)
1009 DIAA High School Interscholastic Athletics.....	21 DE Reg. 147 (Final) 21 DE Reg. 218 (Final) 21 DE Reg. 535 (Prop.)
1202 Delaware Teacher Corps Program.....	21 DE Reg. 15 (Prop.) 21 DE Reg. 219 (Final)
<b>Professional Standards Board</b>	
1502 Graduate Level Salary Increments.....	21 DE Reg. 81 (Prop.) 21 DE Reg. 302 (Final)
1505 Standard Certificate.....	21 DE Reg. 86 (Prop.)
1511 Issuance and Renewal of Continuing License.....	21 DE Reg. 179 (Prop.)
1515 Hearing Procedures and Rules.....	21 DE Reg. 264 (Prop.) 21 DE Reg. 470 (Prop.)
1520 Early Childhood Teacher.....	21 DE Reg. 91 (Prop.) 21 DE Reg. 303 (Final)
1531 Middle Level English Language Arts Teacher.....	21 DE Reg. 93 (Prop.) 21 DE Reg. 304 (Final)
1532 Middle Level Mathematics Teacher.....	21 DE Reg. 95 (Prop.) 21 DE Reg. 306 (Final)
1533 Middle Level Science Teacher.....	21 DE Reg. 97 (Prop.) 21 DE Reg. 308 (Final)
1534 Middle Level Social Studies Teacher.....	21 DE Reg. 99 (Prop.) 21 DE Reg. 310 (Final)
1539 Health Education Teacher.....	21 DE Reg. 101 (Prop.) 21 DE Reg. 312 (Final)
1540 Secondary English Language Arts Teacher.....	21 DE Reg. 103 (Prop.) 21 DE Reg. 314 (Final)
1542 Secondary Mathematics Teacher.....	21 DE Reg. 105 (Prop.) 21 DE Reg. 316 (Final)
1544 Secondary Social Studies Teacher.....	21 DE Reg. 107 (Prop.) 21 DE Reg. 318 (Final)
1550 AgriScience Teacher.....	21 DE Reg. 109 (Prop.) 21 DE Reg. 320 (Final)
1551 Business Education Teacher.....	21 DE Reg. 111 (Prop.) 21 DE Reg. 322 (Final)
1553 Driver Education and Traffic Safety Education Teacher.....	21 DE Reg. 113 (Prop.) 21 DE Reg. 324 (Final)
1554 Family and Consumer Sciences Teacher.....	21 DE Reg. 115 (Prop.) 21 DE Reg. 326 (Final)
1555 Marketing Education Teacher.....	21 DE Reg. 117 (Prop.) 21 DE Reg. 328 (Final)
1557 Technology Education Teacher.....	21 DE Reg. 119 (Prop.) 21 DE Reg. 330 (Final)
1562 Teacher of English Learners.....	21 DE Reg. 121 (Prop.) 21 DE Reg. 332 (Final)

**DEPARTMENT OF FINANCE**

**Office of Unclaimed Property, State Escheator**

100 Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager (Repeal).....	21 <b>DE Reg.</b> 335 (Final)
101 Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property (Repeal)	21 <b>DE Reg.</b> 335 (Final)
102 Regulation on Practices and Procedures for Records Examinations by the State Escheator (Repeal).....	21 <b>DE Reg.</b> 335 (Final)
103 Abandoned or Unclaimed Property Examination Guidelines (Repeal).....	21 <b>DE Reg.</b> 335 (Final)
104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual.....	21 <b>DE Reg.</b> 123 (Prop.) 21 <b>DE Reg.</b> 336 (Final)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**Commission for Statewide Contracts to Support Employment for Individuals with Disabilities**

9102 Regulations for Set Aside Contracts.....	21 <b>DE Reg.</b> 424 (Final)
---	-------------------------------

**Delaware Health Care Commission**

Delaware Health Resources Management Plan.....	21 <b>DE Reg.</b> 222 (Final)
--	-------------------------------

**Division of Long Term Care Residents Protection**

3310 Neighborhood Homes for Persons with Developmental Disabilities.....	21 <b>DE Reg.</b> 229 (Final)
--	-------------------------------

**Division of Medicaid and Medical Assistance**

Dental Fee Schedule.....	21 <b>DE Reg.</b> 124 (Prop.) 21 <b>DE Reg.</b> 430 (Final)
Division of Developmental Disabilities Services (DDDS) Lifespan Waiver.....	21 <b>DE Reg.</b> 269 (Prop.) 21 <b>DE Reg.</b> 574 (Final)

DSSM 2027 - Disqualification of Individuals Convicted of Drug Related Offenses.....	21 <b>DE Reg.</b> 477 (Prop.)
---	-------------------------------

DSSM 5000 - Definitions.....	21 <b>DE Reg.</b> 389 (Prop.) 21 <b>DE Reg.</b> 568 (Final)
------------------------------	--

DSSM 11004.13 - Child Care Redetermination.....	21 <b>DE Reg.</b> 374 (Prop.)
---	-------------------------------

DSSM 11006.7 - Relative Child Care.....	21 <b>DE Reg.</b> 376 (Prop.)
---	-------------------------------

DSSM 16500.2 - Excluded Income.....	21 <b>DE Reg.</b> 392 (Prop.) 21 <b>DE Reg.</b> 572 (Final)
-------------------------------------	--

DSSM 20400.9.1 - Special Needs Trust.....	21 <b>DE Reg.</b> 374 (Prop.) 21 <b>DE Reg.</b> 566 (Final)
---	--

DSSM 20620.2.3.1 - Limitation on the Submission of Requests for Protection of Prior Medical Costs.....	21 <b>DE Reg.</b> 475 (Prop.) 21 <b>DE Reg.</b> 637 (Final)
--	--

DSSM 30000 Delaware Prescription Assistance Program.....	21 <b>DE Reg.</b> 127 (Prop.) 21 <b>DE Reg.</b> 433 (Final)
--	--

DSSM 70000 - Certification and Regulation of Medicaid Managed Care Organizations.....	21 <b>DE Reg.</b> 389 (Prop.) 21 <b>DE Reg.</b> 568 (Final)
---	--

Inpatient Psychiatric Hospital Services For Individuals Under Age 21.....	21 <b>DE Reg.</b> 187 (Prop.) 21 <b>DE Reg.</b> 438 (Final)
---	--

Managed Care Hearings: DSSM 5304.3.....	21 <b>DE Reg.</b> 606 (Prop.)
---	-------------------------------

Reasonable Limits on Care Expenses.....	21 <b>DE Reg.</b> 185 (Prop.) 21 <b>DE Reg.</b> 435 (Final)
---	--

Targeted Case Management for Children and Youth with Serious Emotional Disturbance.....	21 <b>DE Reg.</b> 379 (Prop.) 21 <b>DE Reg.</b> 628 (Final)
---	--

Title XXI CHIP Compliance with MHPAEA.....	21 <b>DE Reg.</b> 608 (Prop.)
--	-------------------------------

**Division of Public Health**

4304 Delaware Medical Orders for Scope of Treatment (DMOST).....	21 <b>DE Reg.</b> 233 (Final)
--	-------------------------------

4453 Cosmetology and Barbering.....	21 DE Reg. 190 (Prop.)
4465 Delaware Radiation Control Regulations.....	21 DE Reg. 18 (Prop.)
<b>Division of Social Services</b>	
Child Care Assistance: DSSM 11002.4 and 11004.....	21 DE Reg. 542 (Prop.)
DSSM 11004.13 - Child Care Redetermination.....	21 DE Reg. 576 (Final)
DSSM 11006.7 - Relative Child Care.....	21 DE Reg. 639 (Final)
<b>DEPARTMENT OF HUMAN RESOURCES</b>	
<b>Division of Statewide Benefits</b>	
2007 Disability Insurance Program Rules and Regulations.....	21 DE Reg. 234 (Final)
<b>DEPARTMENT OF INSURANCE</b>	
<b>Office of Legal and Special Projects</b>	
301 Audited Financial Reports.....	21 DE Reg. 191 (Prop.)
	21 DE Reg. 441 (Final)
307 Corporate Governance Annual Disclosure Regulation.....	21 DE Reg. 394 (Prop.)
	21 DE Reg. 578 (Final)
603 Delaware Motorists Protection Act.....	21 DE Reg. 150 (Final)
	21 DE Reg. 237 (Final)
901 Arbitration of Automobile and Homeowners' Insurance Claims.....	21 DE Reg. 398 (Prop.)
	21 DE Reg. 579 (Final)
906 Use of Credit Information.....	21 DE Reg. 546 (Prop.)
1003 Credit for Reinsurance.....	21 DE Reg. 443 (Final)
1301 Internal Review and Independent Utilization Review of Health Insurance Claims .....	21 DE Reg. 192 (Prop.)
	21 DE Reg. 400 (Prop.)
	21 DE Reg. 580 (Final)
1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers.....	21 DE Reg. 196 (Prop.)
	21 DE Reg. 406 (Prop.)
	21 DE Reg. 581 (Final)
<b>Office of the Commissioner</b>	
1318 Compensation for Chiropractic Services.....	21 DE Reg. 19 (Prop.)
	21 DE Reg. 610 (Prop.)
1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions.....	21 DE Reg. 271 (Prop.)
	21 DE Reg. 478 (Prop.)
<b>DEPARTMENT OF LABOR</b>	
<b>Division of Industrial Affairs</b>	
1322 Prevailing Wage Regulations.....	21 DE Reg. 22 (Prop.)
1326 Workplace Fraud Act Regulations.....	21 DE Reg. 23 (Prop.)
	21 DE Reg. 237 (Final)
<b>Division of Unemployment Insurance</b>	
1201 Unemployment Insurance Appeal Board Regulations.....	21 DE Reg. 496 (Final)
<b>DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL</b>	
<b>Division of Air Quality</b>	
1120 New Source Performance Standards.....	21 DE Reg. 46 (Final)
1123 Standards of Performance for Steel Plants: Electric Arc Furnaces.....	21 DE Reg. 273 (Prop.)
1136 Acid Rain Program.....	21 DE Reg. 277 (Prop.)
1140 Delaware Low Emission Vehicle Program.....	21 DE Reg. 278 (Prop.)
<b>Division of Energy and Climate</b>	
2102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.....	21 DE Reg. 152 (Final)

**Division of Fish and Wildlife**

3300 Non-Tidal Finfish: 3301 Definitions.....	21 <b>DE Reg.</b> 613 (Prop.)
3511 Summer Flounder Size Limits; Possession Limits; Season.....	21 <b>DE Reg.</b> 6 (Emer.)
	21 <b>DE Reg.</b> 239 (Final)
3900 Wildlife.....	21 <b>DE Reg.</b> 523(Emer.)
	21 <b>DE Reg.</b> 614 (Prop.)

**Division of Parks and Recreation**

9201 Regulations Governing State Parks.....	21 <b>DE Reg.</b> 523(Emer.)
	21 <b>DE Reg.</b> 616 (Prop.)

**Division of Waste and Hazardous Substances**

1301 Regulations Governing Solid Waste.....	21 <b>DE Reg.</b> 129 (Prop.)
1353 Boiler Safety Regulations for Boilers, Pressure Vessels, and Nuclear....	21 <b>DE Reg.</b> 554 (Prop.)
	21 <b>DE Reg.</b> 618 (Prop.)

**Division of Water**

7102 Regulations Governing Underground Injection Control.....	21 <b>DE Reg.</b> 199 (Prop.)
	21 <b>DE Reg.</b> 410 (Prop.)
	21 <b>DE Reg.</b> 283 (Prop.)
7204 Regulations for Licensing Operators Of Wastewater Facilities .....	21 <b>DE Reg.</b> 31 (Prop.)

**Division of Watershed Stewardship**

7401 Surface Water Quality Standards.....	21 <b>DE Reg.</b> 241 (Final)
---	-------------------------------

**Office of the Secretary**

109 Regulations Governing the Guidelines to Evaluate Land Being Considered for Permanent Protection.....	21 <b>DE Reg.</b> 130 (Prop.)
---	-------------------------------

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**Division of Gaming Enforcement**

301 Interactive Fantasy Sports Contests Regulations.....	21 <b>DE Reg.</b> 284 (Prop.)
	21 <b>DE Reg.</b> 499 (Final)

**Division of State Police**

1300 Board of Examiners of Private Investigators & Private Security Agencies	21 <b>DE Reg.</b> 480 (Prop.)
2400 Board of Examiners of Constables.....	21 <b>DE Reg.</b> 32 (Prop.)
	21 <b>DE Reg.</b> 500 (Final)
5500 Bail Enforcement Agents.....	21 <b>DE Reg.</b> 49 (Final)

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

**Division of Family Services**

101 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	21 <b>DE Reg.</b> 133 (Prop.)
103 Regulations for Family and Large Family Child Care Homes.....	21 <b>DE Reg.</b> 134 (Prop.)

**DEPARTMENT OF STATE**

**Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program**

301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation.....	21 <b>DE Reg.</b> 50 (Final)
---	------------------------------

**Division of Professional Regulation**

100 Board of Accountancy.....	21 <b>DE Reg.</b> 53 (Final)
101 Regulations Governing Bingo.....	21 <b>DE Reg.</b> 200 (Prop.)
	21 <b>DE Reg.</b> 501 (Final)
300 Board of Architects.....	21 <b>DE Reg.</b> 54 (Final)
500 Board of Podiatry.....	21 <b>DE Reg.</b> 582 (Final)
700 Board of Chiropractic.....	21 <b>DE Reg.</b> 520(Errata)
	21 <b>DE Reg.</b> 555 (Prop.)
1000 Board of Pilot Commissioners.....	21 <b>DE Reg.</b> 34 (Prop.)
	21 <b>DE Reg.</b> 583 (Final)
1100 Board of Dentistry and Dental Hygiene.....	21 <b>DE Reg.</b> 337 (Final)
	21 <b>DE Reg.</b> 362(Errata)

1100 Board of Dentistry and Dental Hygiene.....	21 DE Reg. 484 (Prop.)
1400 Board of Electrical Examiners.....	21 DE Reg. 642 (Final)
1725 Polysomnography Advisory Council.....	21 DE Reg. 619 (Prop.)
1799 Genetic Counselor Advisory Council.....	21 DE Reg. 411 (Prop.)
1900 Board of Nursing.....	21 DE Reg. 644 (Final)
2500 Board of Pharmacy.....	21 DE Reg. 485 (Prop.)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	21 DE Reg. 485 (Prop.)
2700 Board of Registration for Professional Land Surveyors.....	21 DE Reg. 556 (Prop.)
	21 DE Reg. 35 (Prop.)
2930 Council on Real Estate Appraisers.....	21 DE Reg. 502 (Final)
3100 Board of Funeral Services.....	21 DE Reg. 244 (Final)
	21 DE Reg. 338 (Final)
3500 Board of Examiners of Psychologists.....	21 DE Reg. 559 (Prop.)
3800 Board of Dietetics/Nutrition.....	21 DE Reg. 486 (Prop.)
4400 Delaware Manufactured Home Installation Board.....	21 DE Reg. 135 (Prop.)
5200 Board of Examiners of Nursing Home Administrators.....	21 DE Reg. 154 (Final)
	21 DE Reg. 138 (Prop.)
	21 DE Reg. 584 (Final)
5300 Board of Massage and Bodywork.....	21 DE Reg. 487 (Prop.)
<b>Public Service Commission</b>	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	21 DE Reg. 205 (Prop.)
	21 DE Reg. 620 (Prop.)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Transportation Solutions</b>	
2402 Delaware Manual on Uniform Traffic Control Devices.....	21 DE Reg. 412 (Prop.)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	21 DE Reg. 418 (Prop.)
	21 DE Reg. 585 (Final)
<b>OFFICE OF MANAGEMENT AND BUDGET</b>	
<b>Division of Facilities Management</b>	
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	21 DE Reg. 284 (Prop.)
	21 DE Reg. 503 (Final)
	21 DE Reg. 645 (Final)

---

## Symbol Key

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

## Proposed Regulations

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

---

### DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 and 1205(b))  
14 **DE Admin. Code** 1521

#### PUBLIC NOTICE

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

#### 1521 Elementary Teacher

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1521 Elementary Teacher. The regulation concerns the requirements for a Standard Certificate for Elementary Teacher. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the knowledge, skill, and education requirements for obtaining a first and second or subsequent Standard Certificate for Elementary Teacher in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; and adding Section 8.0, which concerns local school districts' requests for the Secretary of Education to review standard certificate applications.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Professional Standards Board's Office, located at the address above.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve the quality of the Delaware educator workforce and to improve student performance.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help to ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to certification of educators.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

[http://regulations.delaware.gov/register/march2018/proposed/21 DE Reg 669RFA 03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21_DE_Reg_669RFA_03-01-18.pdf)

## 1521 Elementary Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary Teacher. This certification is required for grades K to 6.
  - 1.1.1 Notwithstanding the above subsection 1.1, the Early Childhood Teacher certification Certification may be used for K to grade 2 in lieu of this ~~certification~~ Certification.
- 1.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

### 2.0 Definitions

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

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

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

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

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

"Fifteen (15) Credits or the Equivalent in Professional Development" means college credits or an equivalent number of hours with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to a degree program from a regionally accredited college or university or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a regionally accredited college or university or other Department-approved provider.

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

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

"Major or Its Equivalent" means a minimum of thirty (30) semester hours of course work in a particular content area.

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

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

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

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

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

### 3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate ~~as an~~ for Elementary Teacher to an educator Educator who ~~has met the following~~:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; ~~or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,~~ meets the requirements set forth in Section 4.0 of this regulation; or
  - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.~~
  - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in elementary education; or

# PROPOSED REGULATIONS

3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

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

4.1 For an applicant who is applying for his or her first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.

4.1.1 The applicant shall have:

4.1.1.1 Obtained an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards; or

4.1.1.2 Completed a bachelor's degree from a regionally accredited college or university with a Major or Its Equivalent in elementary education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach grades K to 6 as provided in 14 DE Admin. Code 1507; or

4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in elementary education; or

4.1.1.5 Completed a bachelor's degree from a regionally accredited college or university in any content area and satisfactory completion of fifteen (15) credits or the equivalent in Department-approved Professional Development related to elementary education of which at least six (6) credits must focus on pedagogy.

4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.

4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.

4.1.2 The applicant shall have achieved a Passing Score on one of the following examinations:

4.1.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the following subtests:

4.1.2.1.1 Reading and Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157; and

4.1.2.1.2 Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157; and

4.1.2.1.3 Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155; and

4.1.2.1.4 Science Subtest (ETS Test Code # 5005) a Passing Score of 159; or

4.1.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the following subtests:

4.1.2.2.1 Reading and Language Arts CKT Subtest (ETS Test Code # 7802) a Passing Score of 156; and

4.1.2.2.2 Mathematics CKT Subtest (ETS Test Code # 7803) a Passing Score of 143; and

- 4.1.2.2.3 Science CKT Subtest (ETS Test Code # 7804) a Passing Score of 144; and
- 4.1.2.2.4 Social Studies Subtest (ETS Test Code # 7805) a Passing Score of 155; or
- 4.1.2.3 The applicant shall have achieved a Passing Score on each of the following subtests:
  - 4.1.2.3.1 Praxis Subject Assessment - Elementary Education: Reading Language Arts Subtest (ETS Test Code # 5002) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Reading and Language Arts CKT Subtest (ETS Test Code # 7802) a Passing Score of 156; and
  - 4.1.2.3.2 Praxis Subject Assessment - Elementary Education: Mathematics Subtest (ETS Test Code # 5003) a Passing Score of 157 or Praxis Elementary Education: Content Knowledge for Teaching Mathematics CKT Subtest (ETS Test Code # 7803) a Passing Score of 143; and
  - 4.1.2.3.3 Praxis Subject Assessment - Elementary Education: Social Studies Subtest (ETS Test Code # 5004) a Passing Score of 155 or Praxis Elementary Education: Content Knowledge for Teaching Social Studies Subtest (ETS Test Code #7805) a Passing Score of 155; and
  - 4.1.2.3.4 Praxis Subject Assessment - Elementary Education: Science Subtest (ETS Test Code # 5005) a Passing Score of 159 or Praxis Elementary Education: Content Knowledge for Teaching Science CKT Subtest (ETS Test Code # 7804) a Passing Score of 144.
- 4.2 For an applicant who is applying for his or her second or subsequent Standard Certificate, the applicant shall have achieved a Passing Score on one of the following examinations:
  - 4.2.1 On the Praxis Subject Assessment - Elementary Education: Multiple Subjects (ETS Test Code # 5001), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.1; or
  - 4.2.2 On the Praxis Elementary Education: Content Knowledge for Teaching (ETS Test Code # 7801), the applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.2; or
  - 4.2.3 The applicant shall have achieved a Passing Score on each of the subtests as provided in subsection 4.1.2.3.

## **5.0 Application Requirements**

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for a Standard Certificate for Elementary Teacher:
  - 5.2.1 Evidence of obtaining an Early Childhood/Generalist certificate from the National Board for Professional Teaching Standards, if applicable; and
  - 5.2.2 Official transcript from the applicant's regionally accredited college or university.
    - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's regionally accredited college or university; or
    - 5.2.2.2 Sealed paper transcripts may be submitted.
    - 5.2.2.3 The Department will not accept copies of transcripts; and
  - 5.2.3 If applicable, documents verifying successful completion of Professional Development; and
  - 5.2.4 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.1.2; and
  - 5.2.5 If applicable, an experience form must be completed in full and signed by the applicant; and
  - 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate, the following documentation is required in the application for a Standard Certificate for Elementary Teacher:

# PROPOSED REGULATIONS

5.3.1 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.2; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in elementary education, the following documentation is required in the application for a Standard Certificate for Elementary Teacher:

5.4.1 An official copy of the valid and current educator license or certificate from another state or professional license.

## **6.0 Validity of a Standard Certificate**

6.1 A Standard Certificate for Elementary Teacher is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A Standard Certificate for Elementary Teacher is not subject to renewal.

## **7.0 Revocation of a Standard Certificate**

7.1 An Educator's Standard Certificate for Elementary Teacher shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 Del.C. §1222.

7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.

