
Delaware Register of Regulations

Issue Date: November 1, 2020

Volume 24 - Issue 5, Pages 420 - 505



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Emergency
Proposed
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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before October 15, 2020.

Silver Lake
Dover, Delaware

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

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

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

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

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

WHEREAS, pursuant to 14 **Del.C.** §301, DIAA was established, in part, to preserve and promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles; and

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

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

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

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

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

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

WHEREAS, on June 30, 2020, the State Board of Education approved the adoption of the Emergency Regulation and the Emergency Regulation went into effect on July 1, 2020.

WHEREAS, on July 15, 2020, the DOE released the State's guidance for reopening schools for the 2020-2021 school year, which outlines requirements for schools under three scenarios: if minimal community spread exists in the State (and school buildings are open), if minimal-to-moderate community spread exists in the State (situation dependent), and if significant community spread exists in the State (and school buildings are closed).

WHEREAS, on August 4, 2020, the State determined that minimal-to-moderate community spread exists and, as a result, schools could reopen for the 2020-2021 school year using a hybrid model of remote instruction and in-person learning options with precautions in place.

WHEREAS, on August 6, 2020, the DIAA Board of Directors determined that amendments to the Emergency Regulation were necessary to promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the amendments to the Emergency Regulation to the Department of Education, subject to the State Board of Education's approval, occur on an emergency basis;

WHEREAS, on August 14, 2020, the State Board of Education approved amendments to the Emergency Regulation that immediately went into effect;

WHEREAS, on September 1, 2020, the Governor issued the Twenty-Sixth Modification of the State of Emergency Order, which provides mandated terms for the operation of youth sports facilities, organizations, and leagues, effective September 2, 2020 at 8:00 a.m. E.D.T.; and

WHEREAS, on September 3, 2020, the Governor issued the Twenty-Seventh Modification of the State of Emergency Order, which consolidates prior Modifications related to the State of Emergency into one Modification and includes mandated terms for the operation of youth sports facilities, organizations, and leagues; and

WHEREAS, on September 10, 2020, the DIAA Board of Directors determined that further amendments to the Emergency Regulation were necessary to promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles during the State of Emergency and proposed that the adoption of the amendments to the Emergency Regulation to the Department of Education, subject to the State Board of Education's approval, occur on an emergency basis;

WHEREAS, on September 17, 2020 the State Board of Education approved amendments to the Emergency Regulation that immediately went into effect;

WHEREAS, on October 8, 2020 and October 15, 2020, the DIAA Board of Directors determined that further amendments, the majority of which are non-substantive, and renewing the Emergency Regulation was necessary to promote the educational significance of interscholastic athletics, provide for fair competition between member schools, protect the physical well-being of student athletes, and promote healthy adolescent lifestyles during the State of Emergency. The DIAA Board of Directors proposed that the amendments be adopted, effective immediately, and the Emergency Regulation be renewed, effective October 30, 2020 for a period of 60 days or until 14 **DE Admin. Code** 1011 goes into effect, whichever is sooner, to the Department of Education, subject to the State Board of Education's approval;

WHEREAS, in accordance with 29 **Del.C.** §10119(4), the DIAA Board of Directors will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency

Regulation by addressing the petitions to the attention of the DIAA Board of Directors, Delaware Department of Education, 35 Commerce Way, Suite 1, Dover, DE 19904 or emailing the petitions to DIAA@doe.k12.de.us.

WHEREAS, in accordance with 29 **Del.C.** §10119(3), the Emergency Regulation shall be effective for 120 days from July 1, 2020 and may be renewed once for a period not exceeding 60 days; and

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

NOW, THEREFORE, IT IS ORDERED this 15th day of October, 2020 that the following amendments to the Emergency Regulation, Interscholastic Athletics during the COVID-19 Pandemic, attached hereto as Exhibit A shall take effect immediately.

IT IS FURTHER ORDERED that effective October 30, 2020, the Emergency Regulation shall be renewed for a period of 60 days or until 14 **DE Admin. Code** 1011 goes into effect, whichever is sooner and, that during this extension period, DIAA Board of Directors will engage in deliberate and ongoing discussions with member schools concerning any unintended inequitable impacts of the Emergency Regulation including funding, transportation, and implementing COVID-19 protections with respect to social distancing.

IT IS SO ORDERED the 15th day of October, 2020

Department of Education

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

Approved this 15th day of October, 2020.

State Board of Education

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

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

Exhibit A

**1010 Interscholastic Athletics during the COVID-19 Pandemic
(Break in Continuity of Sections)**

3.0 Pre-Participation Physical Examination

(Break in Continuity Within Section)

3.2 Returning Student Athletes Who Obtained a Physical for the 2020-2021 School Year

(Break in Continuity Within Section)

3.2.2 The student athlete is not required to submit a completed 2020-2021 PPE Form unless the student athlete requires a Reexamination. A student athlete who is determined by the Qualified Healthcare Professional or is required to wear a mask and has a history of a cardiac or respiratory disorder or sickle cell trait, shall obtain medical clearance by a doctor (MD or DO), ~~school nurse~~, nurse practitioner, or physician assistant prior to participation in interscholastic athletic activities.

3.3 Returning Student Athletes Who Have Not Obtained a Physical for the 2020-2021 School Year

3.3.1 Returning Middle School Student Athletes - Notwithstanding subsection 3.1.1 of 14 **DE Admin. Code** 1008, a Member School's Qualified Healthcare Professional shall review a student athlete's

2020-2021 History Form and Athlete Medical Card to determine if the student athlete is required to obtain a physical and evaluation before participating in interscholastic athletic activities at the middle school level during the 2020-2021 school year if the student athlete had a valid pre-participation physical evaluation during the 2019-2020 school year and does not require a Reexamination. If the Qualified Healthcare Professional determines that a student athlete is not required to obtain a physical and evaluation before participating, the student athlete shall obtain a physical and evaluation and submit the completed 2020-2021 PPE Form by December 31, 2020 in order to continue being eligible to participate.

3.3.1.1 Subsection 3.3.1 shall not apply to a student athlete who is required to wear a mask and has a history of a cardiac or respiratory disorder, sickle cell trait, or being diagnosed with COVID-19. The student athlete shall obtain medical clearance by a doctor (MD or DO), ~~school nurse~~, nurse practitioner, or physician assistant prior to participation in interscholastic athletic activities.

3.3.2 Returning High School Student Athletes - Notwithstanding subsection 3.1.1 of 14 **DE Admin. Code** 1009, a Member School's Qualified Healthcare Professional shall review a student athlete's 2020-2021 History Form and Athlete Medical Card to determine if the student athlete is required to obtain a physical and evaluation before participating in interscholastic athletic activities at the high school level during the 2020-2021 school year if the student athlete had a valid pre-participation physical evaluation during the 2019-2020 school year and does not require a Reexamination. If the Qualified Healthcare Professional determines that a student athlete is not required to obtain a physical and evaluation before participating, the student athlete shall obtain a physical and evaluation and submit the completed 2020-2021 PPE Form by December 31, 2020 in order to continue being eligible to participate.

3.3.2.1 Subsection 3.3.2 shall not apply to a student athlete who is required to wear a mask and has a history of a cardiac or respiratory disorder, sickle cell trait, or being diagnosed with COVID-19. The student athlete shall obtain medical clearance by a doctor (MD or DO), ~~school nurse~~, nurse practitioner, or physician assistant prior to participation in interscholastic athletic activities.

4.0 Suspension of Interscholastic Athletic Activities and DIAA Return to Play Stages

(Break in Continuity Within Section)

4.5 If subsection 4.3 or 4.4 applies, the Board shall determine the applicable DIAA Return to Play Stage for Member Schools that choose to have Interscholastic Athletics.

(Break in Continuity Within Section)

4.5.3 Requirements That Apply to DIAA Return to Play Stages 1, 2, 3, and 4

(Break in Continuity Within Section)

4.5.3.2 Member Schools shall perform screenings for COVID-19 symptoms before every activity, including team meetings.

(Break in Continuity Within Section)

4.5.3.2.4 A student athlete who tests positive for COVID-19 shall obtain medical clearance from a doctor (MD or DO), ~~school nurse~~, nurse practitioner, or physician assistant and submit a completed DIAA COVID-19 Return to Play form to the student athlete's Member School in order to resume participating in any interscholastic athletic activities.

(Break in Continuity Within Section)

4.5.7 DIAA Return to Play Stage 4 – During DIAA Return to Play Stage 4, Workouts and Practices, Scrimmages, and Competitions in all sports are permitted subject to the limitations in subsection 4.5.6.6. Play Days and Tournament events are permitted provided the plans have been approved by the Delaware Division of Public Health. Conditioning Programs and Open Gym Programs (indoors and outdoors) are permitted.

(Break in Continuity Within Section)

4.5.7.8 Notwithstanding subsections 7.6.1 and 7.6.1.3 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009, if the Board determines DIAA Return to Play Stage ~~4~~ is applicable, a certified, emergency, or volunteer coach may provide instruction out of the designated season in his or her assigned sport to any student registered in the school at which he or she coaches, including providing instruction or coaching during the designated season in his or her sport to current members of the varsity or subvarsity teams of the school at which he or she coaches outside of school-sponsored Practices, Scrimmages, and Competitions, subject to the conditions in subsection 7.6.1.1 and 7.6.1.2 of 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and for the fall sports in subsection 5.5.1 only.

5.0 2020-2021 Fall, Winter, and Spring Sports Seasons and Sport-Specific Requirements

(Break in Continuity Within Section)

5.6 Sport-Specific Requirements

5.6.1 In addition to the requirements for the applicable DIAA Return to Play Stage set forth in subsection 4.5, the following sport-specific requirements shall apply.