7.2.1 Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

## **8.0 Secretary of Education Review**

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

---

## **DEPARTMENT OF INSURANCE**

### **OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 314, and 526A (18 Del.C. §§311, 314, & 526A)

18 DE Admin. Code 303

### **PUBLIC NOTICE**

### **303 Supplement to Annual Statement of Property or Casualty Insurers**

#### **A. Type of Regulatory Action Required**

Proposed repeal of existing regulation

#### **B. Synopsis of Subject Matter of the Regulation**

The Department of Insurance (Department) hereby gives notice of the proposed repeal of existing Regulation 303 Supplement to Annual Statement of Property or Casualty Insurers.

The underlying statute at 18 Del.C. §526A(a) requires as follows:

Each insurer licensed to write property or casualty insurance in this State, as a supplement to

Schedule T of its annual statement, shall submit a report on a form furnished by the Commissioner showing its direct writings and experience, prior to reinsurance, in this State and the United States. All such writings and experience shall be required on a line-by-line basis both for the State and in total, and where appropriate, on a subline-by-subline basis.

However, the statute also provides that, "The Commissioner may waive, modify or defer the requirements of this section if he or she determines the information required under this section to be reported is not needed." See 18 **Del.C.** §526A(h).

Regulation 303 implements 18 **Del.C.** §526A by setting forth the information that is to be reported in the supplement to the statement that property and casualty insurers are required to file annually. The Department has determined that the information required by Regulation 303 is not needed, and has therefore determined to repeal Regulation 303, as permitted by 18 **Del.C.** §526A(h).

The Department does not plan to hold a public hearing on the proposed repeal. The text of the regulation to be repealed appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3711-2018.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2<sup>nd</sup> day of April, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
DOI Docket No. 3711- 2018  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

**\*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/march2018/proposed/21 DE Reg 674RFA 03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21%20DE%20Reg%20674RFA%2003-01-18.pdf)

### **303 Supplement to Annual Statement of Property or Casualty Insurers**

#### **1.0 Purpose and Authority**

- 1.1 ~~The purpose of this regulation is to set forth the financial reporting requirements and the form in which such reports shall be submitted to the Commissioner as authorized by 18 **Del.C.** §§314 and 526A.~~

#### **2.0 Reporting Requirements**

##### **2.1 Annual Requirements**

- 2.1.1 ~~As required by 18 **Del.C.** §526A, each property or casualty insurer, licensed or authorized in this State, shall submit as a supplement to Schedule T of its annual statement, a report showing its direct writings and experience, prior to reinsurance, in this State and the United States.~~
- 2.1.2 ~~This information shall be submitted annually on or before the 1<sup>st</sup> of April, on the forms attached hereto. Additional forms may be reproduced by the insurer as needed. Each report shall include the required data for the previous year ending on the 31st of December. The report for the year 1986 is due on or before April 1, 1987.~~

##### **2.2 Special Nine Year Reporting Requirement**

- 2.2.2 ~~By May 1, 1987, each insurer shall report data in the form required for the 1986 data for the years 1977-1985, unless such data was destroyed prior to May 23, 1986. If such data for any of the nine~~

preceding years (1977-1985) has been destroyed, an affidavit attesting to the destruction of the data must be submitted. The affidavit shall be signed by the President or Vice President of the company.

### 3.0 Definitions

- 3.1 ~~"Other Professional Malpractice"~~ means all coverages written for professional liability for persons engaged in a vocation or occupation requiring advanced education and training that are not included in medical malpractice or attorney malpractice coverages.
- 3.2 ~~"Municipalities"~~ include boroughs, cities, towns, townships and villages.
- 3.3 ~~"Other Authorities"~~ include all other governmental entities.

### 4.0 Procedure for Completion of Forms

#### 4.1 General Requirements

- 4.1.1 Each insurer shall complete two copies of each form. The first copy shall contain the insurer's Delaware experience data only. The second copy of each form shall contain the insurer's countrywide data including Delaware. The name of the company must be plainly printed or stamped at the top of each form. The insurer shall clearly check the appropriate box in the upper right corner of each form. The statements filed shall contain responses to all items. In the event an insurer does not write the line of coverage requested, or is exempt from reporting as set forth in Section 5.0 of this regulation, a response of "NONE" or "EXEMPT" shall be inserted in the appropriate column.
- 4.1.2 A detailed statement or footnote shall be submitted with respect to any item or items requiring special comments or explanation.
- 4.1.3 Any insurer that files its annual statement on a group basis may file this supplemental report as a group.
- 4.1.4 Each report shall be verified by the oath of the insurer's president or vice president and secretary or actuary, as applicable, or in the absence of the foregoing, by two other principal officers, that the information submitted is a full and true statement of the condition and affairs of the insurer to the best of their knowledge and belief. This verification shall be submitted as a cover letter and include a contact person and phone number.
- 4.1.5 Each insurer is responsible for reproducing the attached forms as needed by their company.

#### 4.2 Forms

- 4.2.1 Form 1 is a display of all lines and sublines of insurance as required in 18 ~~Del.C.~~ §526A to be reported. In addition to the lines of insurance in 18 ~~Del.C.~~ §526A, the experience for the line of coverage entitled "Title Insurance" shall also be reported.
- 4.2.2 In the event an insurer does not collect premiums on the lines or sublines required on a separate basis, the insurer must divide the premium in proportion to losses incurred. All entries shall be expressed in whole dollar amounts.
- 4.2.3 Form 1A is a display of medical malpractice by specialty. Information for completion of this form will be forwarded to medical malpractice insurers shortly. These instructions will be inserted as Appendix I.
- 4.2.4 Form 1B is a display of entertainment, recreational and sporting liability by specialty. Each insurer must enter in the blank columns provided the name and class code for each specialty written. Each insurer shall report all coverages written by specialty in accordance with the Insurance Services Office (ISO) Commercial Risk Statistical Plan, as categorized in Appendix II. The total experience for entertainment, recreational and sporting liability shall be reported in Form 1.
- 4.2.5 Form 2 is a report of closed claims. The reserves shown for each year shall be the initial reserve set on each claim. An insurer shall complete the two required copies for every line of insurance written.

#### 4.3 Specific Requirements and Calculations

- 4.3.1 ~~Line 2—To determine earned premium, do not deduct dividends paid or credited to policyholders on direct business.~~
- 4.3.2 ~~Line 3—To calculate investment income on unearned premium and loss reserves, refer to the formula used in the 1986 Insurance Expense Exhibit.~~
- 4.3.3 ~~Line 13—Total underwriting expense equals: Commissions + Advertising + Other Acquisition Costs + General Office Expenses + Taxes, Licenses & Fees + All Other Expenses.~~
- 4.3.4 ~~Line 15—Net Underwriting Gain or Loss shall be calculated as follows: Earned Premium minus Total Incurred Claim Losses and Loss Adjustment Expenses minus Total Underwriting Expenses.~~
- 4.3.5 ~~Line 16—Net Operating Gain or Loss including Investment Income equals: Investment Income on Unearned Premium and Loss Reserves + Net Underwriting Gain or Loss.~~
- 4.3.6 ~~Line 17—Pure Loss Experience Ratio equals Incurred Loss divided by Earned Premium.~~
- 4.3.7 ~~Line 18—Net Operating Ratio equals: Total Incurred Claim Loss + Total Incurred Loss Adjustment Expenses + Total Underwriting Expenses divided by the sum of Earned Premium and Investment Income on Unearned~~

**5.0 Exemption from 18 Del.C. §526A.****5.1 General Exemption**

- 5.1.1 ~~Every property or casualty insurer licensed or admitted in this State shall comply with the requirements of 18 Del.C. §526A. Insurers are exempt from this requirement for an individual line if their direct premiums earned during calendar year 1986 and their incurred losses during calendar year 1986 are less than the amounts indicated below:~~
  - 5.1.1.1 ~~Private Passenger Automobile No-Fault—\$75,000.00.~~
  - 5.1.1.2 ~~Private Passenger Automobile Other Liability—\$340,000.00.~~
  - 5.1.1.3 ~~Commercial Automobile No-Fault—\$5,000.00.~~
  - 5.1.1.4 ~~Commercial Automobile Other Liability—\$100,000.00.~~
  - 5.1.1.5 ~~Medical Malpractice—\$500,000.00.~~
  - 5.1.1.6 ~~Workers' Compensation—\$195,000.00.~~
  - 5.1.1.7 ~~Other Liability—\$120,000.00.~~  
~~(Total of all of premiums written)~~
- 5.1.2 ~~This exemption will significantly reduce the number of companies reporting while capturing 90% of the direct writings and experience by line of property and casualty insurers in this State.~~
- 5.1.3 ~~Each insurer that qualifies for exemption is required to file an affidavit with the Commissioner on or before April 1, 1987.~~

**5.2 Additional Exemption for Medical Malpractice Insurers**

- 5.2.1 ~~Any medical malpractice insurer required to submit a report shall be exempt from reporting any specialty/class code in which their direct written premium, direct earned premium and incurred losses each total less than \$10,000.~~

**6.0 Commissioner's Report**

- 6.1 ~~The Commissioner shall annually compile and review all reports submitted by insurers to aid in determining the appropriateness of premium rates for property or casualty insurance in this State. The Commissioner's findings and filings shall be published and made available to any interested insured or citizen.~~

**7.0 Penalty**

- 7.1 ~~Failure to comply with the requirements set forth in this regulation shall subject an insurer to suspension or revocation of its Certificate of Authority.~~

# PROPOSED REGULATIONS

## 8.0 Separability

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

## 9.0 Effective Date

9.1 ~~This Regulation shall become effective 30 days after signature.~~

## DEPARTMENT OF JUSTICE

### VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL

Statutory Authority: 11 Delaware Code, Section 9006(7) (11 Del.C. §9006(7))  
1 DE Admin. Code 301

### PUBLIC NOTICE

### 301 Victims' Compensation Assistance Program Rules and Regulations

#### Brief Synopsis of the Subject, Substance and Issues

The Department of Justice Victims' Compensation Assistance Program (VCAP) proposes to add Rule 24.5 to help provide the agency with the assurance that the victims it serves are receiving appropriate care by appropriately supervised therapists. The VCAP Advisory Council determined that this was an appropriate balance to ensure that all victims are able to access mental health services and that if those mental health services are provided by unlicensed therapists, that those individuals are sufficiently supervised. VCAP further proposes to add Rule 29.4 regarding victims who have Medicaid or Medicare benefits. If the victim's chosen provider is not paneled with Medicaid or Medicare, VCAP will only pay the provider at the rate that Medicaid or Medicare would pay. A payment at this rate shall be payment in full. The VCAP Advisory Council determined that this enables VCAP to control costs and ensure that the victims it serves are able to see providers of their choice for their health or mental health care needs.

#### NOTICE OF PUBLIC COMMENT

Interested persons may submit comments in writing to Andrea Godfrey, Deputy Chief of Staff, Delaware Department of Justice, 820 N. French St., 6th Floor, Wilmington, DE or [andrea.godfrey@state.de.us](mailto:andrea.godfrey@state.de.us). The comment period will close on April 2, 2018.

**\*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/march2018/proposed/21 DE Reg 678RFA 03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21%20DE%20Reg%20678RFA%2003-01-18.pdf)

### 301 Victims' Compensation Assistance Program Rules and Regulations (Break in Continuity of Sections)

#### 24.0 Mental Health Practitioner Qualifications/Licensure

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

24.5 In order to receive payment from VCAP, any unlicensed clinician is required to participate in weekly supervision with a licensed behavioral health professional. Supervision must be documented in a Supervision Log which will be available for review by VCAP upon request. The Supervision Log shall contain the name of the employee receiving supervision and list the date, length and time of the supervisory session as well as the number of cases discussed. The licensed behavioral health professional must sign off to document the supervisory session occurred as reported. The licensed behavioral health professional assumes clinical responsibility for employees under their supervision.

The licensed behavioral health professional providing supervision to the unlicensed staff is also required to sign off on assessments, treatment plans and other clinical correspondence with VCAP completed by unlicensed staff under their supervision.

*(Break in Continuity of Sections)*

## 29.0 Payment of Mental Health Claims

*(Break in Continuity Within Section)*

- 29.4 If a victim has Medicaid or Medicare benefits, VCAP will pay the mental health provider at the rates established by Medicaid or Medicare regardless of whether the provider is paneled with Medicaid or Medicare. The provider shall accept VCAP's payment as payment in full, and may not attempt to collect from the victim or third parties any amount exceeding the amount of reimbursement made by VCAP.

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

**301 Victims' Compensation Assistance Program Rules and Regulations**

---

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### DIVISION OF STATE POLICE

#### 1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1305 (24 Del.C. §1305)

24 DE Admin. Code 1300

#### PUBLIC NOTICE

#### 1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 Del.C. Ch. 13 proposes to amend the following adopted rules in 24 DE Admin. Code 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 3.0 Nightstick, PR24, Mace, Peppergas and Handcuffs; Rule 11.0 Personnel Rosters and Job Assignments. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by April 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, April 12, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

**\*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/march2018/proposed/21 DE Reg 679RFA 03-01-18.pdf>**

#### 1300 Board of Examiners of Private Investigators & Private Security Agencies

*(Break in Continuity of Sections)*

### 3.0 ~~Nightstick, Pr24, Mace, Peppergas and Handcuffs~~

- 3.1 ~~To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.~~

#### 3.2 ~~Weapon/Item Instructors~~

- 3.2.1 ~~All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 Del.C. Ch. 13.~~

# PROPOSED REGULATIONS

## **3.0 Baton, Inflammatory Agent Sprays, Chemical Sprays and Handcuffs**

- 3.1 The Board only approves security guards and armored car guards registered in 24 Del.C. Ch. 13 to carry law enforcement style batons, inflammatory agent sprays, chemical sprays and handcuffs. The carrying of these weapons/items is only authorized after the security guard/armored car guard completes the appropriate training program with a certified instructor as required by the manufacture of the weapon/item. It shall be the security guard/armored car guard's responsibility to maintain certification and requalification with the weapon/item consistent with manufacturer standards.
- 3.1.1 Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director.
- 3.1.2 Any person registered in 24 Del.C. Ch. 13 who, upon inspection, fails to provide a valid certification for any of the above weapons, if carried in performance of their duties, will be subject to disciplinary actions consistent with the law.
- 3.2 It shall be the responsibility of all Class B, C & D agencies to record and maintain said records on an employee's qualifications with any approved weapon(s)/item(s) carried in performance of that employee's duties under 24 Del.C. Ch. 13.
- 3.2.1 These records are subject to review and audit by the Section as prescribed in 24 Del.C. Ch. 13.
- 3.2.2 Any agency licensed in 24 Del.C. Ch. 13 who, upon inspection, fails to provide a valid certification for any employee found to be carrying any of the above weapons/items in the performance of their duties, will be subject to disciplinary actions consistent with the law.
- 3.3 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the weapon/item. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

## **11.0 Personnel Rosters and Job Assignments**

- 11.1 Anyone licensed as a private security agency (Class B or C) under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster and a job site list to the Professional Licensing Section by the tenth of every month. Anyone licensed as a private investigative agency (Class A) or armored car agency (Class D), under 24 Del.C. Ch. 13, shall submit an alphabetical personnel roster to the Professional Licensing Section by the tenth of January, April, July and October. Class A rosters only need to use the position code for the License Holder and Compliance Agent. Class D rosters must specify an individual that only has a yellow card, the License Holder and Compliance Agent.
- 11.1.1 Alphabetical, by last name, personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Henry, John F.	05/23/43	B	M	05/23/00	PI
Montgomery, Frank G.	07/24/55	B	M	06/30/99	LH
<del>Murray, Anne L.</del>	<del>40/20/40</del>	<del>W</del>	<del>F</del>	<del>06/30/99</del>	<del>CO</del>
Smith, Mark A.	01/25/60	W	M	01/25/99	SG
White, Helen E.	03/17/71	B	F	03/17/00	FA
<del>Williams, James D.</del>	<del>42/03/40</del>	<del>W</del>	<del>M</del>	<del>06/30/99</del>	<del>MG</del>
Workman, Henry K.	08/15/60	W	M	08/15/99	CA

SG	Security Guard
FA	Firearms Guard
PI	Private Investigator
<del>MG</del>	<del>Delaware Manager</del>
LH	License Holder
<del>CO</del>	<del>Corporate Officer</del>

CA Compliance Agent

- 11.2 Job site lists shall include the name, address, location, and hours of coverage. Employees shall not be listed on the job sites. For example:  
The DuPont Industry  
Barley Mill Road  
2200 - 0600 Hours, Monday, Wednesday, and Friday
- 11.3 Rosters shall be submitted as required in subsection 11.1 regardless of the number of employees working in the State of Delaware, ~~to include the licensed Delaware Manager.~~

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

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

---

**DIVISION OF STATE POLICE**

**2400 BOARD OF EXAMINERS OF CONSTABLES**

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)  
24 **DE Admin. Code** 2400

**PUBLIC NOTICE**

**2400 Board of Examiners of Constables**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 1.0 Licensing; Rule 6.0 Baton, Nightstick, PR24, Chemical Spray, and Handcuffs; Rule 8.0 Canine; Rule 9.0 Minimum Training Standards and In-Service Training. If you wish to view the complete Rules, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by April 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting Thursday, May 24, 2018, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

**\*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/march2018/proposed/21 DE Reg 681RFA 03-01-18.pdf>**

**2400 Board of Examiners of Constables**

**1.0 Licensing**

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

- 1.4 All applicants who were not prior law enforcement, in any jurisdiction, must meet the minimum training standards as established by the Board. They must also submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position that the applicant is psychologically fit to function as a competent Constable. Proof that the evaluation has been completed shall be provided, with the initial application for constable commission, to the Professional Licensing Section unless there is a documented issue, in which case the complete evaluation will be provided for review by the Board.

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

# PROPOSED REGULATIONS

## **6.0 ~~Baton, Nightstick, Pr24, Chemical Spray, and Handcuffs~~**

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

## **6.0 Baton, Inflammatory Agent Sprays, Chemical Sprays and Handcuffs**

- 6.1 Anyone commissioned under 10 ~~Del.C.~~ Ch. 27 wishing to carry law enforcement style batons, inflammatory agent sprays, chemical sprays and handcuffs must have completed a training program consistent with the manufacturer's standards, on each and every weapon/item. All certifications/re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.
- 6.1.1 Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director.
- 6.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the weapon/item. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

*(Break in Continuity of Sections)*

## **8.0 Canine**

- ~~8.1 In order for a constable to use a canine, he/she, and the canine, must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.~~
- ~~8.2 Canine Instructors~~
- ~~8.2.1 All canine instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 ~~Del.C.~~ Ch. 27.~~
- 8.1 Anyone commissioned under 10 ~~Del.C.~~ Ch. 27 wishing to use a canine, both the constable and the canine must have completed a training program consistent with canine law enforcement standards. All certifications/re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.
- 8.1.1 Under no circumstances would a person be permitted to substitute one canine for another, unless first approved by the Director.
- 8.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the canine standards. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

## **9.0 Minimum Training Standards and In-Service Training**

*(Break in Continuity Within Section)*

- 9.2 Applicants attending the Academy must take and pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the Academy again.
- 9.2.1 Applicants wishing to attend the Academy must be employed and sponsored by an approved constable entity for acceptance into the Academy, with the exception of the provision in subsection 9.2.2.

9.2.2 Other attendees, not affiliated with a constable entity, must be approved by the Director, by showing the cause and need to attend such training/Academy. The Director can only consider attendees who are currently employed by a local, state or federal government entity.

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

**2400 Board of Examiners of Constables**

---

**DIVISION OF STATE POLICE  
5500 BAIL ENFORCEMENT AGENTS**

Statutory Authority: 24 Delaware Code, Section 5503(d) (24 **Del.C.** §5503(d))  
24 **DE Admin. Code** 5500

**PUBLIC NOTICE**

**5500 Bail Enforcement Agents**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rules in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 5.0 Baton, Nightstick, PR24, Chemical Spray, and Handcuffs. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by April 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, May 17, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

**\*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/march2018/proposed/21 DE Reg 683RFA 03-01-18.pdf>**

**5500 Bail Enforcement Agents  
(Break in Continuity of Sections)**

**5.0 ~~Baton, Nightstick, Pr24, Chemical Spray, and Handcuffs~~**

- ~~5.1 To carry the above weapons/items a BEA must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.~~
- ~~5.2 Weapon/Item Instructors~~
  - ~~5.2.1 All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 **Del.C.** Ch. 55.~~

**5.0 Baton, Inflammatory Agent Sprays, Chemical Sprays, and Handcuffs**

- 5.1 Anyone licensed under 24 **Del.C.** Ch. 55 wishing to carry law enforcement style batons, inflammatory agent sprays, chemical sprays, and handcuffs, while in the performance of their duties as a BEA under 24 **Del.C.** Ch. 55, must have completed a training program on each and every weapon/item. The carrying of these weapons/items is only authorized after the BEA completes the appropriate training program with a certified instructor as required by the manufacture of the weapon/item and all certification and re-certifications are provided to the Professional Licensing Section.

# PROPOSED REGULATIONS

- 5.1.1 Under no circumstances would a person be permitted to carry any other type weapon/item, while in the performance of their duties as a BEA under 24 Del.C. Ch. 55, unless first approved by the Director.
- 5.1.2 Any person registered in 24 Del.C. Ch. 55 who fails to provide a valid certification for any of the above weapons, if carried while in the performance of their duties as a BEA under 24 Del.C. Ch. 55, will be subject to disciplinary actions consistent with the law.
- 5.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the weapon/item. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

**5500 Bail Enforcement Agents**

---

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1769D (24 Del.C. §§1713(a)(12) & 1769D)  
24 DE Admin. Code 1700

**PUBLIC NOTICE**

**1700 Board of Medical Licensure and Discipline**

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 Del.C. §§1713(a)(12) & 1769D, proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 2, 2018.

**\*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/march2018/proposed/21 DE Reg 684RFA 03-01-18.pdf>

**1700 Board of Medical Licensure and Discipline  
(Break in Continuity of Sections)**

**19.0 Telemedicine**

- 19.1 A remote, audio-only examination is not an "appropriate in-person examination" as that term is used in 24 Del.C. §1769D(h)(1).
- 19.2 No opioid prescribing is permitted via telemedicine with the exception of addiction treatment programs offering medication assisted treatment that have received a Division of Substance Abuse and Mental Health (DSAMH) waiver to use telemedicine through DSAMH's licensure or renewal process as outlined in 16 DE Admin. Code 6001 Substance Abuse Facility Licensing Standards Sec. 4.15. All other controlled substance prescribing utilizing telemedicine is held to the same standards of care and requisite practice as prescribing for in-person visits.
- 19.3 For formation of the physician-patient relationship using audio and visual communications pursuant to 24 Del.C. §1769D(h)(3), the audio and visual communications must be live, real-time communications.

19.4 "Major medical specialty societies" as the term is used in 24 Del.C. §1769D(h)(4) means specialty societies that are members of the Council of Medical Specialty Societies.

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

**1700 Board of Medical Licensure and Discipline**

---

**DIVISION OF PROFESSIONAL REGULATION  
1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 Del.C. §1775(c))  
24 DE Admin. Code 1770

**PUBLIC NOTICE**

**1770 Respiratory Care Practice Advisory Council**

Pursuant to 24 Del.C. § 1775(c), the Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline has proposed revisions to its regulations. Section 9.0 has been revised to clarify and streamline the licensure application process. A new Section 10.0 adds a "Duty to Update Address" requirement for all licensees. Subsection 10.2 is stricken as it is encompassed by the new Section 10.0.

A public hearing will be held on April 11, 2018 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be April 26, 2018. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

**\*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/march2018/proposed/21 DE Reg 685RFA 03-01-18.pdf>**

**1770 Respiratory Care Practice Advisory Council  
(Break in Continuity of Sections)**

**2.0 Definitions**

**(Break in Continuity Within Section)**

"**Unlicensed Personnel (UP)**" - means an individual not otherwise authorized or exempt to provide respiratory care services except as provided in Section ~~13.0~~ 14.0.

**(Break in Continuity of Sections)**

**9.0 Application for a License**

**(Break in Continuity Within Section)**

**9.2 Completed Application**

9.2.1 An application for a license to practice respiratory care shall be considered completed when the Board has received all of the following documentation:

9.2.1.1 Non-refundable application fee.

9.2.1.2 Completed application for licensure.

9.2.1.3 Verification of education from Respiratory Care Education.

# PROPOSED REGULATIONS

9.2.1.4 ~~Verification of national examination score.~~ NBRC Credential Verification as a certified respiratory therapist (CRT) and/or as a registered respiratory therapist (RRT).

9.2.1.4.1 Individuals who have not been licensed in any jurisdiction within three (3) years of initially passing the NBRC entry level examination will be required to re-take the NBRC examination and provide proof of a current passing score and NBRC Credential Verification as a CRT or RRT before a license will be issued.

*(Break in Continuity Within Section)*

## **10.0 Duty to Update Address**

Licensees must provide the Division of Professional Regulation with any change of address from that registered with the Division. Any change in address must be reported to the Division within thirty days of such change. All notifications and correspondence pertaining to a licensee's license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current address will not operate to excuse any duty or responsibility of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

## **40.011.0 Renewal of Licenses**

~~40.111.1~~ Each license shall be renewed biennially. The failure of the Council/Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Council's regulations and 24 **Del.C.** Ch. 17.

~~40.2~~ A licensee's failure to notify the Council of a change in mailing address will not absolve the licensee from audit requirements, including possible sanctions for non-compliance.

~~40.311.2~~ Renewal shall be effected electronically by:

~~40.3.111.2.1~~ Filing a renewal application online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);

~~10.3.211.2.2~~ Attesting on the renewal application to the completing of continuing education as required by Section 8.0; and

~~40.3.311.2.3~~ Payment of fees as determined by the Division of Professional Regulation.

~~40.411.3~~ Failure of a licensee to renew his/her license shall cause his/her license to expire.

~~40.4.411.3.1~~ A licensee whose license has expired may renew his/her license within one (1) year after the expiration date upon fulfilling the requirements in subsections ~~40.3.1—40.3.3~~ 11.2.1 - 11.2.3 above, certifying that he/she has not practiced respiratory care in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation. All late renewals shall be audited for compliance with CE renewal requirements. Any licensee whose license is in an expired status as of December 1, 2014 must either renew his/her license no later than November 30, 2015 or fulfill the requirements in subsections ~~40.3.2 or 40.3.3~~ 11.2.2 or 11.2.3, as applicable.

~~40.4.211.3.2~~ An applicant whose license has been expired for more than one (1) year and who has been actively engaged in the practice of respiratory care during the period of expiration in another jurisdiction shall be required to submit to the Council an application for reinstatement demonstrating proof of active practice, consisting of a minimum of 500 hours over the one year preceding the date of application for reinstatement, on a Council approved form, and shall demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application.

~~40.4.311.3.3~~ An applicant whose license has been expired for more than one (1) year and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.

**41-012.0 Telehealth**

41-412.1 The respiratory care practitioner who provides treatment through telehealth shall meet the following requirements:

41-4.1.12.1.1 Location of patient during treatment through telehealth

41-4.1.1.12.1.1.1 The respiratory care practitioner shall have an active Delaware license in good standing to practice telehealth in the state of Delaware; and

41-4.1.2.12.1.1.2 During the telehealth treatment session, the patient shall be located within the borders of the State of Delaware.

41-4.2.12.1.2 Informed consent

41-4.2.1.12.1.2.1 Before services are provided through telehealth, the respiratory care practitioner shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient. At minimum, the informed consent shall inform the patient and document acknowledgement of the risk and limitations of:

41-4.2.1.1.12.1.2.1.1 The use of electronic communications in the provision of care;

41-4.2.1.2.12.1.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and

41-4.2.1.3.12.1.2.1.3 The potential disruption of electronic communication in the use of telehealth.

41-4.3.12.1.3 Confidentiality: The respiratory care practitioner shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.

41-4.4.12.1.4 Competence and scope of practice:

41-4.4.1.12.1.4.1 The respiratory care practitioner shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient;

41-4.4.2.12.1.4.2 The respiratory care practitioner shall comply with the Council's and the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care;

41-4.4.3.12.1.4.3 The respiratory care practitioner shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training and experience; and

41-4.4.4.12.1.4.4 The respiratory care practitioner shall document in the file or record which services were provided by telehealth.

**42-013.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

42-413.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

42-213.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

42-313.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

42-413.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any

---

## PROPOSED REGULATIONS

---

limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

- ~~42-513.5~~ Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, ~~as outlined in subsection 12.8 of this section.~~
- 42-613.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- ~~42-6-413.6.1~~ Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- ~~42-6-213.6.2~~ Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- ~~42-6-313.6.3~~ Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- ~~42-6-413.6.4~~ Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- ~~42-6-513.6.5~~ Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- ~~42-6-613.6.6~~ Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 42-713.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- ~~42-813.8~~ The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating

professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

~~42-913.9~~ If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

~~42-1013.10~~ Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

~~42-1113.11~~ Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

~~42-1213.12~~ Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

#### ~~43-014.0~~ **Unlicensed Personnel (UP)**

~~43-114.1~~ Unlicensed personnel working in the State of Delaware may not perform any clinical assessments or provide patient care during the course of their job duties.

~~43-214.2~~ Any UP found to have violated the provisions of this section shall be prosecuted for the unlicensed practice of respiratory care.

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

**1770 Respiratory Care Practice Advisory Council**

---

### **DIVISION OF PROFESSIONAL REGULATION 1795 MIDWIFERY ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code, Section 1799HH(c) (24 **Del.C.** §1799HH(c))  
24 **DE Admin. Code** 1795

#### **PUBLIC NOTICE**

#### **1795 Midwifery Advisory Council**

The Midwifery Advisory Council, pursuant to 24 **Del.C.** §1799HH(c), proposes to adopt the following regulation governing the practice of midwifery in the State of Delaware. The new regulation establishes that records requested must be provided within 30 days from the closure of the record or the assembly of a complete record.

The Council will hold a public hearing on the proposed regulation change on April 16, 2018 at 10:00 a.m., Second Floor, Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Midwifery Advisory Council, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 2, 2018 pursuant to 29 **Del.C.** §10118(a).

**\*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/march2018/proposed/21 DE Reg 689RFA 03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21%20DE%20Reg%20689RFA%2003-01-18.pdf)**

# PROPOSED REGULATIONS

1795 Midwifery Advisory Council  
(Break in Continuity of Sections)

## 3.0 Midwifery Record Keeping

(Break in Continuity Within Section)

- 3.3 Every midwife shall have 30 days from the closure of the record or the assembly of a complete record to fulfill a request for medical records.

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

**1795 Midwifery Advisory Council**

## DIVISION OF PROFESSIONAL REGULATION 2100 BOARD OF EXAMINERS IN OPTOMETRY

Statutory Authority: 24 Delaware Code, Section 2104(a)(1) (24 Del.C. §2104(a)(1))  
24 DE Admin. Code 2100

### PUBLIC NOTICE

#### 2100 Board of Examiners in Optometry

The Delaware Board of Examiners in Optometry, pursuant to 24 Del.C. §2104(a)(1), proposes to revise its regulations. The proposed regulations seek to clarify and provide more detailed information regarding the use of telehealth services for the provision of optometry services.

The Board will hold a public hearing on the proposed rule change on April 12, 2018 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until April 27, 2018.

\*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/march2018/proposed/21 DE Reg 690RFA 03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21%20DE%20Reg%20690RFA%2003-01-18.pdf)

#### 2100 Board of Examiners in Optometry (Break in Continuity of Sections)

## 9.0 Telehealth

(Break in Continuity Within Section)

- 9.2 The Optometrist or Optometry Intern (referred to as "licensee" for the purpose of this Board Rule) who provides treatment through telehealth shall meet the following requirements:

(Break in Continuity Within Section)

- 9.2.4 Competence and scope of practice

(Break in Continuity Within Section)

- 9.2.4.5 Telehealth does not include email message or facsimile transmission between the provider and patient, or an automated computer program or algorithm used to diagnose or treat ocular or refractive conditions. The means by which a patient receives a contact lens or eyeglass prescription must take place face-to-face in an exam room by the health care professional.

- ~~9.2.4.5~~ 9.2.4.6 The licensee shall document in the file or record which services were provided by telehealth.

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

**2100 Board of Examiners in Optometry**

---

**DIVISION OF PROFESSIONAL REGULATION  
CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

Statutory Authority: 16 Delaware Code, Section 4731 (16 Del.C. §4731)

**PUBLIC NOTICE**

**Uniform Controlled Substances Act Regulations**

Pursuant to 16 Del.C. §4731, the Delaware Controlled Substance Advisory Committee ("Committee") has proposed revisions to its rules and regulations. Section 1.0 addresses the composition and operation of the Committee. This Section has been revised to state that Committee members may serve up to three terms of three years each. Further proposed changes specify that Committee officers may serve for up to two one year terms, and all Committee members are appointed by the Secretary of State. Subsection 1.7, pertaining to quorum, currently provides that in disciplinary matters, at least one member of the quorum must be from the same profession as the practitioner who is the subject of the proceeding. This requirement can pose significant difficulties in hearing disciplinary matters in the event that a Committee member has a conflict requiring recusal. In that scenario, the Committee may be precluded from taking action with the result that a registrant who has violated laws and regulations pertaining to controlled substances may be insulated from discipline. The Committee has proposed that Section 1.7 be revised to remove this problematic language.

A public hearing will be held on March 28, 2018 at 9:00 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Christine Mast, Administrative Specialist for the Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be April 12, 2018, which is 15 days following the public hearing. The Committee will deliberate on the proposed revisions at its next regularly scheduled meeting.

**\*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/march2018/proposed/21 DE Reg 691RFA 03-01-18.pdf>**

**Uniform Controlled Substances Act Regulations**

**1.0 Controlled Substance Advisory Committee**

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

- 1.2 The Committee shall consist of 9 members: one physician, one dentist, one podiatrist, one veterinarian, one nurse practitioner, two pharmacists, one physician assistant and one public member. The Secretary of State will be provided recommendations for appointments to the Committee from the associated licensing Boards. Members shall have engaged in the prescribing, dispensing or storing of controlled substances for at least 5 years except for the public member. ~~The public member~~ All Committee members will be appointed by the Secretary of State or their designee.
- 1.3 ~~Each Committee member shall serve a term of three years and may succeed themselves for one additional term. A member of the Committee may not serve more than 3 full, consecutive 3-year terms, which is not diminished by serving an unexpired term. Upon serving 3 full, consecutive 3-year terms, a former member is eligible for reappointment to the Committee no earlier than 1 year after the expiration of the last term served on the Committee by the former member. A Committee member~~

# PROPOSED REGULATIONS

whose appointment has expired remains eligible to participate in Committee proceedings ~~unless~~ until replaced.

- 1.4 The Committee shall hold regularly scheduled meetings at least four times a calendar year and at other times the Committee considers necessary at the request of a majority of the members. A president and vice-president shall be elected by the members annually. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

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

- 1.7 ~~A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 5 members. For proceedings involving the denial, suspension or revocation of a controlled substance registration at least 1 member of the quorum must be from the same profession as the practitioner whose registration is the subject of the proceeding. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Secretary of State~~ A majority of the members shall constitute a quorum for the purpose of transacting business and no action shall be taken without the affirmative vote of a majority of the quorum. No disciplinary action may be recommended to the Secretary without the affirmative vote of a majority of the members of the Committee.
- 1.8 Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Secretary of State.
- 4-81.9 Minutes of all meetings shall be maintained by the Division of Professional Regulation. A record from which a verbatim transcript can be prepared shall be made of all hearings where evidence is presented. The expense of preparing any transcript shall be borne by the person requesting it.

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

**Uniform Controlled Substances Act Regulations**

## DEPARTMENT OF TRANSPORTATION

### DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507, 508 and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §§132(e), 507 & 508; 29 **Del.C.** §8404(8))  
2 **DE Admin. Code** 2309

#### PUBLIC NOTICE

#### **2309 Development Coordination Manual**

Pursuant to the authority provided by 17 **Del.C.** §§132(e), 507, and 508, as well as 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT) adopted the Development Coordination Manual.

The Department, through its Division of Planning and Public Policy, seeks to adopt general revisions to its existing regulations, the Development Coordination Manual, to address procedural changes, add or modify technical requirements and clarify and amend design criteria. These collective changes are both technical and administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

#### **Public Comment Period**

DelDOT will take written comments on these proposed general revisions to Section 2309 of Title 2, Delaware Administrative Code, from March 1, 2018 through April 2, 2018. The public may submit their comments to:

Marc Coté, P.E., Assistant Director, Planning Development Coordination via email  
 ([Marc.Cote@state.de.us](mailto:Marc.Cote@state.de.us)) or in writing to his attention,  
 Division of Planning  
 Delaware Department of Transportation  
 P.O. Box 778  
 Dover, DE 19903

## SUMMARY OF PROPOSED CHANGES TO THE DEVELOPMENT COORDINATION MANUAL

Sec/Fig	Para.	DelDOT Comment/Proposed Change	Justification
P3-a	-	<p>“Submit Record Plan in accordance with the Gatekeeping Checklist” <b>“Submit Record Plan in accordance with the Development Coordination Manual”</b></p> <p>“Submission acceptable in accordance with Gatekeeping Checklist” <b>“Submission acceptable in accordance with Development Coordination Manual”</b></p>	Removing the reference to the Gatekeeping Checklist
P3-b	-	<p>“Submit Entrance/Construction Plans in accordance with the Gatekeeping Checklist.” <b>“Submit Entrance/Construction Plans in accordance to the Development Coordination Manual.”</b></p> <p>“Submission acceptable in accordance to the Gatekeeping Checklist?” <b>“Submission acceptable in accordance to the Development Coordination Manual?”</b></p>	Removing the reference to the Gatekeeping Checklist
P.4.2		<p>“Once the approval expires, plans will need to be resubmitted for review.”</p> <p>“Once the approval expires, plans will need to be resubmitted for review <b>with the proper fee</b>”.</p>	Clarification

# PROPOSED REGULATIONS

P.4.2		<p>“Upon addressing all comments provided by DeIDOT in a comment response letter, the entrance/construction plans can be submitted.”</p> <p>“Upon addressing all comments provided by DeIDOT <del>in a comment response letter</del>, the entrance/construction plans can be submitted.”</p>	Clarification
P.4.4		<p>“For commercial sites, a Commercial Entrance Construction Permit (see Appendix E) will be issued in addition to NTP.”</p> <p>“For commercial sites, a Commercial Entrance Construction Permit (<del>see Appendix E</del>) will be issued in addition to NTP.”</p>	Typographical Error
P.5		<p>Added “If all or a portion of the property subject to this fee is re-subdivided within 10 years of the payment of this fee, that subdivision shall be treated for fee purposes as if planned for 5 lots or more.”</p>	Added Language from Title 17, Chapter 1, Section 131 for clarification
P6		Deleted and Replaced entire Section	Modified this entire section to allow more projects to be eligible for this shorter process. The revision added clarity to what was required of the projects in the process and clarified the waiver process.
P7		Deleted entire Section. P6 and P7 now combined into one.	Deleted entire Section. P6 and P7 now combined into one.
P.9		<p>Now P.8</p> <p>Updated manual references to the most current version.</p>	Clarification
5.2.9	-	Auxiliary Lane warrants	Consistent with other local and regional standards.
Ch.9	-	Removal of entire Chapter	Removed to prevent any conflict with the Administrative Procedures Act

**\*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/march2018/proposed/21 DE Reg 692RFA 03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21%20DE%20Reg%20692RFA%2003-01-18.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. The following links to the proposed regulation are provided below:

Preface (<http://regulations.delaware.gov/register/march2018/proposed/Preface.pdf>)  
 Chapter 5 Design Elements (<http://regulations.delaware.gov/register/march2018/proposed/Chap5.pdf>)  
 Chapter 9 Manual Updates (<http://regulations.delaware.gov/register/march2018/proposed/Chap9.pdf>)

## DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
 (17 Del.C. §§134, 141 and 21 Del.C. Ch. 41)  
 2 DE Admin. Code 2402

### PUBLIC NOTICE

#### 2402 Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from March 1, 2018 through April 2, 2018. Copies of the Draft Delaware MUTCD Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Mark Luszcz, P.E., PTOE, Chief Traffic Engineer, Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4062 (telephone) (302) 653-2859 (fax) [mark.luszcz@state.de.us](mailto:mark.luszcz@state.de.us)

The following is a summary of the official public comments that were submitted to DelDOT based on the October 2017 revision of the Delaware MUTCD posted as a proposed regulation in the November 2017 edition of the Delaware *Register*. During the 30-day public comment period, DelDOT received extensive comments from several parties, and therefore we are re-noticing the documents with the comments addressed. The comments and suggestions are listed below, along with the proposed action taken by DelDOT.

Pages	Sec/Fig/Table	Para.	Public Comment	DelDOT Response
1A-12	1A.13	01	<p>When the term "shall" is used there is no variance or modification allowed. When the term "should" is used a written request for modification must be submitted to the chief traffic engineer and the ADA compliance officer of the department for approval.</p> <p>If there is no agreement between the ADA officer and the chief engineer the request shall be sent to the Secretary for final approval of the request. All decisions shall be produced in writing and filed with the original request in the project award/specifications for future reference.</p>	<p><i>No action taken.</i></p> <p><b>Justification:</b> Mixing DE MUTCD and ADA requirements and processes.</p>

# PROPOSED REGULATIONS

2B-3	Table 2B-1 Sheet 2	-	Add a smaller "Do Not Enter" sign size to be used at development access points so it can fit on the back side of a 36" stop sign shape.	<p><i>An option for a 24" x 24" DO NOT ENTER sign was added to be used on the back side of 36" STOP signs at development access points.</i></p> <p><b>Justification:</b> Reduces the number of required sign assemblies at development entrances where DO NOT ENTER signs are required.</p> <p><i>A guidance statement was added accordingly.</i></p>
2B-10	2B.06	02	Add an additional criteria for the guidance to consider the use of STOP signs on minor-street approaches: "The vehicular volumes on the minor-street approach exceed 100 vehicles per day". Adding a minimum volume threshold for the installation of STOP signs would reduce the costs to construct intersections with low-volume approaches; for example, at access points to new development or roadside businesses.	<p><b>Justification:</b> The DE MUTCD provides minimum volume thresholds for major street approach but not minor street approach volumes for the installation of STOP signs. This guidance statement will allow for the omission of STOP signs on very low volume approaches based on engineering judgement.</p> <p><i>No action taken.</i></p>
2B-38	2B.37	03C	Consider shifting this guidance to Section 2B.38 as it regards placement of "DO NOT ENTER" signs moreso than "WRONG WAY" signs.	<p><b>Justification:</b> The guidance statement is located in the DO NOT ENTER section already (as suggested) and in the first place chronologically that the reader might look.</p> <p><i>No action taken.</i></p>
2B-78 2B-79	Figure 2B-33 2B.72	08A	Consider placing this guidance under Chapter 2I (General Service Signs) due to the blue background.	<p><b>Justification:</b> While signs with blue backgrounds are typically located in Chapter 2I, it is more appropriate to place the guidance for the supplemental plaque shown in Figure 2B-33 in the same section where the reader would look for this guidance.</p>

2I-2 2I-13	Table 2I-1 Figure 2I-8		Is the intent to receive calls related to congestion? Consider safety concerns due to too many drivers making calls. This messaging might leave too much leeway for drivers to call about less important issues.	<i>No action taken.</i> <b>Justification:</b> The intent of this sign is for motorists to call with any kind of traffic problem. DelDOT can handle the number of calls.
2I-14	2I.09	01A 09A		
3B-4	3B.01	11C	Add a Delaware Revision to accommodate on-street parking. Engineering judgment should be used in determining whether to place center line markings on roadways that accommodates on-street parking. At minimum, centerline striping should be installed at the beginning and ending of the roadway for 30 feet and leading in and out of a horizontal traffic calming device.	<i>Guidance statement was added accordingly.</i> <b>Justification:</b> DE MUTCD guidance does not account for roadways with on-street parking.
3B-4 3B-37	3B.01 3B.08	11D 03A	Add guidance or option (guidance preferred) to maintain or allow existing center line or edge line striping along roadways at the intersection with minor roadways or driveways with an ADT of 200 vehicles per day or lower; for example, at access points to new development or roadside businesses. Allowing center line and edge line striping to remain when constructing new intersections with low-volume roadways and driveways would result in reduced construction costs and improved pavement quality, which would naturally deteriorate when markings are eradicated from the pavement surface.	<i>Guidance statement was added accordingly.</i> <b>Justification:</b> This guidance statement will allow the center line and edge line to be maintained at low volume driveways based on engineering judgement.
3B-58	Figure 3B-15F	-	Add dimension between skip line RPMs. 80 feet?	<i>Dimension was added accordingly.</i> <b>Justification:</b> Provides additional clarification to designers.
3B-59	3B.16	01E	Add guidance: "Stop lines should not be installed at a stop-controlled approach with an ADT of 100 vehicles per day or lower, unless a crosswalk is present or engineering judgment indicates such a need." Adding a minimum volume threshold for the installation of stop lines would reduce the costs to construct intersections with low-volume approaches; for example, at access points to new development or roadside businesses.	<i>A guidance statement was added accordingly.</i> <b>Justification:</b> This guidance statement will allow for the omission of stop lines on very low volume approaches based on engineering judgement.