(Break in Continuity Within Section)

5.6.1.15 Volleyball

5.6.1.15.1 Student athletes shall wear a face covering at all times.

~~5.6.1.15.2 Breaks of at least two minutes during which student athletes remove their face coverings while maintaining a distance of six feet from others shall be taken every 20 minutes during Practices, Scrimmages, and Competitions.~~

~~5.6.1.15.3~~ 5.6.1.15.2 The pre-game conference shall be held in the center of the court area designated by the officials and attendees shall be limited to the plate umpire, officials and the head coach from each team, and one captain from each team.

~~5.6.1.15.4~~ 5.6.1.15.3 The Board may mandate additional sport-specific requirements to protect the physical well-being of student athletes.

5.6.1.16 Wrestling

5.6.1.16.1 Member Schools shall follow the requirements in the plan for wrestling that is approved by the Board prior to the start of the winter season. The plan shall include rules modifications and sport-specific requirements that are designed to protect the physical well-being of student athletes.

5.6.1.16.2 Student athletes shall wear face coverings at all times unless the plan includes rules changes or face covering modifications to prevent student athletes from being in close proximity or direct contact with one another that have been approved by the Delaware Division of Public Health.

5.6.1.16.3 The Board may mandate additional sport-specific requirements to protect the physical well-being of student athletes.

6.0 Effective Date

This regulation shall be effective on July 1, 2020 and shall be in effect for 120 days unless it is renewed, amended, or repealed. Effective October 30, 2020, this regulation shall be renewed for a period of 60 days or until 14 DE Admin. Code 1011 goes into effect, whichever is sooner. The amendments to this regulation shall be effective upon the signing of the Emergency Order on ~~September 17, 2020~~ October 15, 2020 and shall not affect the 120-day period this regulation is in effect or the renewal period.

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

1010 Interscholastic Athletics during the COVID-19 Pandemic

EMERGENCY REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504, and 29 Delaware Code, Section 10119 (16 **Del.C.** §§122(3)(a) and 504 & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4202

EMERGENCY SECRETARY'S ORDER**4202 Control of Communicable and Other Disease Conditions**

Pursuant to 16 Del.C. §§ 122(3)(a) and 504, 29 Del.C. § 10119, and Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat

16 DE Admin Code 4202: *Control of Communicable and Other Disease Conditions*

AUTHORITY

Pursuant to 16 *Del.C.* §§ 122(3)(a) and 504, 29 *Del.C.* §10119, and Paragraph A(7) of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat ("Governor's Emergency Declaration,"), the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 DE Admin. C. 4202: *Control of Communicable and Other Disease Conditions*. Additionally, 29 *Del.C.* §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* §10115. Moreover, 16 *Del.C.* §§ 122(3)(a) and 504 authorize the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health and to declare any disease a notifiable disease.

REASON FOR THE EMERGENCY ORDER

The Department of Health and Social Services issued an order on March 10, 2020 requiring all laboratories and providers to immediately report all SARS-CoV-2/COVID-19 tests and results to the Division of Public Health. While the existing *Control of Communicable and Other Disease Conditions* regulations specify that Severe Acute Respiratory Syndrome (SARS) is a notifiable disease/condition, under which SARS-CoV-2/COVID-19 falls, this Emergency Order clarifies that all novel coronavirus causing severe acute respiratory disease, including the 2019 novel coronavirus disease COVID-19, are considered notifiable and are required to be reported to the Division of Public Health in accordance with these regulations.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 *DE Admin. C.* 4202: *Control of Communicable and Other Disease Conditions*, specifically, Appendix I, which lists notifiable disease/conditions, is temporarily modified as shown by underline as follows:

Coronavirus, novel (novel coronavirus causing severe acute respiratory disease including the 2019 novel coronavirus disease [COVID-19], severe acute respiratory syndrome-associated coronavirus disease [SARS-CoV], and Middle East Respiratory Syndrome [MERS-CoV])

The Emergency Order shall take effect on October 1, 2020 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal Street, Dover, DE 19901, by email to Alanna.Mozeik@Delaware.gov, or by fax to 302-744-5361.

ORDER

It is hereby ordered, this 30th day of September 2020, that the above referenced amendment to 16 *DE Admin. C. 4202: Control of Communicable and Other Disease Conditions*, a copy of which is hereby attached, is adopted, pursuant to the Governor's Emergency Declaration, 16 *Del.C. §122(3)(a)*, and 29 *Del.C. §10119*, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik
Cabinet Secretary

**4202 Control of Communicable and Other Disease Conditions
(Break in Continuity of Sections)**

**APPENDIX I
State of Delaware - List of Notifiable Diseases/Conditions**

List of Notifiable Diseases/Conditions	
AIDS (S)	Amoebiasis
Anthrax (T)	Arboviral human infections (including West Nile Virus, Eastern Equine Encephalitis, etc.)
Babesiosis	Botulism (T)
Brucellosis (T)	Campylobacteriosis
Chickenpox (Varicella)	Chancroid (S)
Cholera (toxigenic <i>Vibrio cholerae</i> 01 or 0139) (T)	Chlamydia (S)
Creutzfeldt-Jakob Disease (T)	Coccidioidomycosis
Cyclosporiasis	Cryptosporidiosis
Dengue Fever (T)	Cytomegalovirus (neonatal only)
Enterohemorrhagic <i>E.coli</i> including but not limited to <i>E.coli</i> 0157:H7 (T)	Diphtheria (T)
Encephalitis	Ehrlichiosis
Enterococcus species,(Vancomycin resistant-invasive only) (A)	Enterobacteriaceae, carbapenem- resistant (invasive or urine only)(A)
ESBL resistance (Extended-Spectrum B-lactamases-invasive only) (A)	Foodborne Disease Outbreak (T)
Giardiasis	Glanders (T)
Gonorrhoea (S)	Granuloma inguinale (S)
	Hansen's Disease (Leprosy)
Guillain-Barre	Haemophilus influenzae, invasive
Hantavirus (T)	Hepatitis A (T)
Hemolytic Uremic Syndrome (T)	Hepatitis C
Hepatitis B	Herpes, congenital (S)
Hepatitis Other	Histoplasmosis
Herpes, genital (S)	Human Papillomavirus (S)
HIV (S)	Influenza Associated Mortality (T)

Influenza	Lead Poisoning
Kawasaki Syndrome	Leptospirosis
Legionellosis	Lyme Disease
Listeriosis	Malaria
Lymphogranuloma venereum (S)	Melioidosis
Measles (T)	Meningococcal Infections, invasive only (T)
Meningitis	Mumps (T)
Monkey Pox (T)	Nosocomial (Healthcare Associated) Disease Outbreak (T)
Norovirus	Pertussis (T)
Pelvic Inflammatory Disease (N. gonorrhoea, C. trachomatis, or unspecified) (S)	Poliomyelitis (T)
Plague (T)	Q Fever
Psittacosis	Reye Syndrome
Rabies (man and animal) (T)	Ricin Toxin (T)
Rheumatic Fever	Rocky Mountain Spotted Fever
Rickettsial Disease	Rubella, congenital (T)
Rubella (including congenital which is rapidly reportable)	Severe Acute Respiratory Syndrome (SARS) Coronavirus, novel (novel coronavirus causing severe acute respiratory disease including the 2019 novel coronavirus disease [COVID-19], severe acute respiratory syndrome-associated coronavirus disease [SARS-CoV], and Middle East Respiratory Syndrome [MERS-CoV]) (T)
Salmonellosis	Shigellosis
Shiga Toxin Production	Smallpox (T)
Silicosis	Staphylococcal aureus, Methicillin Resistant-invasive only (MRSA) (A)
Staphylococcal Enterotoxin (T)	Streptococcal Disease, invasive group A or B (T)
Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T)	Syphilis (S)
Streptococcus pneumoniae, invasive (sensitive and resistant) (A)	Toxic Shock Syndrome (Streptococcal or Staphylococcal)
Tetanus (T)	Trichinellosis
Toxoplasmosis	Tularemia (T)
Tuberculosis (T)	Typhus Fever (endemic flea borne, louse borne, tick borne)
Typhoid Fever (T)	Vibrio, non-cholera
Vaccine Adverse Reaction	Waterborne Disease Outbreaks (T)
Viral Hemorrhagic Fevers (T)	Yersiniosis
Yellow Fever (T)	

(T) - report by rapid means (telephone, fax or other electronic means)

(S) - sexually transmitted disease, report required within 24 hours

(A) - Drug Resistant Organisms required to be reported within 48 hours

Others - report required within 48 hours

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

4202 Control of Communicable and Other Disease Conditions

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**Statutory Authority: 3 Delaware Code, Sections 904(b) (3 **Del.C.** §904(b))**3 DE Admin. Code 702****PUBLIC NOTICE****702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program****SUMMARY**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 9, Section 904(b)(20) and (21), the Agricultural Lands Preservation Foundation (the "Foundation") is proposing amendments to regulations governing the Delaware Agricultural Forestlands Preservation Program.

The regulations are being revised to create a more efficient and flexible application and appraisal process by eliminating the references to unnecessary form information and review procedures. The revisions also eliminate the bonus for properties located in a State Resource Area (SRA) and replace it with a bonus for properties located in a Forest Legacy Area (FLA). Other changes are typographical.

COMMENTS

A copy of the proposed regulations is being published in the November 1, 2020 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 S Dupont Hwy, Dover, Delaware 19901, and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml.

A virtual public hearing will be held on November 24, 2020 at 10:00 a.m. via Zoom. Members of the public may join using the link: <https://us02web.zoom.us/j/83411172427>, with the mobile app: Meeting ID: 834 1117 2427, or by call in (voice only): 646-558-8656. Persons wishing to submit written comments may forward these to the Foundation at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written

comments will be December 9, 2020, which is 15 days following the public hearing. The Board will deliberate on all the public comments at its regularly scheduled meeting.

***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/november2020/proposed/24 DE Reg 437RFA 11-01-20.pdf>

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

702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program

DELAWARE FOREST SERVICE

Statutory Authority: 3 Delaware Code, Section 1011, and 29 Delaware Code, Section 8103(8)
(3 Del.C. §1011 & 29 Del.C. §8103(8))
3 DE Admin. Code 402

PUBLIC NOTICE

402 State Forest Regulations

1. TITLE OF THE REGULATIONS: 3 DE Admin. Code 402 State Forest Regulations
2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:
3 DE Admin. Code 402 State Forest Regulations are being proposed for amendment to comply with current practices and agency procedures. These regulation changes are for the following sections: 5.0 General Rules and Regulations, 7.0 Camping Rules and Regulations, 8.0 Hunting Rules and Regulations, and 9.0 Forest Use Permits.
3. POSSIBLE TERMS OF THE AGENCY ACTION:
None
4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:
These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for the Delaware Department of Agriculture to promulgate necessary regulations to protect forest lands, 3 Del.C. §1011, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;" 29 Del.C. §8103(8).
5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:
None
6. NOTICE OF PUBLIC COMMENT:
Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Department of Agriculture, Forest Service, 2320 S DuPont Hwy, Dover Delaware 19901 or by email to Kyle.Hoyd@Delaware.gov by 4:30 p.m. on December 1, 2020. Please identify in the subject line: 2020 State Forest Regulation Changes.
7. PREPARED BY: Kyle Hoyd
Assistant Forestry Administrator
Delaware Department of Agriculture
Forest Service

2320 S. DuPont Highway, Dover, DE 19901
Phone: 302-698-4548 Fax: 302-697-6287
E-mail: Kyle.Hoyd@Delaware.gov

***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/november2020/proposed/24 DE Reg 438RFA 11-01-20.pdf>

402 State Forest Regulations

1.0 Authority

These regulations are promulgated pursuant to the delegation of authority to the Department of Agriculture by the General Assembly found in 3 **Del.C.** Sections 1008 and 1011.

2.0 Purpose

The State Forests of Delaware are open to members of the public for their enjoyment. Most legal forms of non-motorized recreation are permitted. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

3.0 Construction

- 3.1 No regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state, county, or municipal agencies from completing official duties or emergency response.
- 3.2 In special circumstances, events, or emergencies, the Secretary or Forestry Administrator may, when it is deemed to be in the public interest, waive a specific regulation or fee.
- 3.3 Failure to enforce a specific regulation at a particular instance or instances shall not affect the validity of any other regulation or affect the validity of such regulation at any other time.

4.0 Definitions

- 4.1 **"Department"** is the Delaware Department of Agriculture
- 4.2 **"DFS"** is the Delaware Forest Service
- 4.3 **"DNREC"** is the Delaware Department of Natural Resources and Environmental Control
- 4.4 **"Secretary"** is the Secretary of the Delaware Department of Agriculture
- 4.5 **"State Business Hours"** are 8:00 a.m. to 4:30 p.m. on Monday through Friday, except for state holidays.

5.0 General Rules and Regulations

- 5.1 In order to promote the safety and welfare of State Forest visitors and protect and manage property in the State Forests, the Secretary and Forestry Administrator shall have the authority to develop reasonable policies for State Forests that are not in conflict with 3 **Del.C.** Ch. 10 and these regulations. These policies must be approved by the Secretary and posted in a conspicuous location in the State Forest prior to their becoming effective. Copies of all policies shall also be maintained in the State Forest office.
- 5.2 Violation of any State Forest policy shall be grounds for eviction from the State Forest and the denial, revocation, or suspension of any permit issued or privilege granted by the Department.
- 5.3 The Department shall have the authority to enforce safety rules ~~and/or~~ and policies developed in accordance with subsection 5.1 of these Regulations for the protection of visitors and property.
- 5.4 State Forests are open to lawful non-motorized recreational uses that do not violate any of the rules and regulations contained herein.

- 5.5 Unless otherwise indicated, State Forest access roads are closed to vehicular travel. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands of the DFS except on established roads or as otherwise authorized by the Forest Administrator. Where vehicular traffic is permitted, the speed limit is twenty (20) miles per hour unless otherwise posted. Vehicular traffic on tax ditch rights of way is prohibited except for maintenance by authorized personnel and for law enforcement purposes. Non-pedestrian traffic (horseback riding and mountain biking) is restricted to access roads and trails unless otherwise noted. None registered vehicles and all-terrain vehicles are prohibited in all areas except those used by DFS employees or law enforcement in the application of their lawful duties. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the DFS, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the DFS.
- 5.6 Boundaries of State Forests are clearly marked with metal signs and yellow paint. Visitors crossing onto private property are subject to trespass laws governed by **Delaware Code**.
- 5.7 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.
- 5.8 No living animals shall be harassed, injured, destroyed, or collected and removed from State Forest lands unless written permission has first been obtained from the forest officer in charge. The only exception is lawful hunting as specified in the Division of Fish and Wildlife adopted regulations outlined in the annual **Hunting and Trapping Guide**.
- 5.9 Fires are prohibited for any purpose on State Forest lands other than in designated areas unless written permission is obtained in advance from the forest officer in charge. All fires must be under the direct supervision of a competent adult. It shall be unlawful to leave any fires that have not been thoroughly extinguished.
- 5.10 The dumping or depositing of rubbish, trash, paint, household items, or other debris, or any other materials and activities that could result in the depositing of such materials, such as paintball and geo-caching, are also prohibited.
- 5.11 The placement of advertisement signs on State Forest property is prohibited.
- 5.12 It shall be unlawful to litter on State Forest lands.
- 5.13 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.
- 5.14 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.
- 5.15 It shall be unlawful to train dogs on DFS property unless prior permission is authorized by the State Forest office.
- 5.16 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.
- 5.17 Fishing on State Forest lands is limited to catch and release only. A state fishing license is required to fish on State Forest lands.
- 5.18 Visitors shall park in designated areas only and within those designated areas. It shall be unlawful for any person to park any vehicle on lands administered by the DFS in such a manner as to obstruct the use of State Forest access roads, gates, or trails. Any vehicle parked in such a manner shall be subject to removal and the owner of said vehicle shall pay for all costs involved in such removal.
- 5.19 Alcoholic beverages are prohibited on State Forest lands except within the Redden Lodge, if and only if, authorized in writing by the DFS.
- 5.20 The use of drones ("Unmanned Aerial Vehicle" or "UAV", or "Remotely Piloted Aerial System" or "RPAS") is prohibited on State Forest lands unless authorized in writing by the DFS.

6.0 Redden State Forest Lodge

It shall be unlawful to make use of the Lodge facility in any manner other than outlined in the Redden state Forest Lodge Lease Agreement.

7.0 Camping Rules and Regulations

- 7.1 Camping is ~~free of charge, year round, but permitted, and~~ restricted to map-designated campsites only. A forest use permit is required for all camping on State Forest lands. Permits are available at State Forest offices during state business hours or from information boxes located at each State Forest office. Completed permits must be submitted during office hours to ensure campsite availability. There is a \$25.00 per night charge for all campsite registration. Camping permits and registration can be found at agriculture.delaware.gov and by contacting the State Forest offices.
- 7.2 ~~Campsites are on a first come, first served basis and reservations are required.~~ Reservations are required prior to the arrival date.
- 7.3 Campsites are of a primitive type, and are to be used ONLY for ~~tent, van or pickup campers.~~ Travel tent camping. Van, pickup campers, travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted by a State Forest employee.
- 7.4 There are a limited number of campsites, ~~each is large enough to accommodate large families that are equipped with tables, fire pits, and charcoal grills. These are equipped with tables, fire pits, charcoal grills and a trash barrel.~~ Firewood can be purchased for a \$5.00 fee onsite and no outside firewood is permitted. Campsites are limited to a maximum number of ~~ten (10) people per site, with a maximum stay of three nights per week.~~ six (6) people per site, with two (2) vehicles per site, overflow parking is provided nearby the parking areas. ~~Camper(s)~~ A camper or campers must remove their trash upon vacating their ~~campsite.~~ campsite and drop it off at the designated dumpster located on the camping map. Failure to adhere to these regulations will result in the camper's removal and loss of security deposit.
- 7.5 Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police and ~~DNREG~~ the Department of Natural Resources Police should the need arise.
- 7.6 State ~~forests~~ Forests are "multiple-use facilities", which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.
- 7.7 Firewood for camp use is available ~~at the campsites~~ for purchase onsite; please refer to the camping map for its location. If more firewood is needed, it may be gathered locally from dead and downed trees. Standing trees or shrubs shall not be cut. Using firewood located ~~at~~ outside of the designated area of the office complex is prohibited. Campfires shall be contained within established fire rings only.
- 7.8 Campsites are to be left clean and all fires are to be extinguished before departing from the area.

8.0 Hunting Rules and Regulations

- 8.1 State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.
- 8.2 No special permits are required to hunt on State Forest lands, except as specified in the DNREC, Division of Fish and Wildlife Hunting and Trapping Guide or if the hunting tract is designated for a lottery permit only. Properly licensed hunters may hunt during any open season except on areas otherwise designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs or areas that are outlined within the Hunting and Trapping Guide that state the area will be closed.
- 8.3 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree steps, spikes, screws, or nails are allowed.
- 8.4 Deer drives by any person or persons are not permitted on any State Forest land at any time.
- 8.5 Small game hunting is closed on State Forest lands during firearm deer seasons.