## PROPOSED REGULATIONS

4D-14 4D-15 4D-17	4D.11  4D-12	07A- 07D  18-19B	<p>Paragraph 07A is an option for backplates to be used, however design directive 2017-1 in the Traffic Design Manual provides more of a guidance statement pertaining to the usage of backplates. Do we want these statements to be consistent across both manuals?</p>	<p><i>Text was modified accordingly.</i> <b>Justification:</b> Consistency with the Traffic Design Manual.</p>
4E-11	4E.09	01-13	<p>Since vehicles are considerably quieter due to motors shutting off when stopped or electric vehicles making no noise and improved exhaust and muffler technology, the determination regarding the placement of APS signals should be determined by the speed of vehicle traffic and the number of pedestrians that utilize the intersection. The APS will stop traffic making it safe and possible for all pedestrians to cross safely When traffic travels above 35 MPH all intersections should be assessed for an APS signal.</p>	<p><i>No action taken.</i> <b>Justification:</b> DeIDOT is following current "on request" process until the US Access Board finalizes rulemaking on this topic.</p>
4E-15	4E.12	02	<p>A short audible beep shall be audible to pedestrians walking along the intersected area to indicate the location of the APS signal button.</p>	<p><i>No action taken.</i> <b>Justification:</b> Locator tone requirements are already included in the Manual.</p>
4E-5	4E.04	07	<p>If a marked crosswalk is skewed at an angle (not perpendicular to the road), then the pedestrian crossing distance used should be the distance along the crosswalk, not the perpendicular edge of road to edge of road distance.</p>	<p><i>No action taken.</i> <b>Justification:</b> This is how crosswalks are measured. No MUTCD changes are required.</p>
4E-7	4E.08	04	<p>Strengthen the "should" guidance so that deviation from these criteria will occur infrequently when it is impossible due to physical constraints to comply. Lines A, E, G and H are especially important to people with a variety of disabilities.</p>	<p><i>No action taken.</i> <b>Justification:</b> Existing constraints in the built environment precludes DeIDOT from making this a standard.</p>
4E-7	4E.08	05	<p>Make this more stringent that it is impossible, not impractical, (shall) to have a level surface.</p>	<p><i>No action taken.</i> <b>Justification:</b> Existing constraints in the built environment precludes DeIDOT from making this a standard.</p>

				<p><i>No action taken.</i></p> <p><b>Justification:</b> An “extension of the level area 18 inches beyond the centerline of the face of the pushbutton” meets the guidance in Section 4E.08, paragraph 04, line H. It should also be noted, Figure 4E-4 is not drawn to scale, and the figure does not depict specific dimensions for the extension of the level area.</p>
4E-9	Figure 4E-4	-	Figure 4E-4 shows the extension of the level area 18 inches beyond the centerline of the face of the pushbutton in compliance with Section 4E.08, paragraph 04, line H.	
4E-12	4E.10			<i>No action taken.</i>
4E-13	4E.11		Utilize the ADA representative for DeIDOT to assure compliance with regulations are taken into consideration.	<b>Justification:</b> Mixing DE MUTCD and ADA requirements and processes.
4E-15	4E.12			
4E-15	4E.13			
6D-1	6D.01			
4F-1	4F.01	01-08	A pedestrian hybrid beacon shall never be installed after a marked crosswalk which follows a curve in the road that blocks or decreases visibility.	<p><i>No action taken.</i></p> <p><b>Justification:</b> No changes were proposed. Also, specific engineering studies will determine the appropriate TCD’s at crosswalks.</p>
6F-11	6F.04	04-06	Should this information be included in construction standards? Not appropriate for MUTCD?	<p><i>No action taken.</i></p> <p><b>Justification:</b> DeIDOT believes this is applicable to this Manual.</p>
6F-27	6F.59	13	Due to the inclusion of the modified 9"x12" pedestrian detour trailblazer (M4-9b-DE) in both the sign tables/figures as well as Typical Applications 28 and 29, is there ever a time when the standard M4-9b pedestrian detour trailblazer would be used? Can it be removed from the manual?	<p><i>No action taken.</i></p> <p><b>Justification:</b> Generally, the smaller sign should be used as shown by the new revisions. The larger sign is being kept in the Manual for the occasional situation where conspicuity of the smaller sign may be limited.</p>
6H-38	Figure 6H-11A	Note 2	Proposed note 2 is not shown as a revision of the Typical Application 11A.	<p><i>No action taken.</i></p> <p><b>Justification:</b> Individual notes for figures such as the Typical Applications are considered part of the figure and have not been shown as individual revisions.</p>

# PROPOSED REGULATIONS

9B-6	9B.05	02	<p>Consider making R4-4-DE mandatory instead of optional. Signage is important to clearly define that cars should yield to bikes in these situations. Current language discourages use of the sign, saying it should only be use in "special circumstances". Should these circumstances be defined in sign remains optional?</p>	<p><i>No action taken.</i>  <b>Justification:</b> There is no evidence that these signs have any impact on road user behavior. DelDOT believes that roadway striping properly and sufficiently conveys the intended traffic control message related to lateral placement of motor vehicles and bicyclists. DelDOT has been reducing the number of these signs with no known negative comments or consequences. Further reduction of the use of this sign will allow other more important signs to be more prominent.</p>
9B-12	9B.19	02	<p>Add language to include the intent for when to install the Bicycle "IN LANE" sign (physical constraint, bridge overpass/underpass)</p>	<p><i>No action taken.</i>  <b>Justification:</b> The requested language (physical constraint, etc.) is already in paragraph 02, but is on the previous page, 9B-11.</p>
9B-20	Figure 9B-9	-	<p>Interested in not using the words "LOW STRESS" but using the word "NEWARK" along with "BIKEWAY" to identify what will grow to become a real network in Newark. The plan would be to use 24"x18" access signs at major points of entry and use a combination of two 24"x12" (identification plus information) signs to point out destinations and direction, including time and distance. On the information signs, we would prefer not to use all caps text, as it hinders quick readability.</p>	<p><i>Per discussions with FHWA, this section has been deleted.</i>  <b>Justification:</b> Discussions with FHWA</p>

---

9B-20	9B.27	01 – 05	<p>We are aware of the Department's multi-year effort to use existing provisions in the Delaware MUTCD (e.g. section 2D.50) for bicycle wayfinding; we appreciate the Department's persistence in trying to identify an effective signage solution for bicycle route wayfinding; and we enthusiastically endorse your recent submission to the Delaware MUTCD that include bicycle-specific wayfinding (Section 9B.27 Low Stress Bicycle Network Signs) to the Delaware Register.</p> <p>The proposed wayfinding signs will serve a critically important role for route decision-making, route monitoring and destination recognition for cyclists. In addition, the signs will be an indispensable tool to enable the Department to inform cyclists how to reach their destinations via "low stress" bicycle routes that avoid high-speed and/or high-volume motor vehicle traffic (which are profoundly frightening to most people and can also be unsafe). They will also serve an even more basic function. While Delaware has spent well over \$50 million on new "low stress" cycling network infrastructure over the last five years, the public remains largely unaware of the existence of this embryonic network, even when it can be accessed nearby. The Department's 9B.27 signs will enable the Department to "brand" the network it is building so the public is made aware of its existence.</p> <p>While many people have inflated and misguided ideas about the ability of signs to change behavior, signs are nevertheless critical at providing the information that transportation system users need. For cyclists, our most critical informational need is for "low stress" wayfinding. Over the next decade, as Delaware continues its efforts to build out an "all ages and abilities" low stress bicycle network, these section 9B.27 signs will be critical to the network's function.</p>	<p><i>Per discussions with FHWA, this section has been deleted.</i></p> <p><b>Justification:</b> Discussions with FHWA.</p>
-------	-------	---------	--	---

---

- 9B-15 Figure 9B-5
- 9C-2 Figure 9C-1
- 9C-3 Figure 9C-1A
- 9C-4 Figure 9C-1B
- 9C-6 Figure 9C-1D
- 9C-7 Figure 9C-1E
- 9C-8 Figure 9C-1F
- 9C-12 9C.04
- 9C-15 Figure 9C-4B
- 9C-16 Figure 9C-4C

15 – 21

Agree that optional signs should be removed but R4-4-DE was not previously listed as optional in these figures. We believe this sign should remain. Also consider use of green paint in weaving area for emphasis.

*No action taken.*

**Justification:** There is no evidence that these signs have any impact on road user behavior. DelDOT believes that roadway striping properly and sufficiently conveys the intended traffic control message related to lateral placement of motor vehicles and bicyclists. DelDOT has been reducing the number of these signs with no known negative comments or consequences. Further reduction of the use of this sign will allow other more important signs to be more prominent. DelDOT has requested and been granted approval by FHWA for the optional use of green paint in bicycle lanes. However, there is little evidence at this time that the green paint has any influence on driver or bicyclist’s behavior, or crash reduction potential. DelDOT is considering green bicycle lanes on a project by project basis, and will be more supportive of this feature if other (such as municipalities) are willing to maintain the green paint.”

The following is a summary of proposed changes to be incorporated into Revision 3 of the Delaware MUTCD, dated February 2018. This summary includes additional changes after the public comment period after the November 2017 publication of the Delaware *Register*.

Pages	Sec/Fig/Table	Para.	DelDOT Comment / Proposed Change	Modification
1A-3	Section 1A.07	01A	Add option for traffic control devices and applications based on engineering judgment and approval of DelDOT Chief Engineer.	<i>Text added.</i> <b>Justification:</b> Clarified approval process for traffic control devices that do not comply with standard statements.

1A-14	Section 1A.13	03	Add definition of bicycle box.	<i>Text added.</i> <b>Justification:</b> Concept of bicycle box is being introduced into the DE MUTCD.
2B-3	Table 2B-1	-	Add a footnote for ONE WAY (R6-1) signs to allow smaller signs on multi-lane conventional roads and expressways based on engineering judgment.	<i>Table modified.</i> <b>Justification:</b> Excessively large ONE WAY signs takes away from the visibility and message of the STOP sign on the minor street approach and other more important sign messages.
2B-3	Table 2B-1	-	Add option for 24" x 24" DO NOT ENTER sign to be used on the back side of 36" STOP signs at development access points.	<i>Table modified.</i> <b>Justification:</b> Reduces the number of required sign assemblies at development entrances where DO NOT ENTER signs are required.
2B-10	Section 2B.06	02	Add guidance for use of STOP signs on minor-street approaches.	<i>Text added.</i> <b>Justification:</b> The DE MUTCD provides minimum volume thresholds for major street approach but not minor street approach volumes for the installation of STOP signs. This guidance statement will allow for the omission of STOP signs on very low volume approaches based on engineering judgement.
2B-14	Section 2B.11	01E	Incorporate FHWA Official Interpretation – R1-5 Sign text into manual.	<i>Text added.</i> <b>Justification:</b> Updated text to reflect the FHWA official interpretation of the R1-5 series.
2B-38	Section 2B.37	03C	Provide guidance regarding spacing between DO NOT ENTER and WRONG WAY signs.	<i>Text added.</i> <b>Justification:</b> Numerous instances across the state where DO NOT ENTER AND WRONG WAY signs are being installed too close together.
2B-78 2B-79	Figure 2B-33 Section 2B.72	08A	Added IT CAN WAIT! plaque as an option	<i>Text added and figure modified.</i> <b>Justification:</b> Revised to reflect use of educational plaque

# PROPOSED REGULATIONS

2C-2	Table 2C-1			<i>Table modified, text added, and figure modified.</i>
2C-5	Table 2C-2		Change designation for the Duck Crossing sign	<b>Justification:</b> Revised to reduce potential confusion regarding sign designations for the Duck Crossing (originally W11-11-DE) sign and the Golf Cart (W11-11) sign.
2C-35	Section 2C.50	01	from W11-11-DE to W11-3-DE.	
2C-36	Figure 2C-11			<i>Figure modified.</i>
2C-17	Figure 2C-3	-	Remove signs W1-11R and W13-1P from figure; keep text referring to these signs as an option.	<b>Justification:</b> W11-1R and W13-1P signs are often misused based on their depiction in Figure 2C-3d
2C-2	Table 2C-1			<i>Text added and figure modified.</i>
2C-5	Table 2C-2		Create new sign called W11-1-DE with text "IN LANE". Provide guidance about preferred width of shoulder. Add new sign to list of vehicular traffic warning signs on Page 2C-33.	<b>Justification:</b> Updated to reflect DelDOT's desire to discontinue the use of the Share the Road plaque.
2C-33	Section 2C.49	06A		
2C-34	Figure 2C-10			
2C-39	Section 2C.60	01A		<i>Text modified.</i>
2D-3	Section 2D.05	01	Revise text regarding lettering style to match original federal text.	<b>Justification:</b> FHWA rescinded use of Clearview font.
2D-4	Section 2E.14	04		
2E-6		07A		<i>Text and figure modified.</i>
2D-3	Table 2D-1		Add DART Beach Bus Park & Ride (D2-2-DE) sign to Figure 2D-7 and as an option in Section 2D.41, paragraph 08A.	<b>Justification:</b> Sign provides guidance regarding the distance to Park & Rides serving the DART Beach Bus
2D-21	Figure 2D-7	08A		<i>Text modified.</i>
2D-28	Section 2D.41			<b>Justification:</b> Smaller letter heights are sufficient to convey information to motorists and problems with mounting large signs on signal mast arms and span wires.
2D-29	Section 2D.43	07A 08A	Incorporate Interim Guidance – Overhead Street Signs Mounted on Traffic Signals memo	
2I-2	Table 2I-1		Change "DISABLED VEHICLES" in sign D12-4-DE to "TRAFFIC PROBLEMS" and update text accordingly in Section 2I.09. Create new plaque "TRAFFIC ALERT WHEN FLASHING" as an optional supplement to the D12-1-DE sign, and update text accordingly in Section 2I.09	<i>Text and figure modified.</i>
2I-13	Figure 2I-8	01A		<b>Justification:</b> Revised to reflect current practices; TRAFFIC PROBLEMS conveys are more comprehensive message compared to DISABLED VEHICLES.
2I-14	Section 2I.09	09A		

2K-3 2K-6	Figure 2K-1 Section 2K.07	02	Add reference to Standards for Agricultural Tourism Attraction Guide Signs memo; delete existing guidance	<i>Text and figure modified.</i> <b>Justification:</b> Standards for Agricultural Tourism signs have been modified.
3B-4	3B.01	11C	Add guidance for centerline markings on roadways with on-street parking	<i>Text modified.</i> <b>Justification:</b> Previous DE MUTCD guidance did not account for roadways with on-street parking.
3B-4 3B-37	3B.01 3B.08	11D 03A	Add guidance for maintaining center line and edge line striping along roadways at the intersection with minor roadways or driveways with an ADT of 200 vehicles per day or lower.	<i>Text modified.</i> <b>Justification:</b> This guidance statement will allow the center line and edge line to be maintained at low volume driveways based on engineering judgement.
3B-58	Section 3B-13 Figure 3B-15F Figure 3B-15G Figure 3B-15H	01.B.6	Remove RPMs from turn lanes on Figure 3B-15F and 3B-15H. Remove Figure 3B-15G. Create new Figure 3B-15G for RPM application for two-way left-turn lanes with 80' spacing through the two-way left-turn lane and 40' spacing approaching the intersection. Remove 48' RPM spacing from Figure 3B-15F. Remove any text regarding 20' RPM spacing (note 2 in multiple figures) along conventional roadways. Revise spacing for all RPMs to 40' or 80' for conventional roadways.	<i>Text and figures modified.</i> <b>Justification:</b> Excessive use of RPMs along conventional roadways; clarification needed for usage of RPMs along two-way left-turn lanes.
3B-59	3B.16	01E	Add guidance for stop lines at stop-controlled approaches with an ADT of 100 vehicles per day or lower.	<i>Text modified.</i> <b>Justification:</b> This guidance statement will allow for the omission of stop lines on very low volume approaches based on engineering judgement. Adding a minimum volume threshold for the installation of stop lines would reduce the costs to construct intersections with low-volume approaches; for example, at access points to new development or roadside businesses.

# PROPOSED REGULATIONS

3B-60	3B.16	10	Add text to reference bicycle boxes in Part 9.	<i>Text modified.</i> <b>Justification:</b> Added Bicycle Boxes based on recommendations from the NCUTCD.
4D-14 4D-15 4D-17	Section 4D.11  Section 4D-12	07A-07D  18-19B	Change Guidance for use of signal backplates on signal heads mounted on mast arms and where an engineering study indicates their need. Add Standard for two-inch wide yellow retroreflective border on backplates and tether wire on signal heads with backplates on span wire.	<i>Text modified.</i> <b>Justification:</b> Text updated to be consistent with the DelDOT Traffic Design Manual.
4E-7 to 4E-10	Section 4E.08 Figure 4E-3 Figure 4E-4	04 06A	Add text to Section 4E.08 paragraph 04 with additional criteria regarding 10" guidance at landing area and extension. Revise wording in Section 4E.08 paragraph 06A. Update depictions of landing areas and pedestrian pushbuttons in Figure 4E-3 and Figure 4E-4.	<i>Text and figures modified.</i> <b>Justification:</b> Corrected issues with landing areas in Figure 4E-4. Updated for current practice in Delaware for Figure 4E-3.
6E-11	Section 6E.08	01A 01B 04A	Add Standard to prohibit flagger stations on Interstates, Freeways, and Expressways. Add Option for use of flaggers to support emergencies and incidents. Add Guidance for location of flagger stations for moving operations on two-lane, two-way roadways.	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6F-1 6F-11	Section 6F.01 Section 6F.03	02 03 05 18	Add reference to AASHTO's <i>Manual for Assessing Safety Hardware</i> (MASH) when referring to NCHRP Report 350	<i>Text modified.</i> <b>Justification:</b> AASHTO's MASH is an update to NCHRP Report 350
6F-11	Section 6F.04	04 – 06	Add Guidance, Option, and Standard for use of ballasts and sandbags with temporary sign stands.	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6F-3 6F-20 6F-26 6H-79 6H-81	Table 6F-1 Figure 6F-5 Section 6F.59 Figure 6H-28 Figure 6H-29	03, 13 & 13A	Add the following signs to Table 6F-1 and Figure 6F-5: M4-9-DE1 (48"x36" I/F/E, 30"x24" Other), M4-9b-DE (9"x12"), and M4-9b-DE1 (9"x12"). Update text in Section 6F.59 to include new signs. Update the TA-28 and TA-29 to show new smaller signs.	<i>Text, table and figures modified.</i> <b>Justification:</b> There have been reports that motorists have confused pedestrian / bicycle detour signs for vehicular detour signs. The smaller version of these signs for pedestrians / bicyclists are intended to reduce driver confusion

6F-24	Section 6F.50	02A	Replace Share the Road plaque with W11-1-DE.	<p><i>Text modified.</i></p> <p><b>Justification:</b> Text updated to reflect DelDOT's current standard practice to discontinue the use of the Share the Road plaque, as discussed in the <i>Bicycle Warning Sign and Share the Road Plaque</i> memorandum.</p>
6F-29	Section 6F.60	30D	Add Guidance for placement of portable changeable message sign and drums to accommodate bicycles to the extent possible on conventional roads.	<p><i>Text added.</i></p> <p><b>Justification:</b> Reflects DelDOT's current standard practice.</p>
6F-37	Section 6F.67	01	Add Standard for base color of drums (orange).	<p><i>Text added.</i></p> <p><b>Justification:</b> Reflects DelDOT's current standard practice.</p>
6G-10	Section 6G.13	04A	Update text to include reference to <i>Traffic Control Within Intersections</i> memorandum.	<p><i>Text modified.</i></p> <p><b>Justification:</b> The memorandum describes DelDOT's current standard practice.</p>
6G-12	Section 6G.14	05 06	Add Standard to prohibit use of flaggers on Interstates, Freeways, and Expressways. Add Option for use of flaggers to support emergencies or incidents	<p><i>Text added.</i></p> <p><b>Justification:</b> Reflects DelDOT's current standard practice.</p>
6G-16	Section 6G.22	All	Create new section based on <i>Interim Guidance – Rolling Road Blocks</i> memorandum.	<p><i>Section added.</i></p> <p><b>Justification:</b> The memorandum describes DelDOT's current standard practice.</p>
6G-17	Section 6G.23	All	Create new section based on <i>Interim Guidance – Installing and Removing TTC Devices</i> memorandum.	<p><i>Section added.</i></p> <p><b>Justification:</b> The memorandum describes DelDOT's current standard practice.</p>
6G-19	Section 6G.24	All	Create new section based on <i>Interim Guidance – Aerial Work</i> memorandum.	<p><i>Section added.</i></p> <p><b>Justification:</b> The memorandum describes DelDOT's current standard practice.</p>