PROPOSED REGULATIONS

- 8.6 The DFS reserves the right to close specific State Forest tracts to hunting during specific hunting seasons. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area maps distributed by the DFS.
- 8.7 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.
- 8.8 Target shooting is prohibited. Firearms are allowed for legal hunting and are otherwise prohibited within designated safe areas on State Forest lands, except as set forth below.
- 8.8.1 Designated areas shall include State Forest ~~Offices~~ offices, education centers, and shall be identified by appropriate signage.
- 8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas.
- 8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas.
- 8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448.
- 8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.
- 8.9 ~~Waterfowl hunting is not permitted on State Forest land or waters. Waterfowl hunting is permitted within designated areas only on State Forest land and/or waters. DFS reserves the right to open and close specific State Forest tracts for waterfowl hunting. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area waterfowl maps distributed annually by the DFS.~~
- 8.10 Squirrel hunting is not allowed with a rifle or muzzleloading rifle. Squirrel hunting with a shotgun is permitted.
- 8.11 The following hunting restrictions apply to those tracts of State Forest lands as specified in the DNREC, Division of Fish and Wildlife **Hunting and Trapping Guide**. Maps delineating these areas are available at State Forest offices.
- 8.11.1 ~~All deer hunting is limited to numbered stands. Deer Hunting is allowed on all State Forest tracts unless otherwise noted on State Forest maps, within the **Hunting and Trapping Guide** and on signs posted on State Forest property.~~
- 8.11.2 ~~For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time. For shotgun season tracts that have deer stands available to hunt, a daily lottery shall be held at the discretion of the State Forest office. Lottery times will be 1 and 1/2 hours before legal shooting times. Please refer to the **Hunting and Trapping Guide** and State Forest guidance for lottery dates and times.~~
- 8.11.3 ~~For Muzzleloader season there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time. For muzzleloader season tracts that have deer stands available to hunt, a daily lottery shall be held at the discretion of the State Forest office. Lottery times will be 1 and 1/2 hours before legal shooting times. Please refer to the **Hunting and Trapping Guide** and State Forest guidance for lottery dates and times.~~
- 8.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must only hunt from their designated stand, as walk around hunting is not permitted.
- 8.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.
- 8.11.6 Stands will be available during Archery season on a first-come, first-served basis.
- 8.11.7 No more than one hunter may hunt from a stand at any one time.

9.0 Forest Use Permits

- 9.1 Forest use permits on State Forests are issued on a first-come, first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation. ~~Facility users are required to submit a completed Forest Use Permit during state business hours. Facilities are to be reserved in advance. Facility users (camping/lodge-pavilion rentals) are required to book their reservations in advance. Reservations links can be found at agriculture.delaware.gov.~~
- 9.2 Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first-come, first-served basis. There is a fee of \$100 for firewood permits, which allows the holder to cut for three days within areas designated and posted by State Forest staff. No trees are to be felled; only downed wood may be cut. Wood is not for resale.

10.0 Department Enforcement Regulations

- 10.1 The violation of, or the refusal to obey, any law, these regulations, State Forest policies or the terms or conditions of any permit issued or privilege granted by the Department shall be grounds for the suspension or revocation of any permit issued or privilege granted by the Department, the removal or eviction from State Forest lands and/or the denial of future entry to, or the denial of future permits or privileges within State Forests. Any and all applicable permit fees shall be forfeited to, and retained by, the Department. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any law or these regulations.
- 10.2 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and shall be fined not less than \$25 nor more than \$250 and be required to pay all applicable court costs. For each subsequent violation, within three years of a previous conviction, the violator shall be fined not less than \$50 nor more than \$500 and be required to pay all applicable court costs. In addition to fines and court costs, State Forest Service may request the court to order restitution in an amount determined by it for the destruction or removal of property to those convicted of violating these regulations.
- 10.3 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.
- 10.4 Notwithstanding the immediate preceding subsection, a duly authorized peace officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of arrest and during the regularly scheduled hours of the Court.

HARNES RACING COMMISSION

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

PUBLIC NOTICE**501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 Del.C. §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the “trainer rules” for clarity by simplifying some language, adding definitions, and specifically stating that all trainers of a horse are responsible for its fitness.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on September 1, 2020, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On September 15, 2020, at its regular monthly meeting, the DHRC unanimously approved these proposed

amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period from November 1 to 30, 2020 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on December 8, 2020 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB December 1, 2020. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

***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/november2020/proposed/24 DE Reg 443RFA 11-01-20.pdf>

501 Harness Racing Rules and Regulations (Break in Continuity of Sections)

6.0 Types of Races

(Break in Continuity Within Section)

6.2 Overnight Events

(Break in Continuity Within Section)

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

- 6.2.2.1.1 ~~horses'~~ Horses' money winnings in a specified number of previous races or during a specified previous time;
- 6.2.2.1.2 ~~horses'~~ Horses' finishing positions in a specified number of previous races or during a specified period of time;
- 6.2.2.1.3 ~~age~~ Age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;
- 6.2.2.1.4 ~~sex~~ Sex;
- 6.2.2.1.5 ~~number~~ Number of starts during a specified period of time;
- 6.2.2.1.6 ~~special~~ Special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;
- 6.2.2.1.7 ~~horse's~~ Horses' race condition in a specified number of previous races or during a specified period of time;
- 6.2.2.1.8 ~~horse's~~ Horses' claiming price in a specified number of previous races or during a specified period of time;
- 6.2.2.1.9 ~~horse's~~ Horses' purses raced for in a specified number of previous races or during a specified period of time;
- 6.2.2.1.10 Delaware-owned or bred races as specified in 3 **Del.C.** §10032;
- 6.2.2.1.11 Delaware Owned or Bred Preferred; ~~or~~
- 6.2.2.1.12 Delaware Trained Preferred; ~~or~~
- 6.2.2.1.13 ~~any~~ Any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules except when written Delaware Owned or Bred Preferred, or Delaware Trained Preferred. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

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

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))
14 DE Admin. Code 201

PUBLIC NOTICE

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

201 District and School Shared Decision Making

A. TYPE OF REGULATORY ACTION REQUIRED

Repealing of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the approval of the State Board of Education to repeal 14 DE Admin. Code 201 District and School Shared Decision Making. The current regulation mirrors sections of 18 Del.C. Ch. 8, School Shared Decision-Making, and its repeal will not modify the Department of Education's responsibilities. The Department has not processed a School Shared Decision Making Transition Planning Grant in a number of fiscal years.

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

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The repeal of the regulation will not impact student achievement as measured against state achievement standards. The current regulation mirrors sections of 18 Del.C. § 801 et seq., and its repeal will not modify the Department of Education's responsibilities.

2. Will the regulation help ensure that all students receive an equitable education? The repeal of the regulation will not impact students' receipt of an equitable education.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The repeal of the regulation will not impact students' health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The repeal of the regulation will not impact students' legal rights.

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The repeal of the regulation will not impact the necessary authority and flexibility of decision making at the local board and school level. The current regulation mirrors sections of 18 Del.C. § 801 et seq., and its repeal will not modify the Department of Education's responsibilities to provide local school boards with assistance, guidance, and strategies to initiate and plan the implementation of these structured conversations and activities.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The repeal of the regulation will not alter the decision making authority and accountability for addressing the subject to be regulated.

8. Will the 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 repeal of the regulation will not be an

impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The current regulation mirrors sections of 18 **Del.C.** § 801 *et seq.*, and its repeal will not modify the Department of Education's responsibilities to provide local school boards with assistance, guidance, and strategies to initiate and plan the implementation of these structured conversations and activities.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no costs to the State and to the local school boards related to repeal of the 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/november2020/proposed/24 DE Reg 445RFA 11-01-20.pdf>

201 District and School Shared Decision Making

4.0 ~~District Shared Decision Making Transition Planning Grant Process~~

- 1.1 ~~Requests for a district shared decision making transition planning grant shall be submitted to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Grant requests shall include the following information:~~
 - 1.1.1 ~~The local board of education Resolution endorsing both the concept of shared decision making and the Report and Recommendations of the District Advisory Committee. See 14 **Del.C.** §802(b)(c).~~
- 1.2 ~~A copy of the Report and Recommendations of the District Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 **Del.C.** §802 have been met.~~
 - 1.2.1 ~~District Advisory Committee (list names and groups represented);~~
 - 1.2.2 ~~Listing of the structured conversations and a brief description of the activities;~~
 - 1.2.3 ~~Brief description of how stakeholders made a good faith effort to communicate with their constituent groups;~~
 - 1.2.4 ~~Recommendation to develop a district transition plan to implement shared decision making;~~
 - 1.2.5 ~~Process for establishing a district transition plan; and~~
 - 1.2.6 ~~Process for determining the composition and roles and responsibilities delegated to the District Transition Team.~~
- 1.3 ~~The District Transition Team (list names and groups represented).~~
- 1.4 ~~A description of the process for the District Transition Team to reach decisions and resolve conflicts.~~
- 1.5 ~~A description of the plan for communicating the results of the district transition plan to the broader school community for information and critical review.~~
- 1.6 ~~Acknowledgment that within the district transition plan there must be a policy for supporting shared decision making activities from the local budget, including the school improvement planning process set forth in 14 **Del.C.** §806, and acknowledgment that funds must be specifically identified and made available for use by school committees.~~
- 1.7 ~~A description of how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.~~
- 1.8 ~~Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the district. Any stakeholder refusing to sign should explain why as part of the grant request.~~
- 1.9 ~~Assurance that a copy of the Report and Recommendations is posted within the district for public review.~~
- 1.10 ~~Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.~~
- 1.11 ~~Procedure to be used by interested parties to obtain a copy of the district grant request.~~