# PROPOSED REGULATIONS

6H-38	Figure 6H-11A	01	Include Note 2 (Standard) from Figure 6H-11 in Figure 6H-11A	<p><i>Figure modified.</i></p> <p><b>Justification:</b> Modifications to regulatory signs (e.g., new STOP signs and new intersection traffic control types/operations), albeit temporary, require DeIDOT Traffic's formal approval and Traffic Control Device Authorization.</p>
6H-66 & 6H-67	Figure 6H-21A	-	<p>Create new typical application (TA-21A) for turn lane closure (left-turn or right-turn lane).</p> <p>Include shoulder closure taper transitioning into in-place left or right turn lane closure.</p>	<p><i>Figure added.</i></p> <p><b>Justification:</b> A right-turn lane closure is a very common MOT application; yet, TA-21 is primarily intended for thru lane applications and TA-23 is a relatively uncommon double left-turn lane closure.</p>
6H-71	Figure 6H-23	-	Shift signs and sign dimensions A and B on the eastbound approach back.	<p><i>Figure modified.</i></p> <p><b>Justification:</b> The former sign dimensions erroneously depicted the stop line as the primary point of measure; however, the beginning of the turn lane closure taper is the appropriate reference point.</p>
7B-1 7B-4 7B-7 7B-9	Table 7B-1 Figure 7B-1 Figure 7B-3 Figure 7B-5	-	Update name and size of overhead school speed limit sign in Table 7B-1. Update overhead school speed limit sign in Figures 7B-1, 3, and 5.	<p><i>Table and figures modified.</i></p> <p><b>Justification:</b> Previously, sign read "School Speed XX Limit When Flashing". Sign has been updated to read "School Speed Limit XX When Flashing" as described in <i>Interim Guidance – Overhead School Speed Limit XX When Flashing Sign</i> memorandum.</p>

7B-7	Figure 7B-3		Update school speed limit assembly signs with flashing beacons in Figures 7B-3 and 7B-5.	<i>Text and figures modified.</i>
7B-9	Figure 7B-5		Remove paragraph 18 in Section 7B.15, as paragraph 16 is sufficient for the description and location of the beacons, and paragraph 18 is incorrect.	<b>Justification:</b> Flashing beacons on school speed limit sign assembly has been updated to comply with MUTCD standards. Previously, both flashing beacons were located on top of the assembly, an arrangement which should only be used at railroad crossings.
7B-13	Section 7B.15	17 & 18		
7B-10	Section 7B.12	04A	Add paragraph 04A to Section 7B.12 to include R1-5 series signs.	<i>Text modified.</i> <b>Justification:</b> Updated text to reflect the FHWA official interpretation of the R1-5 series described in <i>FHWA Official Interpretation – R1-5 Sign memorandum</i> .
9B-2	Table 9B-1		Add text and update table and figure for new EXCEPT BICYCLES R3-7bP plaque.	<i>Text, table, and figure modified.</i> <b>Justification:</b> Added plaque based on recommendations from the <i>NCUTCD Except Bicycles Plaque</i> and <i>FHWA Interim Approval #18 memorandums</i> .
9B-5	Figure 9B-2(1)			
9B-8	Section 9B.11	06 - 09		
9B-3	Table 9B-1		Remove W16-1P sign from Table 9B-1 and Figure 9B-3 (no longer related to bicycles). Add W11-1-DE sign to Figure 9B-3. Replace paragraph 02 with Option for W11-1-DE instead of SHARE THE ROAD plaque.	<i>Text, table, and figures modified.</i> <b>Justification:</b> New Bicycle IN LANE warning sign added based on DelDOT's current practice. Text updated to reflect DelDOT's current standard practice to discontinue the use of the Share the Road plaque, as discussed in the <i>Bicycle Warning Sign and Share the Road Plaque memorandum</i> .
9B-11	Section 9B.19	02		
9B-15	Figure 9B-3 Figure 9B-5			
9B-4	Section 9B.04	01A	Add Guidance for use of Bike Lane (R3-17) and Bicycle Route (M1-8) signs.	<i>Text added.</i> <b>Justification:</b> Reduce overuse of signs.
9B-13	Section 9B.21	01A		

# PROPOSED REGULATIONS

9B-5	Figure 9B-2(1)		Eliminate use of the R4-4. Replace all references to R4-4 with R4-4-DE. Modify text to allow optional use of R4-4-DE for all weaving movements between bicycles and right-turning vehicles.	<i>Table and figures modified.</i> <b>Justification:</b> Application of both sign messages was confusing.
9B-6	Section 9B.05	01 - 04		
9B-7				
9C-2	Figure 9C-1			
9B-15	Figure 9B-5		Remove optional signs from figures.	<i>Figures modified.</i> <b>Justification:</b> Optional signs shown on figures have led to the overuse of optional signs.
9C-2	Figure 9C-1			
9C-3	Figure 9C-1A			
9C-4	Figure 9C-1B			
9C-6	Figure 9C-1D			
9C-7	Figure 9C-1E			
9C-8	Figure 9C-1F			
9C-13	Figure 9C-4			
9C-14	Figure 9C-4A			
9C-15	Figure 9C-5			
9C-16	Figure 9C-6			
9C-17	Figure 9C-6A			
9C-9	Figure 9C-1G	-		
9C-10	Section 9C.04	03A	Modify the Guidance text to include "should" condition.	<i>Text modified.</i> <b>Justification:</b> Clarified Guidance statement.
9C-12	Section 9C.04	15 – 21	Add paragraphs 15 – 21 in Section 9C.04. Add Figures 9C-4B and 9C-4C.	<i>Text and figures added.</i> <b>Justification:</b> Text and figures added to depict common practice in Delaware for right-turn lane treatments where space does not exist to provide a dedicated bicycle lane to the left of a right-turn only lane, as described in the <i>Interim Guidance; Part 9, Right-Turn Lane Markings for Bicycles</i> memorandum.
9C-15	Figure 9C-4B			
9C-16	Figure 9C-4C			

---

*Text and figures added.*

**Justification:** Added Bicycle Boxes based on recommendations from the *NCUTCD Bicycle Box* and *FHWA Interim Approval #18* memorandums.

9C-23 Section 9C.08  
9C-25 Figure 9C-10  
9C-26 Figure 9C-11

01 – 07 Add new section and figures.

---

**\*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/march2018/proposed/21\\_DE\\_Reg\\_695RFA\\_03-01-18.pdf](http://regulations.delaware.gov/register/march2018/proposed/21_DE_Reg_695RFA_03-01-18.pdf)

(2) Due to the size of the proposed regulation, the Delaware Manual on Uniform Traffic Control Devices is not being published here. A PDF version is available at the following location:

DE MUTCD Revision 3 - Part 1 - General

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart1General.pdf>

DE MUTCD Revision 3 - Part 2 - Signs

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart2Signs.pdf>

DE MUTCD Revision 3 - Part 3 - Markings

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart3Markings.pdf>

DE MUTCD Revision 3 - Part 4 - Highway Traffic Signals

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart4HighwayTrafficSignals.pdf>

DE MUTCD Revision 3 - Part 6 - Temporary Traffic Control

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart6TemporaryTrafficControl.pdf>

DE MUTCD Revision 3 - Part 7 - School Areas

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart7SchoolAreas.pdf>

DE MUTCD Revision 3 - Part 9 - Bicycle Facilities

<http://regulations.delaware.gov/register/march2018/proposed/MUTCDPart9BicycleFacilities.pdf>

---

---

**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.

---

**DELAWARE HEALTH INFORMATION NETWORK**

Statutory Authority: 16 Delaware Code, Sections 10306 & 10311-10315 (16 Del.C. §§10306 & 10311-10315)

**Order Adopting the Final Regulation****104 Delaware Health Care Claims Database Data Access Regulation**

In accordance with 16 Del.C. §10306, and for the reasons set forth herein, the Delaware Health Information Network (DHIN) enters this Order adopting the Delaware Health Care Claims Database Data Access Regulation.

**NATURE OF THE PROCEEDINGS**

Pursuant to its authority under 16 Del.C. §10306, DHIN proposes to adopt a regulation to establish allowable purposes for access to health claims data, the process by which a request for access to claims data will be reviewed and evaluated, and factors that will be considered in granting or denying such requests.

DHIN gave notice of its intent to adopt the proposed regulation in the December 1, 2017 issue of the Delaware *Register of Regulations*. DHIN solicited written comments from the public for forty-seven (47) days as mandated by 29 Del.C. §10118(a).

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

Comments were received from United Healthcare, Highmark (HM), the Department of Health and Social Services Office of the Secretary (OSEC), America's Health Insurance Plans (AHIP), the State Council for Persons with Disabilities (SCPD), the Governor's Advisory Council for Exceptional Citizens (GACEC), and the Delaware Healthcare Association (DHA). The Delaware Health Information Network (DHIN) has considered each comment and the table below summarizes the comments and DHIN's response. Some requests for changes in the

regulatory language were denied, not because there is no merit in the underlying concern expressed, but because DHIN believes the more appropriate place to address those concerns in detail is in the policies and procedures of the HCCD Committee, not the regulation.

[DHIN Regulation 104 Comments Summary Table](http://regulations.delaware.gov/register/march2018/final/DHINRegulation104CommentsSummaryTable.pdf)

<http://regulations.delaware.gov/register/march2018/final/DHINRegulation104CommentsSummaryTable.pdf>

## FINDINGS OF FACT

The public was given notice of DHIN's intention to adopt the proposed regulation and was given opportunity to provide DHIN with comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation were submitted. Public comments were received, considered, and response provided. Thus, the Delaware Health Information Network (DHIN) finds that the proposed regulation should be adopted as in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS SO ORDERED**, this 15<sup>th</sup> day of February, 2018, that the proposed Delaware Health Care Claims Database Data Access Regulation 104 is adopted and shall become effective ten (10) days following publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(e) and (g).

Janice L. Lee, MD, Delaware Health Information Network

### **104 Delaware Health Care Claims Database Data Access Regulation** *(Break in Continuity of Sections)*

#### **2.0 Definitions**

The following words and terms, when used in this regulation, have the ~~following meaning~~ same meaning as those in CDR 1-100-103 §2.0] unless the context clearly indicates otherwise:

*(Break in Continuity Within Section)*

**"Claims Data"** ~~[includes means]~~ Required Claims Data and any additional health care information that a voluntary reporting entity elects, through entry into an appropriate Data Submission and Use Agreement, to submit to the Delaware Health Care Claims Database.

*(Break in Continuity Within Section)*

**"Collaborating State Agencies"** ~~[shall refer to means]~~ the Delaware Office of Management and Budget, State Employee Benefits Committee, Division of Public Health, and Division of Medicaid and Medical Assistance and their successors, if applicable.

**"Community Health Record" or "CHR"** means a searchable online portal that presents authorized users with a view of a patient's aggregated clinical data from all sources that contribute health data to DHIN. Access to patient records in the Community Health Record is on the basis of an established relationship between the patient and the end user for purposes of Treatment, Payment, and Operations, as those terms are defined in the HIPAA regulations, for Public Health purposes as defined in the HIPAA Privacy Rule, or by patient consent or patient request. Patients can opt out of allowing their CHR data to be searchable by anyone who was not the ordering Provider, but may not opt out of reporting required by law or regulation, such as, but not limited to, reporting of certain conditions to the Division of Public Health.]

**"Data Submission and Use Agreement" or "DSUA"** ~~[shall mean means]~~ the agreement between the HCCD Administrator and the Reporting Entity describing the specific terms and conditions for data submission and use.

**"De-Identified Data"** ~~[refers to means]~~ health information as defined in the HIPAA Privacy Rule, which is not considered PHI because it excludes the following direct and indirect patient identifiers:

- Direct Patient Identifiers

*(Break in Continuity Within Section)*

- Any other unique identifying ~~numbers~~ characteristic or code].

# FINAL REGULATIONS

*(Break in Continuity Within Section)*

**"HCCD Administrator"** ~~[shall mean means]~~ the Delaware Health Information Network and its staff and contractor(s) that are responsible for collecting data submissions, providing secure production services and providing data access for approved users.

**"Health Care Claims Database"** or **"HCCD"** ~~[shall mean means]~~ the database and associated technology components maintained by DHIN and authorized under 16 Del.C. Ch. 103, Subchapter II.

**"Health Care Claims Database Committee"** (the **"Committee"**) ~~[shall mean means]~~ the subcommittee established by the Delaware Health Information Network Board of Directors and governed by its by-laws that has the authority to determine when applications for Claims Data should be provided to a data requestor to facilitate the purposes of the enabling legislation, and such other duties as designated by the DHIN Board of Directors consistent with the enabling legislation.

**"Health care services"** means as defined in 18 Del.C. §6403.

**["Health Insurer"** means as defined in 16 Del.C. §10312.]

**"Identified Data"** ~~[refers to means]~~ data that contains direct patient identifiers.

**"Limited Data Set"** ~~[refers to a limited set of PHI as defined in the HIPAA Privacy Rule, which excludes direct patient identifiers. A Limited Data Set excludes all of the same data elements as De-Identified Data, with the following exceptions:~~

- ~~• Elements of dates are allowed~~
- ~~• Geographic subdivisions are allowed, except street address~~

means PHI that excludes 16 categories of direct identifiers and may be used or disclosed, for purposes of research, public health, or health care operations, without obtaining either an individual's Authorization or a waiver or an alteration of Authorization for its use and disclosure, with a data use agreement. The following data elements are removed from a Limited Data Set:

- Names;
- Postal address information, other than town or city, state, and ZIP Code;
- Telephone number;
- Fax numbers;
- Electronic mail addresses;
- Social Security numbers;
- Medical record numbers;
- Health plan beneficiary numbers;
- Account numbers;
- Certificate/license numbers;
- Vehicle identifiers and serial numbers, including license plate numbers;
- Device identifiers and serial numbers;
- Web universal resource locators (URLs);
- Internet protocol (IP) address numbers;
- Biometric identifiers, including fingerprints and voiceprints;
- Full-face photographic images and any comparable images.

A Limited Data Set may include:

- City, state, ZIP Code;
- Elements of dates;
- Other numbers, characteristics, or codes not listed as direct identifiers.]

*(Break in Continuity Within Section)*

**"Pricing Information"** [means any information referring to prices charged or paid, and] includes the pre-adjudicated price charged by a Provider to a Reporting Entity for Health Care Services, the amount paid by a Member or insured party, including co-pays and deductibles, and the post-adjudicated price paid by a Reporting Entity to a Provider for Health Care Services.

**"Protected Health Information"** or **"PHI"** ~~[refers to means]~~ individually identifiable health information as defined in the HIPAA Privacy Rule.

"Provider" means a hospital, facility, or any health care practitioner licensed, certified, or authorized under State law to provide Health Care Services and includes hospitals and health care practitioners participating in group arrangements, including accountable care organizations, in which the hospital or health care practitioners agree to assume responsibility for the quality and cost of health care for a ~~designed~~ designated] group of beneficiaries.

["Re-disclosure" means the publication, distribution or other dissemination of Claims Data released to an Approved User using any medium and in any format, context or structure.]

"Reporting Entity" means either a Mandatory Reporting Entity or a Voluntary Reporting Entity.

"Required Claims Data" as authorized under 16 Del.C. §10312(8) ~~shall mean means] the required data containing records of member eligibility, medical services claims and pharmacy claims as specified in the Submission Guide.~~

"Submission Guide" ~~shall mean means] the document providing the specific formats, timelines, data quality standards and other requirements for claims data submission, incorporated as Addendum One to the DSUA. It shall be established and maintained as technical guidance document and substantively updated on an annual basis.~~

"Voluntary Reporting Entity" ~~includes means] any of the following entities that has chosen to submit or has been instructed to submit data at the request of an employer or client and enters into a Data Submission and Use Agreement, unless such entity is a Mandatory Reporting Entity:~~

*(Break in Continuity Within Section)*

## **3.0 General Data Access Provisions**

*(Break in Continuity Within Section)*

3.3 Except as otherwise specified in this Regulation, all requests for HCCD data or data access shall require **[completion of] a written [application Data Access Application] that describes the intended purpose and use of the data[, the justification for the data request,] and the security and privacy measures that will be used to safeguard the data and prevent unauthorized access to or use of the data [as well as such other acknowledgments as may be included on the Data Request Application].** Exceptions to this rule include:

3.3.1 DHIN may incorporate HCCD Clinical Proxy Data Elements into the Community Health Record for purposes of treatment and care coordination, without a written application or Committee review.

3.3.2 DHIN may make HCCD Clinical Proxy Data Elements available to the Members to whom they apply without a written application or Committee review. **[Members may access their health data by enrolling in DHIN's Personal Health Record on the DHIN website at www.DHIN.org.]**

3.3.3 Requests from Reporting Entities for their own data will not require Committee review.

3.3.4 Collaborating State Agencies may access HCCD data without Committee review by entering into an interagency agreement with the DHIN. **[The allowable uses of Claims Data by Collaborating State Agencies will be posted on DHIN's web site for public transparency.]** The interagency agreement shall include but not be limited to the following:

*(Break in Continuity Within Section)*

[3.3.5 Requests from Providers for their own data, as submitted by Reporting Entities, will not require Committee review.]

*(Break in Continuity Within Section)*

[3.6 DHIN will post an annual summary of disclosures on its website.]

## **4.0 Structure and Duties of the Committee**

4.1 The Committee shall have a chairperson and members appointed by the DHIN Board of Directors.

4.2 The Committee shall be comprised of five (5) to eleven (11) members and shall be representative of various stakeholder groups[, including, where possible, consumers, employers, health plans, hospitals, physicians, researchers, and State government].

*(Break in Continuity Within Section)*

- 4.4 The Committee shall ~~[determine by majority vote whether an application should be approved. As part of their review, the Committee shall]~~ consider [any comments received from Reporting Entities whose Claims Data is being requested. The Committee shall approve an application by majority vote after finding the following]:
- 4.4.1 ~~[Whether the The]~~ intended use is consistent with the statutory purpose of the HCCD;
- 4.4.2 ~~[Whether access Access]~~ to the requested data is necessary to achieve the intended goals, including but not limited to the need for identifiable data, if requested;
- ~~[4.4.3 Whether access to the requested data may provide an unfair competitive advantage to the requestor;~~
- ~~4.4.4 Whether any comments were received from Reporting Entities whose Claims Data is being requested, if applicable;~~
- ~~4.4.5 4.4.3 Whether the The]~~ request complies with all applicable state and federal laws relating to the privacy and security of PHI;
- ~~[4.4.6 4.4.4 Whether the The]~~ request complies, to the fullest extent practicable, with guidance found in Statement 6 of the Department of Justice and Federal Trade Commission Enforcement Policy regarding the exchange of price and cost information;
- ~~[4.4.7 4.4.5 Whether the The]~~ applicant is qualified to serve as a responsible steward of the requested data.
- 4.5 The Committee reserves the right to ask an applicant to acquire Institutional Review Board review, or its equivalent, prior to approving an application.
- 4.6 [After a decision is reached by the Committee, public notice will be posted on the DHIN website that an application for data access was received, by whom it was submitted and for what purposes, and the decision of the Committee to grant or deny the application.] The final determination of the Committee shall not be subject to appeal.

## 5.0 Applications for HCCD Data

*(Break in Continuity Within Section)*

- 5.2 Upon the Committee's approval of an application for HCCD data, the applicant shall sign a legally binding data use agreement. The data use agreement will include but not be limited to:
- (Break in Continuity Within Section)*
- [5.2.5 Confirmation of compliance with all statutory and regulatory requirements.]

## 6.0 ~~[Public Reports and]~~ Re-Disclosure [Requirements]

*(Break in Continuity Within Section)*

- 6.2 Any re-disclosure of HCCD data made by anyone other than DHIN or a Collaborating State Agency, shall require Committee review and approval. All HCCD data shared publicly or re-disclosed to anyone other than an Approved User shall adhere to the following re-disclosure requirements:
- (Break in Continuity Within Section)*
- [6.2.3 Follow guidance found in Statement 6 of the Department of Justice and Federal Trade Commission Enforcement Policy regarding the exchange of price and cost information.]

## 7.0 Fees

- 7.1 DHIN may charge a reasonable cost-based fee for preparing and transmitting HCCD data. This fee may include: costs of aggregating, storing, extracting, de-identifying, and transmitting the information; associated infrastructure and staff labor costs; costs for programming and data generation; allocated indirect operating costs ~~[and]~~ other costs associated with the production and transmission of data sets[, and such other costs or fees as DHIN determines necessary].
- (Break in Continuity Within Section)*

## **8.0 Penalties**

8.1 If an Approved User violates the terms of the data use agreement, the DHIN may take one or more of the following actions:

*(Break in Continuity Within Section)*

[8.1.3 Notify the requester's licensing body, if any, and if none, its accreditation body.

8.2 If the violation pertains to access or misuse of the data, the DHIN shall report the violation to the office of the Attorney General, pursuant to 16 Del.C. §10307(c).]

\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 463 (21 DE Reg. 463). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**104 Delaware Health Care Claims Database Data Access Regulation**

---

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) & 303(a) (14 **Del.C.** §§122(b) & 303(a))  
14 **DE Admin. Code** 1008

### REGULATORY IMPLEMENTING ORDER

#### **1008 DIAA Junior High and Middle School Interscholastic Athletics**

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

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education ("Secretary") seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education ("Department"), developed the amendments to 14 **DE Admin. Code** 1008. The amendments include adding subsection 8.1.2, which specifies that if the DIAA recognizes multiple officials associations for a particular sport, a conference or an individual school, in the absence of a conference affiliation, determines the officials association that officiates its home contests; clarifying, in subsection 8.2.9, that the DIAA Board of Directors ("DIAA Board") considers an officials association's petition and the Evaluation Committee's recommendation in deciding whether to recognize and approve the association; adding subsection 8.2.10, which requires officials associations that have been approved by the DIAA Board to submit an annual written report to the DIAA Officials' Committee; adding subsection 8.2.11, which provides the DIAA Officials' Committee's standard and procedure for reviewing an officials association's annual report; and replacing the option of viewing a videotape of a DIAA clinic with completing an online course in subsection 8.3.5.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 1, 2018, in the form hereto attached as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2018. The Department did not receive written comments regarding the proposed changes.

On February 8, 2018, the DIAA Board voted to approve the proposed amendments to the regulation with one additional nonsubstantive change to the title of to Section 8.0. The order of "Recognition of Officials' Associations" and "Required Use of Officials" was changed to be consistent with the order of subsections 8.1 and 8.2.

#### **II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics in order to add the requirement that a conference or an individual school, in the absence of a conference affiliation, determines the officials association that officiates its home contests if the DIAA recognizes multiple officials associations for a particular sport; clarify that the DIAA Board considers an officials

association's petition and the Evaluation Committee's recommendation in deciding whether to recognize and approve the association; add the requirement that officials associations that have been approved by the DIAA Board submit an annual written report to the DIAA Officials' Committee; add the standard and procedure for reviewing an officials association's annual report; and replace the option of viewing a videotape of a DIAA clinic with completing an online course for officials who are unable to attend a DIAA rules interpretation clinic.

The Secretary also finds that the additional amendment to the order of Section 8.0 is a nonsubstantive change that further clarifies the regulation.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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** 1008 DIAA Junior High and Middle School Interscholastic Athletics amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics 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(b) and 303(a) on February 15, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of February, 2018.

#### Department of Education

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

Approved this 15<sup>th</sup> day of February, 2018.

#### State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

G. Patrick Heffernan (absent)

Wali W. Rushdan, II

Barbara B. Rutt

Hon. Liane M. Sorenson (absent)

Terry M. Whittaker, Ed.D.

### 1008 DIAA Junior High and Middle School Interscholastic Athletics (Break in Continuity of Sections)

#### 8.0 [~~Recognition of Officials' Associations,~~] Required Use of Officials[, Recognition of Officials' Associations,] and Attendance at Rules Clinics

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 530 (21 DE Reg. 530). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1008 DIAA Junior High and Middle School Interscholastic Athletics**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) & 303(a) (14 **Del.C.** §§122(b) & 303(a))  
14 **DE Admin. Code** 1009

### REGULATORY IMPLEMENTING ORDER

#### 1009 DIAA High School Interscholastic Athletics

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

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education ("Secretary") seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education ("Department"), developed the amendments to 14 **DE Admin. Code** 1009. The amendments include revising the eligibility requirements for foreign exchange and international students in subsection 2.8; adding subsection 8.1.2, which specifies that if the DIAA recognizes multiple officials associations for a particular sport, a conference or an individual school, in the absence of a conference affiliation, determines the officials association that officiates its home contests; clarifying, in subsection 8.2.9, that the DIAA Board of Directors ("DIAA Board") considers an officials association's petition and the Evaluation Committee's recommendation in deciding whether to recognize and approve the association; adding subsection 8.2.10, which requires officials associations that have been approved by the DIAA Board to submit an annual written report to the DIAA Officials' Committee; adding subsection 8.2.11, which provides the DIAA Officials' Committee's standard and procedure for reviewing an officials association's annual report; and replacing the option of viewing a videotape of a DIAA clinic with completing an online course in subsection 8.3.5.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 1, 2018, in the form hereto attached as Exhibit "A." In addition, notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2018. The Department did not receive written comments regarding the proposed changes.

On February 8, 2018, the DIAA Board voted to approve the proposed amendments to the regulation with one additional nonsubstantive change to the title of Section 8.0. The order of "Recognition of Officials' Associations" and "Required Use of Officials" was changed to be consistent with the order of subsections 8.1 and 8.2.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics in order to revise the eligibility requirements for foreign exchange and international students; add the requirement that a conference or an individual school, in the absence of a conference affiliation, determines the officials association that officiates its home contests if the DIAA recognizes multiple officials associations for a particular sport; clarify that the DIAA Board considers an officials association's petition and the Evaluation Committee's recommendation in deciding whether to recognize and approve the association; add the requirement that officials associations that have been approved by the DIAA Board submit an annual written report to the DIAA Officials' Committee; add the standard and procedure for reviewing an officials association's annual report; and replace the option of viewing a videotape of a DIAA clinic with completing an online course for officials who are unable to attend a DIAA rules interpretation clinic.

The Secretary also finds that the additional amendment to the order of Section 8.0 is a nonsubstantive change that further clarifies the regulation.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1009 High School Interscholastic Athletics attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics 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** 1009 DIAA High School Interscholastic Athletics amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited as 14 **DE Admin. Code** 1009 High School Interscholastic Athletics 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(b) and 303(a) on February 15, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of February, 2018.

#### Department of Education

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

Approved this 15<sup>th</sup> day of February, 2018

#### State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

G. Patrick Heffernan (absent)

Wali W. Rushdan, II

Barbara B. Rutt

Hon. Liane M. Sorenson (absent)

Terry M. Whittaker, Ed.D.

#### 1009 DIAA High School Interscholastic Athletics (Break in Continuity of Sections)

#### 8.0 ~~[Recognition of Officials' Associations,]~~ Required Use of Officials[, Recognition of Officials' Associations,] and Attendance at Rules Clinics

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 535 (21 DE Reg. 535). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1009 DIAA High School Interscholastic Athletics**

---

#### PROFESSIONAL STANDARDS BOARD

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

#### REGULATORY IMPLEMENTING ORDER

#### 1515 Hearing Procedures and Rules

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

The Professional Standards Board, acting in cooperation and consultation with the Department of Education ("Department"), developed a new regulation, 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation concerns the hearing procedures and rules for license denial actions under 14 **Del.C.** §1217 and license disciplinary actions under 14 **Del.C.** §1218. The proposed regulation was initially published on October 1, 2017.

The Professional Standards Board received one written comment that subsection 3.1.2 does not seem to align with modern technology or to be the most efficient, non-burdensome form of communicating a hearing request. The Professional Standards Board believes that the forms of hearing request are those permitted by statute, so no changes were made in response to the comment. On November 2, 2017, the Professional Standards Board voted to republish the regulation with two substantive changes. The Professional Standards Board added a deadline for submitting a written request for additional time for a hearing to subsection 4.1.1.1 and added "stenographic" to subsection 4.5.2.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2017. The Professional Standards Board did not receive written comments regarding the proposed regulation.

On February 1, 2018, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1515 Hearing Procedures and Rules for adoption by the Department subject to the State Board of Education's approval.

## II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement Chapter 12 and, therefore, it is appropriate to adopt 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1515 Hearing Procedures and Rules subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1515 Hearing Procedures and Rules attached hereto as Exhibit "A" is hereby adopted.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1515 Hearing Procedures and Rules adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1515 Hearing Procedures and Rules 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 Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on February 15, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of February, 2018.

**Department of Education**

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

Approved this 15<sup>th</sup> day of February, 2018.

**State Board of Education**

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

G. Patrick Heffernan (absent)

Wali W. Rushdan, II

Barbara B. Rutt

Hon. Liane M. Sorenson (absent)

Terry M. Whittaker, Ed.D.

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 470 (21 DE Reg. 470). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1515 Hearing Procedures and Rules**

# FINAL REGULATIONS

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)  
16 DE Admin. Code 2027

#### ORDER

#### 2027 Disqualification of Individuals Convicted of Drug Related Offenses

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the December 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 2, 2018 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 July 28, 2017 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Services Manual section 2027 regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony*.

#### Statutory Authority

- 31 Del.C. §524 - Eligibility for Temporary Assistance for Needy Families

#### Background

Delaware Code, Title 31, Chapter 5, §524 became effective July 28, 2017. This law removes the prohibition against receipt of Temporary Assistance for Needy Families (TANF) funds by persons convicted of a drug felony, so long as that person is otherwise eligible for TANF assistance.

#### Purpose

The purpose of this proposed regulation is to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.

#### Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 2, 2018.

#### Fiscal Impact Statement

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$312,012 (12 months)	\$312,012 (12 months)
Federal funds	\$40,572 (12 months)	\$40,572 (12 months)

## Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) both endorsed the proposed amendment and offered the following summarized observation: They write,

The proposed regulation implements H.B. No. 11, which was enacted in 2017, by striking the DSS regulation which imposed the drug conviction eligibility ban. Both councils noted there is a difference between the H.B. No. 11 fiscal note (projecting \$33,810 10-month State funds impact in SFY18) and the regulation's fiscal impact of \$312,012 12-month State funds impact in FFY18. The suggestion was for DSS to review the accuracy of the fiscal impact.

**Agency Response:** DSS appreciates the Councils' perspective on the fiscal note, but the fiscal note is not inaccurate; it is for the TANF and General Assistance Cash Assistance Programs. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 disqualifies individuals who were convicted of a drug felony on or after August 22, 1996 from TANF cash assistance. In 1996, DSS included General Assistance in its policy for consistency with the cash assistance programs it administered. DSS has decided to remove the ban from clients receiving General Assistance, since it was removed for TANF clients.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony*, is adopted and shall be final effective March 11, 2018.

Kara Odom Walker, MD, MPH, MSHS  
Cabinet Secretary, DHSS  
2/22/18

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 477 (21 DE Reg. 477). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2027 Disqualification of Individuals Convicted of Drug Related Offenses**

---

## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c), and 2312  
(18 Del.C. §§311, 2501, 2304(15)(c), & 2312)  
18 DE Admin. Code 906

### REGULATORY IMPLEMENTING ORDER

#### 906 Use of Credit Information

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance (Department) gave notice in the Delaware *Register of Regulations* at 21 DE Reg. 546 (01/01/2018) of the proposed repeal of existing Regulation 906, Use of Credit Information, effective on May 1, 2018. The Department's internal docket number is DOI Docket No. 3690-2017.

HS1 for HB 80 replaced then existing Chapter 83 of the Delaware Insurance Code with a new chapter. The new chapter was signed into law on August 1, 2017, and it becomes effective on May 1, 2018. The new chapter sets forth the permissible uses of credit information in rating personal insurance, and prohibits insurance companies from increasing rates on current customers solely for having reached the age of 75 or above or for

having a change in marital status due to the death of a spouse.

Regulation 906 is now outdated as it lacks many of the requirements in the new statute. Additionally, HS1 for HB 80 is sufficiently prescriptive to not warrant implementing regulations. Accordingly, the Department proposed to repeal existing Regulation 906. The repeal would be effective on May 1, 2018.

The Department did not hold a public hearing on the proposed repeal. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 31<sup>st</sup> day of January, 2018, which was thirty days from the date of publication.

The Department received comments from the Governor's Advisory Council for Exceptional Citizens (GACEC) in support of the proposed repeal. A copy of GACEC's comments may be obtained by contacting the Department.

## II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to repeal 18 **DE Admin. Code** 906 for the reasons set forth above and in the proposal. Additionally, the Department received no adverse comments on the proposed repeal.

## III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to repeal 18 **DE Admin. Code** 906, as discussed in the above Findings of Fact.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §311 and Chapter 50 on February 15, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*, and the effective date of the repeal will be May 1, 2018.

### IT IS SO ORDERED.

The 15<sup>th</sup> day of February, 2018.

Trinidad Navarro

Commissioner, Delaware Department of Insurance

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 546 (21 DE Reg. 546). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**906 Use of Credit Information**

---

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 50 (18 **Del.C.** §311 & Ch. 50)  
18 **DE Admin. Code** 1801

### REGULATORY IMPLEMENTING ORDER

### 1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance gave notice in the Delaware Register of Regulations at 21 **DE Reg.** 271 (10/01/2017) of its proposal to amend Department of Insurance Regulation 1801 relating to reporting forms and instructions for Insurance Holding Company System Regulation. The Department's internal docket number for this regulatory project is 3607-2017.

The purpose of the proposed amendment to Regulation 1801 is to add new subsection 4.5. This new subsection puts filers of reporting forms on notice that any statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 **Del.C.** Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also making edits to section 8.0, Definitions, to comport that section with the Delaware Administrative Code Drafting and Style Manual.

The Department did not hold a public hearing on the proposed regulation. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 1<sup>st</sup> day of November, 2017, which was thirty days from the date of publication.

The Department received comments from the National Association of Mutual Insurance Companies (NAMIC). A copy of NAMIC's comments may be obtained by contacting the Department.

The Department re-proposed proposed new subsection 4.5, but revised it to put filers on notice that any Form A statement submitted to the Department pursuant to the NAIC Insurance Holding Company System Regulatory Act, 18 **Del.C.** Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department also proposed to make the same edits to section 8.0, Definitions, as were proposed in its October 1 proposal, for the same reason. The Department is also revising Section 23 of the regulation to update the effective dates of the existing regulation and of proposed new subsection 4.5.

The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the re-proposed amendments until the 2<sup>nd</sup> day of January, 2018, which was thirty days from the date of publication.

The Department received no comments on the re-proposal.

## II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to amend 18 **DE Admin. Code** 1801 to adopt new subsection 4.5. The Department received no adverse comments on the amendments as re-proposed.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 18 **DE Admin. Code** 1801 to add new subsection 4.5 as re-proposed and to amend the effective dates of the existing regulation and new subsection 4.5 discussed in the above Findings of Fact.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §311 and Chapter 50 on February 15, 2018. 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 15<sup>th</sup> day of February, 2018.

Trinidad Navarro

Commissioner, Delaware Department of Insurance

### 1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions (Break in Continuity of Sections)

#### 23.0 Effective Date

This Regulation became effective on January 11, 2016 [(ten days after publication - see 19 DE Reg. 642)]. New subsection 4.5 shall become effective 10 days after being published as a final regulation [(insert date that is 10 days after being published as a final regulation) March 12, 2018].

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2017 issue of the Register at page 478 (21 DE Reg. 478). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions**

---

**FINAL REGULATIONS**

---

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

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1123

Secretary's Order No.: 2018-A-0004

**RE: Approving Final Repeal of 7 DE Admin. Code 1123:  
Standards of Performance for Steel Plants: Electric Arc Furnaces**

**Date of Issuance: February 1, 2018  
Effective Date of the Amendment: March 11, 2018**

**1123 Standards of Performance for Steel Plants: Electric Arc Furnaces**

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

**Background, Procedural History and Findings of Fact**

This Order relates to the proposed regulation repeal of 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces*. The Department's Division of Air Quality is proposing the aforementioned repeal pursuant to 29 **Del.C.** §10407, which directs all State of Delaware executive branch agencies to conduct a periodic review of regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The current regulatory review process commenced on January 1, 2016, at which time the Department performed a focused review of its existing, older regulations, with the purpose to identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's review of its existing regulations was to ensure that all regulations continue to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality identified 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces*, as an existing, older regulation which required repeal.

The Department is proposing to repeal 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces*, as this regulation applies to electric arc furnaces in steel plants. Currently, there is no source in Delaware to which this regulation applies, and other more restrictive State and Federal requirements would apply should a new electric arc furnace be constructed here in Delaware in the future.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice #2017-07 (July 3, 2017). The Department published its proposed regulation repeal in the October 1, 2017 Delaware *Register of Regulations*. The Department then held a public hearing on October 25, 2017. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 10, 2017. No comment was received from the public during the post-hearing phase of this promulgation.

Hearing Officer Vest prepared a Hearing Officer's Report dated January 18, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed repeal as attached to the Report as Appendix "A".

**Reasons and Conclusions**

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I

find that the proposed regulatory repeal of 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces*, is well- supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory repeal be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of this regulatory repeal. The adoption of this regulatory repeal will enable the Department to eliminate this antiquated regulation. Currently, there is no source in Delaware to which this regulation applies, and other more restrictive State and Federal requirements would apply should a new electric arc furnace be constructed here in Delaware in the future.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed repeal of 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces*, pursuant to 7 **Del.C.** Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting this proposed regulatory repeal as final;

3. The Department provided adequate public notice of the proposed regulatory repeal, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed repeal, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory repeal of 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces* will enable the Department to eliminate this antiquated regulation. Currently, there is no source in Delaware to which this regulation applies, and other more restrictive State and Federal requirements would apply should a new electric arc furnace be constructed here in Delaware in the future;

5. The Department has reviewed this proposed regulatory repeal in light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "A" regarding same, as this proposed regulation repeal will not apply to small businesses or individuals at all;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory repeal as set forth in Appendix "A", is hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory repeal, as published in the October 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final regulatory repeal, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed repeal of 7 **DE Admin. Code** 1123, *Standards of Performance for Steel Plants: Electric Arc Furnaces*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 273 (21 DE Reg. 273). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1123 Standards of Performance for Steel Plants: Electric Arc Furnaces**

## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1136

Secretary's Order No.: 2018-A-0005

Date of Issuance: February 1, 2018

Effective Date of the Amendment: March 11, 2018

**1136 Acid Rain Program**

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

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 1136, *Acid Rain Program*. This public hearing was held pursuant to 29 **Del.C.** §10407, which directs all State of Delaware executive branch agencies to conduct a periodic review of regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The current regulatory review process commenced on January 1, 2016, at which time the Department performed a focused review of its existing, older regulations, with the purpose to identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's review of its existing regulations was to ensure that all regulations continue to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality identified 7 **DE Admin. Code** 1136, *Acid Rain Program*, as an existing, older regulation which requires revision.

In reviewing this regulation (and its corresponding Federal requirements), the Department determined that there have been a number of updates to portions of 40 CFR Parts 72 - 78 (Acid Rain Program provisions) which should be adopted. These proposed Amendments will (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 - 78 into 7 **DE Admin. Code** 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 **DE Admin. Code** 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice #2017-10 (July 3, 2017). The Department published its initial proposed regulation Amendments in the October 1, 2017 *Delaware Register of Regulations*. The Department then held a public hearing on October 25, 2017. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 10, 2017. No comment was received from the public during the post-hearing phase of this promulgation.

Hearing Officer Vest prepared a Hearing Officer's Report dated January 18, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

**Reasons and Conclusions**

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 1136, *Acid Rain Program*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption

of these regulatory Amendments. The adoption of these regulatory Amendments will enable the Department to (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 - 78 into 7 **DE Admin. Code** 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 **DE Admin. Code** 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments to 7 **DE Admin. Code** 1136, *Acid Rain Program*, pursuant to 7 **Del.C.** Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed repeal, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 1136, *Acid Rain Program* will enable the Department to (1) clarify the Federal Acid Rain Program regulatory requirements that Electric Generating Units in Delaware are subject to by incorporating the provisions of 40 CFR Parts 72 - 78 into 7 **DE Admin. Code** 1136, *Acid Rain Program*, by reference; and (2) update the Federal reference date in 7 **DE Admin. Code** 1136 to reflect the revision date of the most recently published annual edition of the Code of Federal Regulations;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B5" regarding same, as this proposed promulgation involves regulations that are required by federal law, and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601 *et seq.*;

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

7. The Department's proposed regulatory Amendments, as published in the October 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1136, *Acid Rain Program*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin,  
Secretary

## 1136 Acid Rain Program

09/11/1996 [~~xx/xx/2017~~ 3/11/2018]

The provisions of Parts 72 through 78, of Title 40 of the Code of Federal Regulations, dated July 1, 1995 [~~2017~~ 2016], are hereby incorporated into this regulation by reference. Within this regulation, the term permitting authority shall mean the Secretary of Delaware Department of Natural Resources & Environmental Control.

## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1140

Secretary's Order No.: 2018-A-0007

Date of Issuance: February 6, 2018

Effective Date of the Amendment: March 11, 2018

**1140 Delaware Low Emission Vehicle Program**

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

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program*. The Department proposes to update the adoption by reference of the California standards in Table 1 of Regulation 1140. These updates are necessary to conform to the federal Clean Air Act and to Delaware's State Implementation Plan ("SIP"). Several non-substantive technical corrections are also being proposed to the current regulatory language at this time.

The federal Clean Air Act ("CAA", "Act") establishes the framework for controlling mobile source emissions. In considering the impact of air pollution on the public health, one finds that the aggregate emission from motor vehicles contributes a very significant impact, when compared to the impact of other air pollution sources. The *Delaware Low Emission Vehicle Program* is just one means for the Department to reduce the impact of mobile sources on the public health.

The United States Congress has sought to reduce public health impacts due to air pollutants in various sections of the original Clean Air Act and its subsequent amendments. Under Subsection 202(a)(1) of the Act, Congress directed the U.S. Environmental Protection Agency ("EPA") to promulgate regulations applicable to the emissions of any air pollution from new motor vehicles or new motor vehicle engines that contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare. To avoid disruption in the motor vehicle manufacturing industry, Congress prohibited State and local agencies from regulating new motor vehicles or new motor vehicle engines under Subsection 209(a). Recognizing that California had been regulating this industry segment prior to March 30, 1966, Congress allowed California to continue adopting new motor vehicle standards, pending the EPA's review and approval of those standards under Subsection 209(b). Under Section 177, Congress allowed States in non-attainment areas to adopt new motor vehicle or motor vehicle engine standards, if such standards are identical to the California standards.

On December 1, 2013, Delaware adopted California's Low Emission Vehicle III standard and the Greenhouse Gas standard into 7 **DE Admin. Code** 1140. On August 30, 2014, Delaware submitted 7 **DE Admin. Code** 1140, and requested the EPA to incorporate this updated version of Delaware's low emission vehicle program into Delaware's State Implementation Plan ("SIP"). The EPA approved Delaware's low emission vehicle program SIP revision on October 14, 2015.

During the first half of 2017, the Department conducted a thorough review of the California Code of Regulations, and determined that, subsequent to the most recent revisions to 7 **DE Admin. Code** 1140 in 2013 as noted above, California had since revised fourteen of the fifty-six Sections listed in Table 1 of that regulation. Accordingly, the Department began its internal regulatory development process to update 7 **DE Admin. Code** 1140, to ensure that Delaware's standards were once again made identical to California standards, as required by Section 177 of the federal Clean Air Act. It should be noted that, while updating the fourteen Sections in the current 7 **DE Admin. Code** 1140, the Department identified the need to make several non-substantive technical corrections to this existing regulation. These corrections have been included in the proposed regulatory amendments as well.

The Department's Division of Air Quality commenced the regulatory development process with Start Action

Notice #2017-09 (July 3, 2017). The Department published its initial proposed regulation Amendments in the October 1, 2017 Delaware *Register of Regulations*. The Department then held a public hearing on October 25, 2017. Members of the public attended that hearing, however, no comment was received by the Department at that time. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through November 10, 2017. No comment was received from the public during the post-hearing phase of this promulgation.

Hearing Officer Vest prepared a Hearing Officer's Report dated January 26, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will enable the Department to update the adoption by reference of the fourteen California sections previously incorporated into 7 **DE Admin. Code** 1140, Delaware Low Emission Vehicle Program, to ensure that Delaware's standards remain identical to the EPA approved California standards, as mandated in Section 177 of the Clean Air Act, as well as make necessary non-substantive technical corrections to the existing regulation.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments to 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program*, pursuant to 7 **Del.C.** Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed repeal, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program* will enable the Department to (1) update the adoption by reference of the fourteen California sections previously incorporated into 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program*, to ensure that Delaware's standards remain identical to the EPA approved California standards, as mandated in Section 177 of the Clean Air Act; and (2) make necessary non-substantive technical corrections to the existing regulation.