2.0 ~~School Shared Decision Making Transition Planning Grant Process~~

- 2.1 ~~Requests for a school shared decision making transition planning grant shall be submitted via the local board of education to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901 3639. Grant requests shall include the following information:~~
 - 2.1.1 ~~Report and Recommendations of the School Advisory Committee:~~
 - 2.1.1.1 ~~A copy of the Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 ~~Del.C.~~ §804 have been met:~~
 - 2.1.1.1.1 ~~School Advisory Committee (list names and groups represented);~~
 - 2.1.1.1.2 ~~Listing of the structured conversations and a brief description of the activities;~~
 - 2.1.1.1.3 ~~Brief description of how stakeholders made a good faith effort to communicate with their constituent groups;~~
 - 2.1.1.1.4 ~~Recommendation to develop a school transition plan to implement shared decision-making;~~
 - 2.1.1.1.5 ~~Process for establishing a school transition plan; and~~
 - 2.1.1.1.6 ~~Process for determining the composition and roles and responsibilities delegated to the School Transition Team~~
- 2.2 ~~The School Transition Team (List Names and Groups Represented)~~
- 2.3 ~~A description of the process for the School Transition Team to reach decisions and resolve conflicts.~~
- 2.4 ~~Assurance that the school has committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision making and improve parental involvement.~~
- 2.5 ~~A description of the plan for communicating the results of the school improvement plan to the broader school community for information and critical review.~~
- 2.6 ~~A description of how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.~~
- 2.7 ~~Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the school. Any stakeholder refusing to sign should explain why as part of the grant request.~~
- 2.8 ~~Assurance that a copy of the Report and Recommendations is posted within the school for public review.~~
- 2.9 ~~Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.~~
- 2.10 ~~Procedure to be used by interested parties to obtain a copy of the school grant request~~

3.0 ~~Approval of School Improvement Grants~~

- 3.1 ~~A school that has an approved shared decision making transition plan as specified in 14 ~~Del.C.~~ §806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901 3639. Requests shall include the following information:~~
 - 3.1.1 ~~Evidence that the local board of education has adopted the school's transition plan; and~~
 - 3.1.2 ~~The school improvement plan containing the following components:~~
 - 3.1.2.1 ~~Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;~~

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- 3.1.2.2 A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision making and support continuous improvement in teaching and student learning;
- 3.1.2.3 Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;
- 3.1.2.4 A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;
- 3.1.2.5 The structural changes or procedures for providing the necessary time and skill building to support shared decision making and continuous improvement in teaching and student learning;
- 3.1.2.6 The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;
- 3.1.2.7 A proposed timeline for phasing in the school improvement plan; and
- 3.1.2.8 A proposed budget for the use of the school improvement grant.
- 3.2 A school with an approved application shall be eligible for a school improvement grant for the following (3) years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by 14 ~~Del.C. §808~~ is completed and the results of such are included in the school's application.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C. §122(b)(2)**)
14 **DE Admin. Code 729**

PUBLIC NOTICE

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

729 School Custodians

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to an Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C. §122(b)(2)**, the Secretary of Education intends to amend 14 **DE Admin. Code 729** School Custodians. This amendment is needed to align the regulation with common practice around operations and training opportunities for custodial staff throughout the state. Additionally, the regulation is being updated to comply with the *Delaware Administrative Code Drafting and Style Manual*.

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

C. IMPACT CRITERIA

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not address students' equitable education.

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

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

<http://regulations.delaware.gov/register/november2020/proposed/24 DE Reg 448RFA 11-01-20.pdf>

729 School Custodians

1.0 Definitions

"Central Heating Plant" means all the component parts and systems used to heat, air condition and ventilate a school facility to include traditional mechanical systems and computer building automation systems.

"Certificate of Occupancy" means the certificate issued by code enforcement agencies certifying that a building meets all building and safety codes required by the jurisdiction of that agency.

"Chief Custodian" means a Custodian who has completed the ~~420-class~~ 120-class hour Chief Custodian training as prescribed by the Department of Education in subsection 5.1.1 below. ~~Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees who have earned the Chief Custodian certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~

"Classroom" means an area or space within a school building that is used for student instruction.

"Classroom Equivalent" means areas or spaces in school buildings that are used for student instruction not classified as a classroom, such as as, but not limited to to, computer labs and centers, libraries, media centers, multiple intelligence rooms and areas, athletic training rooms.

"Custodial Unit" means a formula used to determine the number of custodial positions earned by an educational ~~facility~~ facility.

"Custodian" means a school district employee who is paid in accordance with 14 Del.C. §1311(a). ~~The school district employee shall be entitled to an additional pay stipend pursuant to 14 Del.C. §1311(b) upon completion of the 60-hour Custodian certificate training as prescribed in subsection 5.1.3 below.~~

"Department" means the Delaware Department of Education.

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“Firefighter and Custodian-Firefighter” means a Custodian who has completed the ~~90-class~~ 90-class hour Firefighter and Custodian-Firefighter certificate training as prescribed by the Department of Education in subsection 5.1.2 ~~below~~. This training ~~includes~~ includes, but is not limited to to, the operation of boilers and central heating plant systems. ~~Employees who have earned the Firefighter and Custodian-Firefighter certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for Custodian Fireman positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~

“Maintenance Mechanic” means an employee filling a custodial position with specialized technical skill in a particular trade or trades as determined by the school district in accordance with subsection 4.3 ~~below~~ and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

“Skilled Crafts Person ~~Craftsperson~~” means an employee filling a custodial position with specialized technical certification ~~and/or~~ or licensure in a particular trade or trades as determined by the school district in accordance with subsection 4.4 ~~below~~ and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

2.0 Experience

Custodians may be allowed one (1) ~~year's~~ year of experience for each creditable year of experience in similar employment as determined by the district.

3.0 Allocation of Custodial Units

- 3.1 The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.
- 3.2 Districts and charter schools are allocated one (1) full-time custodial position for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:
 - 3.2.1 One (1) unit for each classroom or classroom equivalent.
 - 3.2.2 One (1) unit for a small auditorium (less than 150 students).
 - 3.2.3 Two (2) units for a large auditorium (more than 150 students).
 - 3.2.4 One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.
 - 3.2.5 One (1) unit for a gymnasium.
 - 3.2.6 One (1) unit for a combined auditorium and gymnasium (less than 150 students).
 - 3.2.7 Two (2) units for a combined auditorium and gymnasium (more than 150 students).
 - 3.2.8 One (1) unit for two locker rooms.
 - 3.2.9 Seven (7) units for a swimming pool.
 - 3.2.10 Units for a central heating plant are determined ~~from the following table~~ as follows:

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 to 15	1
16 to 20	1 1/2
21 to 25	2
26 to 30	2 1/2
31 to 35	3
36 to 40	3 1/2
41 to 45	4
46 to 50	4 1/2

51 to 55	5
56 to 60	5 1/2
61 or more	

3.2.11 One-half (1/2) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site. If two schools are located on the same site of 100 acres or more, the second school shall receive credit for half of the acres for that site.

3.3 Part-time custodians equivalent to one (1) or more full-time custodians may be employed with the provision that proper records will be maintained at the school district for review.

3.4 A full custodial staff for a new school building may be employed two (2) months prior to the pupil occupancy of the building.

3.4.1 In order to ~~maintain, heat~~ maintain building climate and secure new school buildings completed with a certificate of occupancy date further in advance of student occupancy than the two (2) months identified in subsection 3.4 ~~above~~, the district is eligible to earn the custodial units provided for site maintenance and central heating plant as of the certificate of occupancy date, until eligible to employ the full custodial staff in accordance with subsection 3.4.

3.5 The termination date for custodial units in closed buildings ~~closed~~ shall be six (6) weeks from the last day classes are held in the building.

3.6 Buildings which are closed and retained under the control of the school district shall lose all custodial units except units provided for site maintenance and heating.

3.7 When the school district signs a lease or in any way loses direct control of the building, through transfer, sale or legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease, transfer, sale or legislation.

3.8 It is the school district's responsibility to notify the Department of ~~Education~~ when the function of a building is changed. When the notification is received, a re-evaluation of the custodial units will be completed by the Department of ~~Education~~. The Department will notify the district by letter of the results of the re-evaluation.

3.9 The Department of ~~Education~~ shall calculate and approve all custodial unit allocation requests submitted by the local school districts and charter schools.

4.0 Classification

4.1 ~~Custodian Fireman~~ Custodian-Firefighter

4.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a ~~custodian fireman~~ Custodian-Firefighter.

4.1.2 There shall be only one (1) ~~custodian fireman~~ Custodian-Firefighter employed in each building.

4.2 Chief Custodian

4.2.1 A custodian may be classified as a Chief Custodian when at least two (2) other full time custodians or the equivalent are employed in the school building or other district facility. There shall only be one (1) Chief Custodian per building.

4.3 Maintenance ~~Mechanic~~: Mechanic. Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing school district.

4.4 Skilled Craftsperson

4.4.1 Each school district may classify an incumbent in one (1) or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:

4.4.1.1 Has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or

4.4.1.2 Possesses a current state license in any of the fields listed in subsection 4.4.1.1 ~~above~~; or

PROPOSED REGULATIONS

- 4.4.1.3 Is an Automobile Mechanic who possesses two (2) or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or
 - 4.4.1.4 Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or
 - 4.4.1.5 Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or
 - 4.4.1.6 Is an HVAC Mechanic who possesses two (2) or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or
 - 4.4.1.7 Possesses two (2) or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or
 - 4.4.1.8 Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or
 - 4.4.1.9 Is a Roofer who possesses Training Certifications from two (2) or more manufacturers of Roofing Systems in use by the District; or
 - 4.4.1.10 Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.
- 4.5 Building and Grounds Supervisor: Each district with ninety five (95) or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed.

5.0 Certificates Granted by the Department of Education for Additional Hours of Special Training

- 5.1 The Department of ~~Education~~ shall specify the special training needed in order for an individual to receive a ~~certificate(s)~~ certificate for the additional pay stipends as outlined in 14 **Del.C.** §1311(b). The following hourly requirements shall be met in order for the Department of ~~Education~~ to grant the custodial certificates listed in subsections 5.1.1 through 5.1.3. The certificate guarantees additional pay as specified in 14 **Del.C.** ~~§1311(b)~~ §1311(b), but only the local school district can change a custodian's classification for purposes of 14 **Del.C.** §1311(a).
- 5.1.1 Chief Custodian Certificate (420 class hours) 120-class hours). Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 **Del.C.** §1311(b). Employees who have earned the Chief Custodian certificate pursuant to 14 **Del.C.** §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 **Del.C.** §1311(a).
 - 5.1.2 Firefighter and Custodian-Firefighter Certificate (90 class hours) 90-class hours). Employees who have earned the Firefighter and Custodian-Firefighter certificate shall be paid an additional pay stipend in accordance with 14 **Del.C.** §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 **Del.C.** §1311(b) are eligible to compete for Custodian-Firefighter positions when they become vacant and earn pay in accordance with the pay scale identified in 14 **Del.C.** §1311(a).
 - 5.1.3 Custodian Certificate (60 on-the-job hours) hours). Employees who have earned the Custodian Certificate shall be paid an additional pay stipend in accordance with 14 **Del.C.** §1311(b).

OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A)
14 **DE Admin. Code** 934

PUBLIC NOTICE

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

934 Regulations for Family and Large Family Child Care Homes

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to amend 14 **DE Admin. Code** 934 Regulations for Family and Large Family Child Care Homes. This amended regulation includes the following changes:

- Clarification that only one license will be issued per address;
- Changing the title of OCCL's administrator to director;
- Changing the word entered to documented regarding attendance sheets;
- Removing a previously posted error that allowed a family child care home to designate a family provider, when the licensee must be the provider;
- Restoring the qualifications of a licensee for a large family child care home;
- Allowing for only one license per address; and
- Additional changes were made to comply with the Delaware Drafting and Style Manual.

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

C. IMPACT CRITERIA

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

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

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

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

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

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

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

8. Will the regulation be consistent with and not an impediment to the implementation of other state

educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

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

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

***Please Note:**

(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/november2020/proposed/24 DE Reg 453RFA 11-01-20.pdf>

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

[934 Regulations for Family and Large Family Child Care Homes](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1580

PUBLIC NOTICE

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

1580 School Library Media Specialist

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education, developed amendments to 14 DE Admin. Code 1580 School Library Media Specialist. The regulation concerns the requirements for a School Library Media Specialist Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Library Media Specialist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Library Media Specialist Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns the validity of a School Library Media Specialist Standard Certificate; adding Section 7.0, which concerns disciplinary actions; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certificates that were issued by the Department.

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

C. IMPACT CRITERIA

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

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 Del.C. § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Library Media Specialist Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 8.0 is consistent with the statute.

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

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

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

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/november2020/proposed/24 DE Reg 454RFA 11-01-20.pdf>

1580 School Library Media Specialist

1.0 Content

1.1 This regulation shall apply to the issuance of a School Library Media Specialist Standard Certificate, Certificate pursuant to 14 Del.C. §1220(a), ~~for School Library Media Specialist. This certification . The School Library Media Specialist Standard Certificate is required for all school library media specialists who are working in grades K to 12 in Delaware public schools.~~

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

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

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a School Library Media Specialist Standard Certificate ~~as a School Library Media Specialist to an educator applicant who has met the following:~~

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and,~~ and meets the requirements set forth in Section 4.0 of this regulation; or

3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and~~ Has met the requirements for licensure and presents proof of a Valid and Current License or Certificate as a school library media specialist.

3.1.3 ~~Has satisfied the additional requirements in this regulation~~

- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Library Media Specialist Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

An educator shall also meet the following:

4.1 Has satisfied at least one of the following additional requirements:

4.1.1 ~~Holds a Masters or Doctoral degree from a regionally accredited college or university in an American Library Association approved program in School Library Media; or~~

4.1.2 ~~Holds a Masters or Doctoral degree from a regionally accredited college or university in any area; and~~

4.1.2.1 ~~Has completed a Department approved School Library Media program which meets American Library Association Standards.~~

4.1 An applicant for a School Library Media Specialist Standard Certificate shall have satisfied the requirement in subsection 4.1.1.

4.1.1 An applicant shall have satisfied one of the following education requirements:

4.1.1.1 Earned a master's or doctoral degree from a Regionally Accredited college or university in school library media from an American Library Association-approved program; or

4.1.1.2 Earned a master's or doctoral degree from a Regionally Accredited college or university in any area and completed a Department-approved school library media program that meets the American Library Association's standards.

5.0 Application Requirements

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

5.2 For applicants who are applying for the School Library Media Specialist Standard Certificate under subsection 3.1.1, the following documentation is required:

5.2.1 Official transcript from the applicant's Regionally Accredited college or university.

5.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.2.1.2 Sealed paper transcripts may be submitted.

5.2.1.3 The Department will not accept copies of transcripts; and

5.2.2 Additional documentation as required by the Department.

5.3 For applicants who are applying for the School Library Media Specialist Standard Certificate under subsection 3.1.2, the following documentation is required:

5.3.1 An official copy of the Valid and Current License or Certificate; and

5.3.2 Additional documentation as required by the Department.

6.0 Validity of a Standard Certificate

6.1 A School Library Media Specialist Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

6.2 A School Library Media Specialist Standard Certificate is not subject to renewal.

7.0 Disciplinary Action

7.1 An Educator's School Library Media Specialist Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

7.2 An Educator's School Library Media Specialist Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.

PROPOSED REGULATIONS

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

8.0 Secretary of Education Review

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

8.1.1 For school districts, requests shall be approved by the superintendent of the school district.

8.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

9.0 Past Certificate Recognized

The Department shall recognize a School Library Media Specialist Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a school library media specialist.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1581

PUBLIC NOTICE

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

1581 School Reading Specialist

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education, developed amendments to 14 DE Admin. Code 1581 School Reading Specialist. The regulation concerns the requirements for a School Reading Specialist Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Reading Specialist Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Reading Specialist Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a School Reading Specialist Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 10.0, which concerns recognizing past certificates that were issued by the Department.

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

[current_issue.shtml](#) or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 and the requirements for reciprocity in Section 5.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 and the requirements for reciprocity in Section 5.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a School Reading Specialist Standard Certificate but whose effectiveness is documented by the district or school. Proposed Section 9.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 6.0 apply to individual applicants.

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

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

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/november2020/proposed/24 DE Reg 458RFA 11-01-20.pdf>

1581 School Reading Specialist

1.0 Content

- 4.1 This regulation shall apply to the ~~requirements for a~~ issuance of a School Reading Specialist Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), ~~for School Reading Specialist. This certification~~ The School Reading Specialist Standard Certificate is required for all ~~School~~ Reading Specialists in Delaware public schools.

PROPOSED REGULATIONS

- 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

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

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

"Reading Specialist" means an educator whose responsibility is to improve reading achievement in their assigned school or district position. A Reading Specialist ~~provides~~ may provide one-on-one or small group, diagnostic teaching of reading. Responsibilities may include coaching and leading school reading programs. Reading Specialists' assignments may include Title I reading teachers, reading resource teachers and educators who work with teachers in reading and communication skills, including, but not limited to literacy coaches and coordinators, and individuals employed as building or district coordinators of reading or in Reading Cadre positions. Reading Specialists may also serve as a resource in reading and writing for educational support personnel, administrators, teachers, and the community, provide professional development based on historical and current literature and research, work collaboratively with other professionals to build and implement reading programs for individuals and groups of students, and serve as advocates for students who struggle with reading.

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

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a School Reading Specialist Standard Certificate as a School Reading Specialist to an educator applicant who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License~~; License or a Standard or Professional Status Certificate issued by the Department prior to August 31, ~~2003~~; 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
- 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,~~ Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a Reading Specialist from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
- 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Reading Specialist Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

An educator must also have met the following additional requirements:

4.1 Education requirements:

4.1.1 ~~An educator shall also have satisfied at least one (1) of the following additional education requirements:~~

4.1.1.1 ~~A Master's degree or its equivalent from a regionally accredited college or university in Reading offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or~~

4.1.1.2 ~~Completion of either a Bachelor's degree plus (30) graduate level credit hours or a Master's degree, from a regionally accredited college or university in any content area; and~~

4.1.1.2.1 ~~The successful completion of twenty four (24) graduate level credit hours in the following content areas:~~

4.1.1.2.1.1 ~~Assessment and Instruction in Writing (3 credits);~~

4.1.1.2.1.2 ~~Assessment and Instruction in Reading (6 credits);~~

4.1.1.2.1.3 ~~Practicum in Reading to include application of strategies in assessment, instruction and parent involvement (6 credits);~~

4.1.1.2.1.4 ~~Literacy in the Content Areas (3 credits);~~

4.1.1.2.1.5 ~~Teaching English as a Second Language (3 credits); and either~~

4.1.1.2.1.6 ~~Literacy Acquisition (3 credits); or~~

4.1.1.2.1.7 ~~Coaching Adult Learners (3 credits).~~

4.2 Experience requirements:

4.2.1 ~~An educator must have a minimum of three (3) years of teaching experience.~~

4.1 An applicant for a School Reading Specialist Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.

4.1.1 An applicant shall have satisfied one of the following education requirements:

4.1.1.1 Earned a master's degree or its equivalent from a Regionally Accredited college or university in reading or literacy from a program that is aligned to the International Literacy

PROPOSED REGULATIONS

Association (ILA) Standards for a Reading/Literacy Specialist or a state-approved educator preparation program where the state approval body employed the ILA Standards for a Reading/Literacy Specialist; or

4.1.1.2 Earned a bachelor's degree and completed 30 graduate-level credit hours or earned a master's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 24 graduate-level credit hours that are guided by current ILA standards for a Reading/Literacy Specialist in the following areas:

4.1.1.2.1 Assessment and instruction in writing (three credits);

4.1.1.2.2 Assessment and instruction in reading (six credits);

4.1.1.2.3 Practicum in reading to include application of strategies in assessment, instruction, and parent involvement (six credits);

4.1.1.2.4 Literacy in the content areas (three credits);

4.1.1.2.5 Teaching English as a Second Language (three credits); and

4.1.1.2.6 Either literacy acquisition (three credits) or coaching adult learners (three credits).

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

4.1.2.1 A Passing Score of 164 on the Praxis Subject Assessment - Reading Specialist (ETS Test Code # 5301); or

4.1.2.2 A Passing Score of 165 on the Praxis Subject Assessment - Reading Specialist (ETS Test Code #5302).

4.1.3 The applicant shall have completed a minimum of three years of teaching experience, including meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance, with satisfactory annual summative evaluations on the State's current evaluation system or the equivalent thereof on a state-approved alternative educator evaluation system under a state credential in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department.