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B1" regarding same, as this proposed promulgation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

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

7. The Department's proposed regulatory Amendments, as published in the October 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1140, *Delaware Low Emission Vehicle Program*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

1140 Delaware Low Emission Vehicle Program  
(Break in Continuity of Sections)

~~42/41/2013~~ [~~12/11/17~~ 3/11/18]

3.0 Definitions

(Break in Continuity of Sections)

~~42/41/2013~~ [~~12/11/17~~ 3/11/18]

5.0 New Vehicle Emission Requirements

(Break in Continuity of Sections)

~~42/41/2013~~ [~~12/11/17~~ 3/11/18]

7.0 Warranty

(Break in Continuity of Sections)

~~42/41/2013~~ [~~12/11/17~~ 3/11/18]

10.0 Incorporation by Reference

(Break in Continuity of Sections)

~~42/41/2013~~ [~~12/11/17~~ 3/11/18]

11.0 Document Availability

\*Please note that no additional changes were made to the regulation as originally proposed and published in the October 2017 issue of the *Register* at page 278 (21 DE Reg. 278). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**1140 Delaware Low Emission Vehicle Program**

---

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**

**1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**

Statutory Authority: 24 Delaware Code, Section 1305 (24 Del.C. §1305)

24 DE Admin. Code 1300

ORDER

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on December 1, 2017 (Vol. 21, Issue 6). Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 7.0 Employment Notification;
- Rule 8.0 Private Investigators;
- Rule 9.0 License Holder;
- Rule 12.0 Record Book; Right of Inspection, and
- Rule 13.0 Licensing Fees

---

the Board makes the following Findings and Conclusions:

## Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to be in compliance with newly amended 24 Del.C. Ch. 13.

## Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule be in compliance with newly amended 24 Del.C. Ch. 13.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to be in compliance with newly amended 24 Del.C. Ch. 13.

## Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. Section 1304 et seq. and, in particular, 24 Del.C. Section 1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del.C. Section 1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 Del.C. Section 1304(b)(3) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be March 11, 2018.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 31<sup>st</sup> day of January 2018.

Lt. Colonel Monroe B. Hudson, Jr., Chairman  
Director Robert J. Irwin  
Vacant  
Ms. Sandra C. Taylor (absent)  
Mr. Mark W. Rainford

Mr. Wayne A. Keller  
Ms. Kelly R. Jansen  
Vacant  
Vacant

**\*Please note that no changes were made to Sections 7.0, 8.0, 9.0, 12.0, and 13.0 of the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 480 (21 DE Reg. 480). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

---

# FINAL REGULATIONS

---

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1725 POLYSOMNOGRAPHY ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code, Section 1799W(c) (24 **Del.C.** §1799W(c))  
24 **DE Admin. Code** 1725

**ORDER**

**1725 Polysomnography Advisory Council**

The Delaware Polysomnography Council, pursuant to 24 **Del.C.** §1799W(c), proposed to amend the regulations governing the practice of polysomnography in the State of Delaware to allow respiratory therapists with specific sleep credentials to act as supervisors to polysomnographic trainees.

Following publication in the Delaware *Register of Regulations* on November 1, 2017 a public hearing was held on November 21, 2017. Written comment periods were held open for thirty days, and fifteen days following the public hearing.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

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

There was no verbal testimony given at the public hearing on November 21, 2017. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1799W(c), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed regulations seek to allow respiratory therapists with Sleep Disorder Specialist; Registered Polysomnographic Technologist; or Certified Polysomnographic Technician sleep credentials to act as supervisors to polysomnographic trainees.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

**DECISION AND EFFECTIVE DATE**

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

**IT IS SO ORDERED** this 16<sup>th</sup> day of January, 2018 by the Delaware Polysomnography Advisory Council.

Grace R. Denault, President  
Theodore S. Kruppa, III

Paul Walker  
Kunal Agarwal, M.D.

**AND NOW**, this 6<sup>th</sup> day of February, 2018;

**WHEREAS**, the Board of Medical Licensure and Discipline has considered the attached recommendation of

the Polysomnography Advisory Council for approval of amended rules and regulations related to licensure renewal; and

**WHEREAS**, the Board has determined to approve the aforesaid rules and regulations as proposed by the Polysomnography Advisory Council and attached hereto as Exhibit A.

**NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:**

1. The rules and regulations recommended by the Polysomnography Advisory Council governing licensure renewal are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

**IT IS SO ORDERED this 6<sup>th</sup> day of February, 2018:**

Karyl Rattay, M.D., President

Joseph M. Parise, D.O.

Mary Lomax, ED.D. Public Member

Sharon Williams-Mayo, Public Member

Malvine Richard, ED.D. Public Member

Stephen Lawless, M.D. (absent)

Bryan D. Villar, M.D.

Gregory D. Adams, M.D.

Stephen G. Cooper, M.D.

Garrett H. Colmorgen, M.D. (absent)

George A. Dahr, M.D.

Barry L. Bakst, D.O.

Janice Truitt, Public Member

N. C. Vasuki, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2017 issue of the *Register* at page 411 (21 DE Reg. 411). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1725 Polysomnography Advisory Council**

---

**DIVISION OF PROFESSIONAL REGULATION  
1900 BOARD OF NURSING**

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

**ORDER**

**1900 Board of Nursing**

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1904(c), proposed to revise its regulations to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes clarify the timeframe for a new school of nursing to obtain national accreditation; clarify the timeframe an applicant may take the NCLEX; eliminate the requirement that nurses retain their maiden name on their licenses; clarify that an APRN is not required to maintain a collaborative agreement after obtaining two years and 4,000 hours of collaboration; clarifies the definitions of licensed healthcare delivery system and established healthcare organization; eliminates the provision precluding APRNs from prescribing medications to individuals who are not established patients; and eliminates crimes from the exhaustive list of crimes substantially related to the practice of nursing.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Following publication in the Delaware *Register of Regulations* on December 1, 2017 a public hearing was held on January 10, 2018. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence, marked and considered the following

as the Board's Exhibits:

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

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

There was no verbal testimony provided at the public hearing on January 10, 2018. Following the hearing, on January 25, 2018, the Medical Society of Delaware (MSD) submitted a written public comment objecting to the proposed change to Regulation 8.12.3. MSD's comment stated that its understanding of the APRN statute was that nurses who have not been granted independent practice are required to maintain a collaborative agreement regardless of how long they have practiced. In support of this argument, MSD referred to 24 **Del.C.** §§1935(g) and 1902(k). In addition, Dr. Ronald Castaldo submitted a written comment on January 10, 2018 noting that Regulations 10.4.2.19 and 10.4.2.26 retained the outdated title of Advanced Practice Nurse instead of Advanced Practice Registered Nurse, a term that was changed by statute in 2015.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The public comments from MSD contended that the Board of Nursing "at one point [shared the] understanding" that the APRN statutory scheme did not contemplate allowing APRNs without independent practice authority to work without a collaborative agreement, regardless of how long they have been practicing. MSD further stated that "[w]e fear that removal of the collaborative requirement in regulations could be de facto independent practice, which the statute did not intend and does allow without following the prescribed pathway."

3. The Board disagreed with MSD's written comments for several reasons. The Board noted that it has always believed that the statutory scheme not only allowed for, but for the first time created the means for experienced APRNs to work without a collaborative agreement, so long as they are not doing so "outside the employment of an established health-care organization, health-care delivery system, physician, podiatrist, or practice group owned by a physician or podiatrist." 24 **Del.C.** §1902(k).

4. The Board notes that MSD cited 24 **Del.C.** §1902(k) but not in its entirety. This section notes that independent practice authority is only required when a nurse is working outside of these settings. In addition, the Board noted that under 24 **Del.C.** §1936(b) "[a]ll new APRN graduates and those nurses seeking to obtain independent practice must practice under a collaborative agreement for 2 years and a minimum of 4,000 full-time hours." As such, APRNs with greater than two years and 4,000 hours of practice under a collaborative agreement, who are not seeking independent practice, are not required to have a collaborative agreement.

5. In addition, the Board pointed to current Regulation 8.16.2, which states that "APRNs who have practiced for at least two years and 4,000 hours in the applicable role and population foci are not required to practice under a collaborative agreement." This Regulation was promulgated on October 1, 2016 demonstrating the Board's position that experienced APRNs should not be required to maintain a collaborative agreement unless they are practicing independently.

6. Finally, the Board noted that the comments from Dr. Castaldo involved technical errors that could be corrected via this Order pursuant to 29 **Del.C.** §10113(b)(4). See *Council 81, American Federation of State, County and Municipal Employees, Afl-Cio, v. State Personnel Commission*, 1989 WL 100473 (Del.Super. Aug. 3, 1989). To that end, regulation 10.4.2.19 currently states "Practicing as an Advanced Practice Nurse with an expired license" and will be changed to the following so as to correct a technical error: "Practicing as an Advanced Practice Registered Nurse with an expired license." Similarly, regulation 10.4.2.26 currently states "Practicing or holding oneself out as an Advanced Practice Nurse without a current license" and will be changed to "Practicing or holding oneself out as an Advanced Practice Registered Nurse without a current license."

7. Pursuant to 24 **Del.C.** §1906(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

8. The proposed regulations seek to bring the regulations into conformity with current law and remove outdated and inconsistent provisions. For example, the proposed changes clarify the timeframe for a new school of nursing to obtain national accreditation; clarify the timeframe an applicant may take the NCLEX; eliminate the requirement that nurses retain their maiden name on their licenses; clarify that an APRN is not required to maintain a collaborative agreement after obtaining two years and 4,000 hours of collaboration; clarifies the definitions of licensed healthcare delivery system and established healthcare organization; eliminates the provision precluding APRNs from prescribing medications to individuals who are not established patients; and eliminates crimes from

the exhaustive list of crimes substantially related to the practice of nursing.

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

10. For the reasons stated above, the Board finds no reason to substantively amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** this 13<sup>th</sup> day of February, 2018 by the Delaware Board of Nursing.

Pamela Zickafoose, RN, President

Pam Tyranski, RN

Madelyn Nellius, Public Member

Nancy Bastholm, RN

Linda Darling, RN

George Brown, Public Member

Ronald Castaldo, CRNA

Dr. Megan Williams, DNP, Vice President

Harland Sanders, Jr., Public Member

Valerie Deveraux, RN

Sherry Lambertson, Public Member (absent)

Victoria Udealer, RN

David Salati, RN

William Hare, Public Member

### 1900 Board of Nursing (Break in Continuity of Sections)

#### 10.0 Disciplinary Proceedings

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

~~40.4~~ 10.1 Unprofessional Conduct Defined

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

~~40.4.2~~10.1.2 Unprofessional conduct shall include but is not limited to the following:

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

~~40.4.2.19~~10.1.2.19 Practicing as an Advanced Practice [**Registered**] Nurse with an expired license.

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

~~40.4.2.26~~10.1.2.26 Practicing or holding oneself out as an Advanced Practice [**Registered**] Nurse without a current license.

##### (Break in Continuity of Sections)

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2017 issue of the *Register* at page 485 (21 DE Reg. 485). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1900 Board of Nursing**

---

# FINAL REGULATIONS

---

## DIVISION OF PROFESSIONAL REGULATION 3800 BOARD OF DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805(1) (24 **Del.C.** §3805(1))  
24 **DE Admin. Code** 3800

### ORDER

#### 3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition, pursuant to 24 **Del.C.** §3805(1), proposed to revise its regulations. The proposed amendments to the regulations seek to clarify and provide more detailed information regarding the use of telehealth for the provision of dietetics and nutrition services.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on August 1, 2017 a public hearing was held on November 3, 2017. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked the following public comments as Board Exhibits:

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

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

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

**Board Exhibit 3** - A letter dated November 27, 2017 from Lore Ritscher Noyes of Nemours A.I. DuPont Hospital for Children in support of the proposed regulation changes.

There was no verbal testimony given at the public hearing on November 3, 2017. No written comments were received by the Board during the initial thirty-day public comment period; one written comment in support of the regulations was received after the public hearing during the fifteen day 29 **Del. C.** §10118(a) second public comment period.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There was one supportive public comment provided to the Board during the two written public comment periods; none were provided at the public hearing.
3. Pursuant to 24 **Del.C.** §3805(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes amend the Board's Regulations to clarify and provide more detailed information regarding the use of telehealth for the provision of dietetics and nutrition services.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. For the reasons stated above, the Board finds no reason to amend the regulations as proposed.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

**IT IS SO ORDERED** this 9<sup>th</sup> day of February, 2018 by the Delaware Board of Dietetics/Nutrition.

Jennifer Linton, L.D.N., Chairman  
Roger Holt, L.D.N

Natalie McKenney, L.D.N., Vice-Chairman  
Gwendolyn Fulwood, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 135 (21 DE Reg. 135). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3800 State Board of Dietetics/Nutrition**

---

## MERIT EMPLOYEES RELATIONS BOARD

Statutory Authority: 29 Delaware Code, Section 5914 (29 **Del.C.** §5914)  
19 **DE Admin. Code** 3001

### ORDER

#### 3001 Merit Employees Relations Board

IN THE MATTER OF THE  
PROPOSED MODIFICATION  
OF THE EXISTING MERIT RULES

ORDER

### AUTHORITY

Pursuant to 29 **Del.C.** §5914 and 29 **Del.C.** §10113(b)(5), the Merit Employee Relations Board adopts the attached amendments to its existing regulations (Merit Rules of the State of Delaware) to make such regulations consistent with changes enacted to the Merit System of Personnel Administration, Chapter 59 of Title 29 of the Delaware Code.

### REASON FOR THE ORDER

On July 16, 2017, the Governor of the State of Delaware signed into law House Bill 4 of the 149th General Assembly, entitled "An Act to Amend titles 14, 15, 18, 19, 29 and 31 of the Delaware Code to provide for the Reorganization of State Government by creating the Department of Human Resources; Transferring Selected Divisions and other Organizational Units from the Office of Management and Budget and Department of State to the Department of Human Resources; Amending References to Superseded Agencies or Officers; Aligning the Duties of the Secretary of Human Resources, the Director of the Office of Management and Budget, and the Secretary of State; and to Provide for the Reorganization of the Office of the Commission on Women by creating the Office of Women's Advancement and Advocacy within the Department of Human Resources."

The sections of the Bill amending references to superseded agencies and officers resulted in references in the existing Merit Rules to the "Director of the Office of Management and Budget" being inconsistent with the amended provisions of Chapter 59 of Title 29.

Consistent with the changes made to Chapter 59 of Title 29, the Merit Employee Relations Board proposed to replace all reference in its rules to the "Director of the Office of Management and Budget" with the "Secretary of the Department of Human Resources" and "Director" with "DHR Secretary." A copy of the revisions is attached to this Order.

### NOTICE OF PROPOSED CHANGES

A properly noticed public hearing was held on February 1, 2018, at which the proposed amendments to the Merit Rules of the State of Delaware were considered by the Board. The Secretary of Human Resources was

---

# FINAL REGULATIONS

---

provided with a copy of the proposed amendments prior to the hearing. The amendments correct an inconsistency between the Rules and the Delaware Code which results from the effectuation of House Bill 4 of the 149th General Assembly, as signed into law by the Governor on July 16, 2017.

## EFFECTIVE DATE OF ORDER

The revised Merit Rules of the State of Delaware shall become effective immediately.

## ORDER

It is hereby ordered, this 1<sup>st</sup> day of **February, 2018**, by a quorum of the Merit Employee Relations Board, that the attached amendments to the above-referenced Merit Rules of the State of Delaware are adopted pursuant to 29 **Del.C.** §10113 and effective immediately.

W. MICHAEL TUPMAN, MERB Chair  
PAUL R. HOUCK, MERB Member  
JACQUELINE D. JENKINS, EDD, MERB Member  
SHELDON N. SANDLER, ESQ., MERB Member

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

**3001 Merit Employees Relations Board**

---

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

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

Secretary's Order No.: 2018-A-0008

Date of Issuance: February 12, 2018

Effective Date of the Amendment: March 11, 2018

### State Implementation Plan (SIP) Final Revisions

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

#### Background, Procedural History and Findings of Fact

This Order relates to the proposed Revisions to the Delaware State Implementation Plan ("SIP"), to wit: (1) *Certification of Delaware's Non-Attainment New Source Review and Emissions Statement Programs*; and (2) *Negative Declaration for Emissions Sources Specified in the Oil and Gas Control Techniques Guidelines ("CTG")*. Delaware is required by Section 110 of the federal Clean Air Act to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards established by EPA. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the Clean Air Act. The Clean Air Act 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.

At the public hearing held on October 25, 2017, the Department presented two proposed SIP revisions for public review and comment:

#### **1. Certification of Delaware's Non-attainment New Source Review and Emissions Statement Programs**

The first SIP revision is a certification that two existing Delaware programs currently contained in the SIP meet all requirements of the 2008 ozone national ambient air quality standard. On February 3, 2017, the EPA issued a Findings of Failure to 15 states and the District of Columbia to submit certain required SIP elements for 2008 8-hour ozone standard non-attainment areas. According to the EPA's action, Delaware failed to certify its Non-attainment New Source Review Program ("Non-attainment NSR Program") for the Seaford and Philadelphia-Wilmington-Atlantic City non-attainment areas for the 2008 ozone standard. EPA previously approved Delaware's Non-attainment NSR Program SIP revision on February 28, 2013 that covered all 2008 ozone standard non-attainment areas. The Department finds and certifies that no changes are necessary to the Non-attainment NSR Program to comply with the 2008 ozone standard non-attainment NSR requirements.

The Department further determined Delaware's Emissions Statement program should also be certified for adequately addressing the 2008 ozone national ambient air quality standards. EPA approved Delaware's Emission Statement program on April 29, 1996. The approved emission statement rule, in force for the 1997 8-hour ozone standard and the 1-hour ozone standard, covers all portions of Delaware's non-attainment areas for the 2008 ozone standard, and is sufficient for purposes of the emissions statement requirements for the 2008 ozone standard.

#### **2. Negative Declaration for Emission Sources in the Oil and Gas Control Techniques Guidelines ("CTG")**

Section 184(b) of the federal Clean Air Act requires Delaware, as part of the Ozone Transport Region, to revise its SIP to implement Control Techniques Guidelines ("CTG") to control volatile organic compound emissions for all sources applicable to the CTG. Regarding the oil and gas CTG, no applicable sources exist in Delaware.

Therefore, the Department is proposing a negative declaration for implementing the 2016 Oil and Gas CTG.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revisions as referenced above, pursuant to 7 **Del.C.** Chapter 60. The Department published the General Notice of the two proposed SIP revisions and the October 25, 2017 public hearing in the October 1, 2017 Delaware *Register of Regulations*. It should be noted that the EPA provided the Department with comments related to the proposed SIP revisions via email on September 22, 2017 and October 4, 2017. These comments were offered by EPA in order to provide additional clarity to the Department's proposed SIP revisions. The Department incorporated EPA's comments into its proposed SIP revisions prior to the public hearing. The *revised* proposed SIP revisions were then presented and fully vetted at the public hearing of October 25, 2017.

Members of the public attended that hearing, but no public comment was received by the Department with regard to this matter. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated January 26, 2018 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the record, and recommends the adoption of the *revised* proposed SIP revisions as attached to the Report as Appendix "A".

### **Reasons and Conclusions**

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the *revised* proposed Delaware SIP document is well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the *revised* SIP document. The adoption of the *revised* SIP document will enable the Department to (1) provide certification that Delaware's Non-attainment New Source Review and Emissions Statement Programs meet all requirements of the 2008 ozone national ambient air quality standard; and (2) provide a negative declaration for emission sources specified in the oil and gas Control Techniques Guidelines issued by EPA.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its *revised* proposed SIP document, pursuant to 7 **Del.C.** Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting this *revised* proposed SIP document as final;

3. The Department provided adequate public notice of the *revised* proposed SIP document, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the *revised* proposed SIP document, including at the time of the public hearing held on October 25, 2017, and held the record open through close of business on November 10, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the aforementioned recommended *revised* proposed SIP document as set forth in Appendix "A", is hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of this *revised* proposed SIP document will enable the Department to (1) provide certification that Delaware's Non-attainment New Source Review and Emissions Statement Programs meet all requirements of the 2008 ozone national ambient air quality standard; and (2) provide a negative declaration for emission sources specified in the oil and gas Control Techniques Guidelines issued by EPA;

6. The Department's *revised* proposed SIP document, as published in the October 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final SIP document, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*; and

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

Shawn M. Garvin, Secretary

*Proposal*

**Delaware State Implementation Plan Revision  
Under the 2008 Ozone National Ambient Air Quality Standard**

**Certification of Delaware's Non-attainment New Source Review (NNSR) and Emissions Statement Programs**

**Submitted To**

**U.S. Environmental Protection Agency  
Submitted By**

**Delaware Department of Natural Resources and Environmental Control**

**September 12, 2017**

## 1. Introduction

On February 3, 2017 the EPA issued Findings of Failure to 15 states and the District of Columbia to submit certain required State Implementation Plan (SIP) elements for 2008 8-hour ozone standard nonattainment areas (82 FR 9158). According to EPA's action, Delaware failed to certify its Non-attainment New Source Review (NNSR) program for the Seaford, DE and Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas for the 2008 ozone National Ambient Air Quality Standards (NAAQS). **[EPA The Department of Natural Resources and Environmental Control]** further determined Delaware's Emissions Statement program **[must should]** also be certified for adequately addressing the 2008 ozone NAAQS.

## 2. Delaware Non-attainment Areas Designated Under the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

EPA final designations under the 2008 ozone NAAQS for Delaware counties were finalized in April 2012. EPA included New Castle County in the marginal Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area and established Sussex County as the stand-alone marginal Seaford nonattainment area.

On April 23, 2015, Delaware submitted the 2011 base year inventory of ozone precursors to EPA for New Castle and Sussex Counties. EPA issued a direct final rule approving Delaware's base year inventory on October 1, 2015. On April 12, 2015 Delaware submitted a RACT SIP revision certifying that Delaware, as part of the Ozone Transport Region, meets its obligation to establish RACT controls for VOC and NOx. On September 12, 2017, EPA published a proposal in the Federal Register (82 FR 42767) to approve Delaware's RACT SIP.