5.0 **Reciprocity**

If an applicant is already licensed or certified as a Reading Specialist in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have earned a master's degree or its equivalent from a Regionally Accredited college or university in reading or literacy from a program that is aligned to the International Literacy Association (ILA) Standards for a Reading/Literacy Specialist or a state-approved educator preparation program where the state approval body employed the ILA Standards for a Reading/Literacy Specialist in order for the Department to issue a School Reading Specialist Standard Certificate.

6.0 **Application Requirements**

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

6.2 For applicants who are applying for the School Reading Specialist Standard Certificate under subsection 3.1.1, the following documentation is required:

6.2.1 Official transcript from the applicant's Regionally Accredited college or university.

6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

6.2.1.2 Sealed paper transcripts may be submitted.

6.2.1.3 The Department will not accept copies of transcripts; and

6.2.2 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and

6.2.3 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and

6.2.4 Additional documentation as required by the Department.

- 6.3 For applicants who are applying for the School Reading Specialist Standard Certificate under subsection 3.1.2, the following documentation is required:
- 6.3.1 An official copy of the Valid and Current License or Certificate; and
 - 6.3.2 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Reading Specialist Standard Certificate under subsection 3.1.3, the following documentation is required:
- 6.4.1 An official copy of the Valid and Current License or Certificate; and
 - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 6.4.2.2 Sealed paper transcripts may be submitted.
 - 6.4.2.3 The Department will not accept copies of transcripts; and
 - 6.4.3 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

- 7.1 A School Reading Specialist Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A School Reading Specialist Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

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

9.0 Secretary of Education Review

- 9.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Reading Specialist Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Reading Specialist Standard Certificate but whose effectiveness is documented by the local school district or charter school.
 - 9.1.1 For school districts, requests shall be approved by the superintendent of the school district.
 - 9.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

10.0 Past Certificate Recognized

The Department shall recognize a School Reading Specialist Standard Certificate that was issued by the Department prior to the effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to practice as a Reading Specialist.

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504 (16 **Del.C.** §§122(3)(a) and 504)
16 **DE Admin. Code** 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 **Del.C.** §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On November 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. The revisions clarify that all novel coronavirus causing severe acute respiratory disease, including the 2019 novel coronavirus disease COVID-19, are considered notifiable and are required to be reported to the Division of Public Health in accordance with these regulations. Other revisions include technical changes to conform with the Delaware Administrative Code Style Manual.

Copies of the proposed regulations are available for review in the November 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Tuesday, December 1, 2020, at:

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

***Please Note:**

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

[http://regulations.delaware.gov/register/november2020/proposed/24 DE Reg 464RFA 11-01-20.pdf](http://regulations.delaware.gov/register/november2020/proposed/24%20DE%20Reg%20464RFA%2011-01-20.pdf)

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

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF NATURAL RESOURCES AND ENV. CONTROL DIVISION OF AIR QUALITY

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

REGISTER NOTICE

SAN # 2019-05

1124 Control of Volatile Organic Compound Emissions

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1124, Section 33.0 "Solvent Cleaning and Drying".

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

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend Section 33.0 to update control requirements based upon a 2012 Ozone Transport Commission model rule. The U.S. Environmental Protection Agency (EPA) has designated certain areas of Delaware in non-attainment of the federal standard for ground-level ozone. Ground-level ozone is formed through the reaction of VOC and other compounds in the air in the presence of sunlight. High levels of ground-level ozone can cause or worsen difficulty in breathing, asthma and other serious respiratory problems. These amendments will reduce emissions of volatile organic compounds from solvent cleaning operations. Delaware also will submit the amendments as a State Implementation Plan revision to the EPA.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

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

None

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2019-R-A-0029) will be held on Wednesday, December 2, 2020 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use Solvent. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 613 8246. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting November 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Renae Held by phone at 302-739-9402 or by email at renae.held@delaware.gov.

The Department will accept public comment through the close of business on Thursday, December 17, 2020. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

7. PREPARED BY:

Renae Held

Division of Air Quality-DNREC

PROPOSED REGULATIONS

100 W. Water Street, Suite 6A, Dover, DE 19904

Phone: (302)739-9402; email: renae.held@delaware.gov

***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/november2020/proposed/24 DE Reg 465RFA 11-01-20.pdf>

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

1124 Control of Volatile Organic Compound Emissions

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 Del.C. §6010(a) & (c))
7 DE Admin. Code 1124

REGISTER NOTICE

SAN # 2020-05

1124 Control of Volatile Organic Compound Emissions

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1124 Section 36.0 "Vapor Emission Control at Gasoline Dispensing Facilities".

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

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing amendments to section 36.0 in order to update the California Air Resources Board Executive Orders referenced in this section regarding Stage I enhanced vapor recovery systems used at Delaware gasoline dispensing facilities. The proposed amendments include updates of the latest executive order numbers and effective dates, and will provide the regulated community with additional Stage I enhanced vapor recovery system component flexibility.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C. Ch.60, Sections 6010(a) and 6010(c).

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

None

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket #2020-R-A-0022) will be held on Tuesday, December 8, 2020, beginning at 6 p.m.. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use 36VEC@GDF. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 779 4117. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnreccomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting November 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Frank Gao

by phone at 302-739-9402 or by email at Frank.Gao@delaware.gov.

The Department will accept public comment through the close of business on Wednesday, December 23, 2020. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

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

7. PREPARED BY:

Frank F. Gao, Ph.D., P.E.
Division of Air Quality-DNREC
715 Grantham Lane, New Castle, DE 19720
Phone: (302)739-9402; email: Frank.Gao@delaware.gov

*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/november2020/proposed/24 DE Reg 466RFA 11-01-20.pdf](http://regulations.delaware.gov/register/november2020/proposed/24%20DE%20Reg%20466RFA%2011-01-20.pdf)

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

[1124 Control of Volatile Organic Compound Emissions](#)

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES TANK MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Sections 7405, 7407, 7408 and 7410 (7 Del.C. §§7405, 7407, 7408 & 7410)
7 DE Admin. Code 1351

REGISTER NOTICE SAN #2020-01

[1351 Underground Storage Tank Systems](#)

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 1351: Underground Storage Tank Systems

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

The objectives of revising 7 DE Admin. Code 1351 "Underground Storage Tank Systems" are to clarify existing regulatory language, add clarifying language, include a federally mandated compliance deadline, and to correct typographical and grammatical errors. The State of Delaware regulations must be at least as stringent as the federal regulations under the requirements of 40 CFR 281, State Program Approval. The storage of petroleum products and other hazardous liquids in underground storage tanks has been known to be a major cause of groundwater contamination in the State. These regulatory clarifications and corrections serve to increase protection of public health and the environment, in particular Delaware's groundwater resources. The regulatory clarifications and corrections do not have any new or additional costs associated with them.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date related to the proposed regulations.

PROPOSED REGULATIONS

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C., Chapter 74, The Underground Storage Tank Act, Section 7405 [Registration by owner], 7407 [Release detection, prevention and correction regulations], 7408 [Inspection and monitoring] and 7410 [Financial responsibility]

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

None

6. NOTICE OF PUBLIC COMMENT:

The proposed amendments may be inspected online starting November 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Jason Sunde, by phone at 302-739-9403 or by email at Jason.Sunde@delaware.gov.

A virtual public hearing will be held on Wednesday, Dec. 9, 2020, beginning at 6 p.m. The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use USTRegAmend. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 639 9600. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The Department will accept public comment through the close of business on Thursday, December 24, 2020. Comments pertaining to the above matter will be accepted in written form via email to DNRECHearingComments@delaware.gov, using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address: Lisa Vest, Hearing Officer, DNREC-Office of the Secretary, 89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Jason W. Sunde
89 Kings Hwy, Dover, DE
302-739-9465
Email: Jason.sunde@delaware.gov

***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/november2020/proposed/24 DE Reg 467RFA 11-01-20.pdf>

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

1351 Underground Storage Tank Systems

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 6010 (7 **Del.C.** §6010)
7 **DE Admin. Code** 7201

REGISTER NOTICE
SAN #2020-02**7201 Regulations Governing the Control of Water Pollution****1. TITLE OF THE REGULATIONS:**

7 **DE Admin. Code** 7201 subsection 9.2 Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Storm Water Discharges Associated with Construction Activities.

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

The Delaware Construction General Permit (CGP) under the National Pollutant Discharge Elimination System (NPDES) program is being converted from a permit by regulation, which currently falls under 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3, to a stand-alone general permit authorizing discharges from construction. As the Delaware CGP becomes effective, the conflicts between the language in 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3 and the Delaware CGP will be removed with the adoption of these proposed regulation revisions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for these regulations. The Delaware CGP expires five years from the effective date of the permit at which time the permit will be re-authorized.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §6010
40 CFR §123.1

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

None

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control (DNREC), Division of Watershed Stewardship will conduct a virtual public hearing (Docket #2020-R-W-0012) on proposed revisions to 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3 "Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Storm Water Discharges Associated with Construction Activities".