## 3. Certification of NNSR program

EPA previously approved a state-wide NNSR SIP revision on February 28, 2013 (78 FR 13496) which covered the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Seaford, DE nonattainment areas for the 2008 ozone NAAQS. **[Delaware has not subsequently amended the SIP approved NNSR program. The NNSR program in Delaware's approved SIP has not been amended.]** Upon review of the **[SIP-]**approved NNSR program, Delaware finds and certify that no changes are necessary to comply with the 2008 ozone NAAQS NNSR requirements. The State of Delaware is certifying that its existing NNSR program is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2008 National Ambient Air Quality Standard for Ozone: State Implementation Plan Requirements* (80 FR 12264, March 6, 2015). **[Note that the emission offset provisions of 7 DE Admin Code 1125 approved by EPA into Delaware's SIP on October 2, 2012 (77 FR 60053) continue to apply to DE sources in nonattainment areas. EPA did not approve into the SIP the provisions in 7 DE Admin Code 1125 that DE adopted on December 11, 2016. Thus the provisions in the approved DE SIP remain applicable requirements, and offsets can only be obtained from the expanded area identified in the December 11, 2016 adoption if the offsets also meet the provisions in the SIP (i.e., they are generated in an area of equal to or higher nonattainment classification, and they are shown to directly impact the nonattainment area where the**

**offsets are being used.])** The requirements necessary to appropriately implement Delaware's NNSR program are included in Table 1.

#### **4. Certification of Emission Statement Program**

Section 182(a)(3)(B) of the Clean Air Act (CAA) requires states with ozone nonattainment areas to develop emission statement programs for VOC and NO<sub>x</sub> sources. The required state program and associated regulation defines how states obtain emissions data directly from facilities and report it to the EPA. EPA approved Delaware's Emission Statement program on April 29, 1996 (61 FR 7415). The approved emission statement rule, in force for the 1997 ozone NAAQS and the 1-hour ozone NAAQS, covers all portions of Delaware's nonattainment areas for the 2008 ozone NAAQS, and is sufficient for purposes of the emissions statement requirements for the 2008 ozone NAAQS. Delaware has reviewed its previously approved emission statement rule and is certifying to EPA that it meets the emission statement requirements for the 2008 ozone NAAQS. The requirements necessary to appropriately implement Delaware's Emission Statement program are included in Table 1.

Table 1: 2008 Ozone NAAQS SIP Requirements	
Non-attainment New Source Review	
40 CFR 51.165	Delaware Requirements
(a)(1)(iv)(A)(1)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	7 DE Admin Code 1125 Section 2.2.
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	7 DE Admin Code 1125 Section 2.2.3.
(a)(1)(v)I: Significant net emissions increase of Nox is significant for ozone	7 DE Admin Code 1125 Section 1.9, Definitions – <b>“Major Modification”</b> .
(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	Not applicable since no Delaware nonattainment area is or has previously been designated as Extreme.
(a)(1)(x)(A)-(C) and I: Significant emissions rates for VOC and Nox as ozone precursors	7 DE Admin Code 1125 Section 1.9, Definitions – <b>“Significant”</b> .
(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits	7 DE Admin Code 1125 Section 2.5 <b>[as approved into Delaware’s SIP on October 2, 2012. These SIP-approved provisions continue to apply to Delaware sources in nonattainment areas].</b>
(a)(8): Requirements for VOC apply to Nox as ozone precursors	7 DE Admin Code 1125 Section 2.2.4.
(a)(9)(i)-(iii): Offset ratios for VOC and Nox for ozone nonattainment areas <i>[subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)]</i>	7 DE Admin Code 1125 Section 2.4.3.
(a)(12): Anti-backsliding provision(s), where applicable	Sources in Kent and New Castle Counties remain subject to requirements and major source thresholds based on the Severe designation for the 1-hour ozone standard. Sussex County remains subject to requirements and major source thresholds based on the Moderate designation as part of an ozone transport region.
Emission Statement Program	
CAA Section 182(a)(3)(B)	Delaware Requirements
182(a)(3)(B)(i) – Submit yearly	7 DE Admin Code 1117 Section 7.3. <b>[Annual emission statements due April 30 for the preceding calendar year.]</b>
182(a)(3)(B)(i) – Source certification	7 DE Admin Code 1117 Section 7.2. <b>[Certification statement contained on the Emission Statement to be signed by the Responsible Official.]</b>
182(a)(3)(B)(ii) – Reporting thresholds	7 DE Admin Code 1117 Section 7.1. <b>[Annual emissions of 25 tons/year of NOx or VOCs in nonattainment areas.]</b>

*Proposal***Delaware State Implementation Plan Revision  
Under the 2008 Ozone National Ambient Air Quality Standard****Negative Declaration for Emission Sources Specified in Oil and Gas Industry Control Technique  
Guidelines****Submittal To****U.S. Environmental Protection Agency****Submitted By****Delaware Department of Natural Resources and Environmental Control****September 2017****1. Introduction**

In October 2016, the US Environmental Protection Agency (EPA) issued the Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry (Reference 1, hereafter referred to as the 2016 Oil and Gas CTG). This document provides the states with ozone non-attainment areas and states in the Ozone Transport Region (OTR) a technical guideline for implementing controls to reduce volatile organic compound (VOC) emissions from leaks in the oil and natural gas production and processing industry.

Section 184 (b) of the Clean Air Act (CAA) requires states in the OTR, including Delaware, to revise their State Implementation Plans (SIP) to implement the CTG control techniques, as a Reasonably Available Control Technology (RACT) control measure, with respect to all covered sources of VOC emissions in the states. When a state confirms there are no applicable sources within its boundary, the revision to its SIP can be a negative declaration regarding the inapplicability of the CTG in the state, and therefore there is no need for implementing the CTG control (Reference 2).

This document is Delaware's negative declaration, as a SIP revision to its RACT SIP under the 2008 Ozone National Ambient Air Quality Standard (NAAQS) (Reference 3), regarding the 2016 Oil and Gas CTG. The agency with the direct responsibility for developing and submitting this SIP revision is Division of Air Quality (DAQ) within Delaware Department of Natural Resources and Environmental Control (the Department, or DNREC).

**2. Determination on Non-Existence of Relevant Sources**

The 2016 Oil and Gas CTG was developed to address VOC leaks in the oil and natural gas production and processing industry. Historically, and at present, Delaware has no facilities involved in industrial activities for oil and natural gas production and processing. Several facilities exist in Delaware for natural gas transmission and distribution only.

After issuing the 2016 Oil and Gas CTG, the EPA conducted an information collection request (ICR) of oil and gas facilities under the authority of section 114 of the Clean Air Act (CAA) to support the development of emission standards for existing oil and gas facilities under section 111 of the CAA. The EPA identified from its file three companies in Delaware that fell under the gas and oil segments: Penn-OK Corporation, Eastern Shore Natural Gas Company, and Delmarva Power & Lighting Company. The ICR was sent to all three companies and the Department in November 2016 and January 2017, respectively.

After receiving the ICR, the Department investigated the current status of the listed companies and their facilities, if any, in Delaware by either contacting the facilities or reviewing facility permit and emission files. The investigation has demonstrated the following.

(1) Penn-OK Corporation, identified in the ICR Part 1, was not recorded in Delaware's emission inventory. A search from Delaware Division of Corporations (DDC) found that this company was incorporated in Delaware in 1991 and closed on a later date (closing date unidentified, see Attachment 1). As shown in the DDC record, its location identified in the ICR (6 Fox Run Dr., Hockessin, DE 19707) was its registration agent's address. A further search in Google Map indicated that this address represented a single family house in a residential area.

(2) Eastern Shore Natural Gas Company, identified in the ICR Part 2, is not an oil or natural gas production and processing facility, but has two boosting stations (Permits#: APC-1996/0895-Operation, and APC-2005/0031-Construction/Operation) as part of the local natural gas transmission and distribution system. Upon request, the company provided the Department its status regarding the 2016 Oil and Gas CTG RACT summary sheet (see Attachment 2).

(3) Delmarva Power & Light Company in Wilmington, identified in the ICR Part 2, does not have any oil or natural gas production and processing facilities in Delaware. As shown in its permit file (Permit#: APC-2009/0002-Construction/Operation), the company has a natural gas distribution facility which stores liquefied natural gas and vaporizes/distributes it to the distributing system on peak-demand days.

In addition, the Department reviewed its air permits, emissions inventory files and Delaware business listings, and found no other facilities in Delaware that are currently involved in oil and gas production and processing activities.

### 3. Negative Declaration

Delaware hereby declares that it does not have any facility that has sources being covered by the 2016 Oil and Gas CTG. Therefore, a new Oil and Gas RACT rule will not be developed and incorporated into Delaware's RACT SIP under the 2008 ozone NAAQS. Delaware's RACT SIP under the 2008 ozone NAAQS (Reference 3) is still valid and sufficient.

### References

1. Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16-001, US Environmental Protection Agency, October 2016. <https://www.epa.gov/sites/production/files/2016-10/documents/2016-ctg-oil-and-gas.pdf>
2. The 2016 Oil and Gas CTG link: <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/2016-control-techniques-guidelines-oil-and>
3. Delaware Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) under the 2008 Ozone National Ambient Air Quality Standard (NAAQS), submittal to EPA by Delaware Department of Natural Resources and Environmental Control, effective August 2014.

### Attachment 1

Status of Peen-OK Corporation

Search result from Del. Division of Corporation search: The facility closed.

# GENERAL NOTICES

From: <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>

## Entity Details

<a href="#">File Number:</a>	2266643	<a href="#">Incorporation Date / Formation Date:</a>	6/24/1991 (mm/dd/yyyy)
<a href="#">Entity Name:</a>	PENN-OK CORPORATION		
<a href="#">Entity Kind:</a>	Corporation	<a href="#">Entity Type:</a>	Closed Corp
<a href="#">Residency:</a>	Domestic	State:	DELAWARE

## REGISTERED AGENT INFORMATION

Name:	SCOTT S. MALONEY		
Address:	6 FOX RUN DRIVE		
City:	HOCKESSIN	County:	New Castle
State:	DE	Postal Code:	19707
Phone:			

### Attachment 2

Facility information provided by Eastern Shore Natural Gas (ESNG) Company upon the Department request.

Final VOC Control Techniques Guidelines for the Oil and Natural Gas Industry Summary of RACT Recommendations for Ozone Nonattainment Areas Classified as "Moderate" and Above, and States in the Ozone Transport Region  <i>NOTE: Please read the <a href="#">CTG</a> for additional detail.</i>	
Sources Covered	Reasonably Available Control Technology (RACT) Recommendation
<b>Storage Tanks</b>	
<ul style="list-style-type: none"> <li>Individual storage tanks with a potential to emit (PTE) <math>\geq</math> 6 tons per year (tpy) of VOCs.</li> </ul>	<p>ESNG does not have any large storage tanks. A few small tanks are used to temporarily contain waste oil from engine oil changes and/or any liquids captured by pipeline filtration and liquid separation vessels that is then collected for recycling. These tanks have a maximum capacity of 500 gallons each.</p> <p style="text-align: right; font-size: small;">emissions remain below 4 tpy.</p>
<b>Pneumatic Controllers</b>	
<ul style="list-style-type: none"> <li>Individual continuous bleed, natural gas-driven pneumatic controller at a natural gas processing plant.</li> </ul>	<ul style="list-style-type: none"> <li>Natural gas bleed rate of zero standard cubic feet per minute (scfm) for safety and positive actuation that require higher bleed rate.</li> </ul> <p>ESNG does not operate any natural gas processing plants.</p>
<ul style="list-style-type: none"> <li>Individual continuous bleed natural gas-driven pneumatic controller located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline.</li> </ul>	<p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p>
<b>Pneumatic Pumps</b>	
<ul style="list-style-type: none"> <li>Individual natural gas-driven diaphragm pump located at a natural gas processing plant.</li> </ul>	<ul style="list-style-type: none"> <li>Require routing of VOC emissions from the pump to an existing onsite control device/process.</li> <li>Require 95% control, unless the onsite existing control device/process is not available.</li> </ul> <p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p>
<ul style="list-style-type: none"> <li>Individual natural gas-driven diaphragm pump located at a well site.</li> </ul>	<ul style="list-style-type: none"> <li>Maintain records if there is no existing control device at the location of the pump.</li> </ul> <p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p>
<ul style="list-style-type: none"> <li>Individual natural gas-driven diaphragm pump located at a well site that is in operation for any period of time each calendar day for less than a total of 90 days per calendar year.</li> </ul>	<p>Not covered; RACT would not apply.</p> <p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p>

# GENERAL NOTICES

Final VOC Control Techniques Guidelines for the Oil and Natural Gas Industry Summary of Recommendations, cont.	
Sources Covered	Reasonably Available Control Technology (RACT) Recommendation
<b>Compressors (Centrifugal &amp; Reciprocating)</b>	
<ul style="list-style-type: none"> <li>Individual reciprocating compressor located between the wellhead and point of custody transfer to the natural gas transmission and storage segment.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site.</li> </ul>	<ul style="list-style-type: none"> <li>operation or 36 months since the most recent rod</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual centrifugal compressor using wet seals that is located between the wellhead and point of custody transfer to the natural gas transmission and storage segment.</li> </ul>	<ul style="list-style-type: none"> <li>Not covered; RACT would not apply.</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual centrifugal compressor using wet seals located at a well site, or an adjacent well site and serving more than one well site.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual centrifugal compressor using dry seals</li> </ul>	<ul style="list-style-type: none"> <li>ESNG operates reciprocation compressors, not centrifugal.</li> </ul>
<b>Leaks (Equipment Leaks and Fugitive Emissions)</b>	
<ul style="list-style-type: none"> <li>Equipment leaks from components in VOC service located at a natural gas processing plant.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Fugitive emissions (leaks) from individual well sites with wells with a gas-to-oil ratio (GOR) <math>\geq 300</math> that produce, on average, &gt; 15 barrel of oil equivalents (boe) per well per day.</li> </ul>	<ul style="list-style-type: none"> <li>Develop and implement semiannual optical gas imaging (OGI) monitoring of wellhead and processing area.</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Fugitive emissions (leaks) at individual gathering &amp; boosting stations located from the wellhead to the point of custody transfer to the natural gas transmission and storage segment, or an oil pipeline.</li> </ul>	<ul style="list-style-type: none"> <li>Develop and implement OGI monitoring and repair emission station</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> <li>Method 500 ppm repair threshold.</li> </ul>

**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, March 15, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

---

**DEPARTMENT OF INSURANCE**  
**OFFICE OF THE COMMISSIONER**  
**PUBLIC NOTICE****303 Supplement to Annual Statement of Property or Casualty Insurers**

The Department of Insurance (Department) hereby gives notice of the proposed repeal of existing Regulation 303 Supplement to Annual Statement of Property or Casualty Insurers.

The underlying statute at 18 **Del.C.** §526A(a) requires as follows:

Each insurer licensed to write property or casualty insurance in this State, as a supplement to Schedule T of its annual statement, shall submit a report on a form furnished by the Commissioner showing its direct writings and experience, prior to reinsurance, in this State and the United States. All such writings and experience shall be required on a line-by-line basis both for the State and in total, and where appropriate, on a subline-by-subline basis.

However, the statute also provides that, "The Commissioner may waive, modify or defer the requirements of this section if he or she determines the information required under this section to be reported is not needed." See 18 **Del.C.** §526A(h).

Regulation 303 implements 18 **Del.C.** §526A by setting forth the information that is to be reported in the supplement to the statement that property and casualty insurers are required to file annually. The Department has determined that the information required by Regulation 303 is not needed, and has therefore determined to repeal Regulation 303, as permitted by 18 **Del.C.** §526A(h).

The Department does not plan to hold a public hearing on the proposed repeal. The text of the regulation to be repealed appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department's docket number is DOI Docket No. 3711-2018.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day of April, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
DOI Docket No. 3711- 2018  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

---

---

# CALENDAR OF EVENTS/HEARING NOTICES

---

**DEPARTMENT OF JUSTICE**  
**VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL**  
**PUBLIC NOTICE**  
**301 Victims' Compensation Assistance Program Rules and Regulations**

The Department of Justice Victims' Compensation Assistance Program (VCAP) proposes to add Rule 24.5 to help provide the agency with the assurance that the victims it serves are receiving appropriate care by appropriately supervised therapists. The VCAP Advisory Council determined that this was an appropriate balance to ensure that all victims are able to access mental health services and that if those mental health services are provided by unlicensed therapists, that those individuals are sufficiently supervised. VCAP further proposes to add Rule 29.4 regarding victims who have Medicaid or Medicare benefits. If the victim's chosen provider is not paneled with Medicaid or Medicare, VCAP will only pay the provider at the rate that Medicaid or Medicare would pay. A payment at this rate shall be payment in full. The VCAP Advisory Council determined that this enables VCAP to control costs and ensure that the victims it serves are able to see providers of their choice for their health or mental health care needs.

Interested persons may submit comments in writing to Andrea Godfrey, Deputy Chief of Staff, Delaware Department of Justice, 820 N. French St., 6th Floor, Wilmington, DE or [andrea.godfrey@state.de.us](mailto:andrea.godfrey@state.de.us). The comment period will close on April 2, 2018.

---

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE**  
**PUBLIC NOTICE**  
**1300 Board of Examiners of Private Investigators & Private Security Agencies**

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rules in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 3.0 Nightstick, PR24, Mace, Peppergas and Handcuffs; Rule 11.0 Personnel Rosters and Job Assignments. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by April 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, April 12, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

---

**DIVISION OF STATE POLICE**  
**PUBLIC NOTICE**  
**2400 Board of Examiners of Constables**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 1.0 Licensing; Rule 6.0 Baton, Nightstick, PR24, Chemical Spray, and Handcuffs; Rule 8.0 Canine; Rule 9.0 Minimum Training Standards and In-Service Training. If you wish to view the complete Rules, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by April 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting Thursday, May 24, 2018, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

**DIVISION OF STATE POLICE**  
**PUBLIC NOTICE**  
**5500 Bail Enforcement Agents**

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rules in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 5.0 Baton, Nightstick, PR24, Chemical Spray, and Handcuffs. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by April 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, May 17, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

---

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE**  
**PUBLIC NOTICE**

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 **Del.C.** §§1713(a)(12) & 1769D, proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 2, 2018.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** § 1775(c), the Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline has proposed revisions to its regulations. Section 9.0 has been revised to clarify and streamline the licensure application process. A new Section 10.0 adds a "Duty to Update Address" requirement for all licensees. Subsection 10.2 is stricken as it is encompassed by the new Section 10.0.

A public hearing will be held on April 11, 2018 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 26, 2018. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**1795 MIDWIFERY ADVISORY COUNCIL**  
**PUBLIC NOTICE**

The Midwifery Advisory Council, pursuant to 24 **Del.C.** §1799HH(c), proposes to adopt the following regulation governing the practice of midwifery in the State of Delaware. The new regulation establishes that records requested must be provided within 30 days from the closure of the record or the assembly of a complete record.

The Council will hold a public hearing on the proposed regulation change on April 16, 2018 at 10:00 a.m., Second Floor, Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Devashree Brittingham, Executive Director of the Delaware Midwifery Advisory Council, Cannon

---

## CALENDAR OF EVENTS/HEARING NOTICES

---

Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 2, 2018 pursuant to 29 **Del.C.** §10118(a).

---

**DIVISION OF PROFESSIONAL REGULATION**  
**2100 BOARD OF EXAMINERS IN OPTOMETRY**  
**PUBLIC NOTICE**

The Delaware Board of Examiners in Optometry, pursuant to 24 **Del.C.** §2104(a)(1), proposes to revise its regulations. The proposed regulations seek to clarify and provide more detailed information regarding the use of telehealth services for the provision of optometry services.

The Board will hold a public hearing on the proposed rule change on April 12, 2018 at 4:30 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Lisa Smith, Administrator of the Delaware Board of Examiners in Optometry, Cannon Building, 861 Silver Lake Blvd, Dover, DE 19904. Written comments will be accepted until April 27, 2018.

---

**DIVISION OF PROFESSIONAL REGULATION**  
**CONTROLLED SUBSTANCE ADVISORY COMMITTEE**  
**PUBLIC NOTICE**  
**Uniform Controlled Substances Act Regulations**

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee ("Committee") has proposed revisions to its rules and regulations. Section 1.0 addresses the composition and operation of the Committee. This Section has been revised to state that Committee members may serve up to three terms of three years each. Further proposed changes specify that Committee officers may serve for up to two one year terms, and all Committee members are appointed by the Secretary of State. Subsection 1.7, pertaining to quorum, currently provides that in disciplinary matters, at least one member of the quorum must be from the same profession as the practitioner who is the subject of the proceeding. This requirement can pose significant difficulties in hearing disciplinary matters in the event that a Committee member has a conflict requiring recusal. In that scenario, the Committee may be precluded from taking action with the result that a registrant who has violated laws and regulations pertaining to controlled substances may be insulated from discipline. The Committee has proposed that Section 1.7 be revised to remove this problematic language.

A public hearing will be held on March 28, 2018 at 9:00 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Christine Mast, Administrative Specialist for the Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be April 12, 2018, which is 15 days following the public hearing. The Committee will deliberate on the proposed revisions at its next regularly scheduled meeting.

---

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF PLANNING AND POLICY**  
**PUBLIC NOTICE**  
**2309 Development Coordination Manual**

Pursuant to the authority provided by 17 **Del.C.** §§132(e), 507, and 508, as well as 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT) adopted the Development Coordination Manual.

The Department, through its Division of Planning and Public Policy, seeks to adopt general revisions to its existing regulations, the Development Coordination Manual, to address procedural changes, add or modify technical requirements and clarify and amend design criteria. These collective changes are both technical and administrative in nature and serve in part to clarify the intent of the Department as enacted through these

regulations.

DelDOT will take written comments on these proposed general revisions to Section 2309 of Title 2, Delaware Administrative Code, from March 1, 2018 through April 2, 2018. The public may submit their comments to:

Marc Coté, P.E., Assistant Director, Planning Development Coordination via email

([Marc.Cote@state.de.us](mailto:Marc.Cote@state.de.us)) or in writing to his attention,

Division of Planning

Delaware Department of Transportation

P.O. Box 778

Dover, DE 19903

---

**DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****2402 Delaware Manual on Uniform Traffic Control Devices**

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from March 1, 2018 through April 2, 2018. Copies of the Draft Delaware MUTCD Revisions can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/>

Questions or comments regarding these proposed changes should be directed to: Mark Luszcz, P.E., PTOE, Chief Traffic Engineer, Traffic Section, Division of Transportation Solutions, Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-4062 (telephone) (302) 653-2859 (fax) [mark.luszcz@state.de.us](mailto:mark.luszcz@state.de.us)

---