Concurrently a virtual public hearing will be conducted for proposed NPDES Permit Number DE 0051268 "General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware", also referenced as the Delaware Construction General Permit (Delaware CGP).

The virtual public hearing will be held on **Tuesday, December 1, 2020, beginning at 6:00 PM.**

Virtual Meeting Information

A web link to the virtual meetings will be posted on the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>.

To access the audio-only portion of the virtual hearing, dial in at 408-418-9388 and enter event code 173 792 2277. If prompted for a password, please use WaterPollAmend.

The proposed regulation revisions and the proposed permit may be inspected in the Delaware Register of Regulations after November 1, 2020 at https://regulations.delaware.gov/register/current_issue.shtml

The proposed regulation revisions and proposed permit may also be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/pages/sedimentstormwater.aspx>

For additional information contact Elaine Webb, 285 Beiser Boulevard, Suite 102, Dover, DE 19904; by phone at 302-739-9921; or by email at elaine.webb@delaware.gov.

For more information about the virtual hearing, visit <https://dnrec.alpha.delaware.gov/public-hearings/>

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register using the form at <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>.

Written comments may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Wednesday, December 16, 2020.

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Elaine Z. Webb

Elaine.webb@delaware.gov

(302) 739-9921

***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/november2020/proposed/24 DE Reg 468RFA 11-01-20.pdf>

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

[7201 Regulations Governing the Control of Water Pollution](#)

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 STATE FIRE PREVENTION COMMISSION

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

ORDER

710 Ambulance Service Regulations

The Delaware State Fire Prevention Commission, pursuant to 16 *Del. C.* § 6604(1), proposed to revise Regulation 710, Ambulance Service Regulations ("Regulation 710"). Among non-substantive changes, proposed to alter style and form and to correct technical errors, and other changes as set forth in the proposed revisions, the Commission proposed the following amendments to Regulation 710 (hereafter, the "Proposed Amendments"):

- Requiring that Ambulance Service Providers pay an annual permit fee for each ambulance.
- Requiring that Ambulance Service Providers maintain bona-fide offices in Delaware.
- Requiring that permit stickers be affixed to ambulances.
- Requiring that Patient Care Transports be completed on all 911 responses and that, if they cannot be entered electronically, to make reasonable efforts to forward them to the State EMS Office by other means, as well as to clarify that it is the responsibility of the BLS Provider to ensure the submission of a Patient Care Report ("PCR").
- Deactivating the PCR system for suspended or revoked EMTs.
- Requiring that by June 1, 2020, all newly purchased, fabricated and remounted ambulance compartments conform to the criteria set forth in NFPA 1917 Standard for Automotive Ambulances 2019.
- Adding specific requirements for transporting bariatric patients.
- Requiring that Ambulance Service drivers maintain Emergency Medical Responder ("EMR") certifications in addition to being current in CPR/AED.
- Modifying a provision to provide that BLS Ambulance Service Providers may have their license and/or permits revoked, placed on probation or suspended for consistently failing inspections, including failing

to maintain the required equipment list. The Proposed Amendments also add provisions where discipline may be imposed for violating protocols, failing QA/QI programs, or for continuously failing to maintain safe and sanitary and properly equipped vehicles.

- Requiring any corrections to Patient Care Reports be made either by the EMT or their supervisors (with the EMT's written approval).
- Adding requirements that Private Ambulance Providers have radios programmed to certain frequencies and that they receive related training.
- Combining and synthesizing various sections dealing with Primary and Secondary Ambulance Service Providers.
- Requiring sponsor signatures for initial Delaware EMT certification and reciprocity applications.
- Requiring EMT applicants to also ensure they have their Healthcare Provider Card and NREMT Certification card, in addition to other documentation when applying for a Delaware certification.
- Adding additional bases for Commission discipline, including, but not limited to: violations of contractual agreements to provide Ambulance Service; having three or more critical deficiencies in a 12-month period; having an NREMT certification revoked; having related certifications revoked in other jurisdictions or in another Commission-regulated profession; where a physical or psychological limitation prevents an EMT from performing the essential functions of their job consistent with applicable law; and failure to report discipline from other jurisdictions.
- Adding categories of unprofessional misconduct, including abuse or misuse of drugs or alcohol and failure to participate in Commission investigations.
- Authorizing Commission confidential letters of concern where acts or omissions of an EMT are concerning even though a regulation or protocol may not have been violated.
- Permitting emergency, temporary suspensions of EMT certifications where there is a clear and immediate danger to the public health, safety or welfare.
- Adding a prohibition of reinstating an EMT certification where the EMT caused the certification to lapse to avoid a Commission investigation.
- Reducing the amount of time an EMT or Ambulance driver has to self-report an arrest or release from custody from 30 days to 10.
- Modifying and streamlining the procedures for conducting criminal background checks and retaining confidential criminal history information obtained through such checks.
- Making numerous other non-substantive changes to improve readability and consistency.

The Proposed Amendments to Regulation 710 were published in the *Delaware Register of Regulations* on January 1, 2020. A written comment period was held open for thirty days, through February 1, 2020.

A public hearing was held on July 20, 2020, notice of which was published in the *Delaware News Journal* on June 23, 2020 and the *Delaware State News* on June 24, 2020.

At the hearing, the Commission accepted as evidence and marked the following exhibits:

Exhibit 1. Written comments from Jay Myers. Mr. Myers questioned charging permit fees for ambulances and the lack of reference to utilizing private ambulances (except in events of mass casualties and disasters). Mr. Myers also had a question regarding requiring EMR certifications for Ambulance drivers.

Exhibit 2. Written comments from Milton Fire Dept., Inc., opposing requiring EMR certification for Ambulance drivers.

Exhibit 3. Written comments from Ellendale Vol. Fire Co., Inc., supporting the Proposed Amendments with the exception of the EMR requirement.

Exhibit 4. Written comments from Laurel Fire Department, likewise opposing the EMR requirement.

Exhibit 5. Written comments from Seaford Volunteer Fire Department, Inc., opposing the EMR requirement.

Exhibit 6. Written comments from Rehoboth Beach Volunteer Fire Co., Inc., opposing the EMR requirement.

Exhibit 7. Written comments from Sussex County Fire Chiefs Association, opposing the EMR requirement.

Exhibit 8. Written comments from Dagsboro Volunteer Fire Department, opposing the EMR requirement.

Exhibit 9. Written comments from Gumboro Volunteer Fire Co., opposing the EMR requirement.

Exhibit 10. Written comments from Mid-Sussex Rescue Squad, Inc., opposing the EMR requirement.

Exhibit 11. Written comments from Magnolia Volunteer Fire Company, Inc., opposing the EMR requirement.

Exhibit 12. Affidavit of publication of the June 23, 2020 *Delaware News Journal* publication of the notice of hearing.

Exhibit 13. Affidavit of the June 24, 2020 *Delaware State News* publication of the notice of the hearing.

Several other non-substantive suggested changes were also noted during the hearing:

- To add a definition for "PCR" - patient care report.
- To modify Section 7.2.1.3, to push back the date that all newly purchased, fabricated and remounted ambulance compartments be in conformity with NFPA 1917 Standard for Automotive Ambulances 2019 from June 1, 2020 to January 1, 2021. The Commission anticipated addressing the Proposed Amendments well before June 1, 2020, the original proposed deadline, but the final hearing was delayed due to the government shutdown and restrictions associated with the COVID-19 pandemic.
- To change "without" to "with" in proposed Section 14.4.1.15, so that it reads: "Where physical or psychological limitations prevent the EMT from performing the essential functions of the job with reasonable accommodations, consistent with any applicable federal or state disability law; or"
- Amend Section 14.4.4.4 to not delete "impose any of the following sanctions" before the word "against." This phrase was inadvertently deleted in the Proposed Amendments.

At the time of the public hearing, the Commission opened the hearing for public comment. There were no comments opposing any of the proposed change to Regulation 710 or any supporting or opposing any specific proposed changes.

The Commission also noted that it will hold the public comment period for a period of 15 days following the hearing, as required by the Administrative Procedures Act. Notice of this period was posted on the Commission's website. The Commission received no new comments or filings with respect to the Proposed Amendments.

Summary of the findings of fact

Pursuant to discussions held during open public Commission meetings, and for the reasons set forth in the numerous filings opposing requiring Ambulance drivers to be EMR certified, the Commission will remove that proposed requirement. The Commission will also remove the proposed requirement to add an ambulance permit fee. The Commission removes these requirements without prejudice to reconsidering them at a later time.

The Commission also found that the non-substantive changes noted above, including moving back the 1917 NFPA 1917 standard to January 2021 made sense given the lapse of time between the publication of the Proposed Amendments and the time of the hearing.

Decision of the Commission

With regard to the criticisms over adding the EMR requirement to Ambulance drivers, the Commission concludes that it should be eliminated from the Proposed Amendments.

With regard to the criticism regarding the Ambulance permit fee, the Commission determines to eliminate it until such time as legislation is enacted to permit such fees.

The technical, non-substantive changes suggested during the hearing and as mentioned above will also be made.

Therefore, the Commission adopts the Proposed Amendments to Regulation 710 as final, with the deletions and other non-substantive changes set forth in this Order. The final proposed amendments are reflected in Exhibit A hereto.

IT IS SO ORDERED, this 18th day of August, 2020 by the Commission:

Ronald Marvel, Chairman

Alan Robinson, Jr., Vice-Chairman

Lynn Truitt

William Kelly

Joseph J. Leonetti, Sr. (absent)

Richard Perillo

Bill Betts

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

710 Ambulance Service Regulations

FINAL REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

612 Possession, Use or Distribution of Drugs and Alcohol

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol in order to add a definition of "Hand Sanitizer" which will clarify its use in response to the COVID-19 pandemic and beyond, as well as to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol 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** 612 Possession, Use or Distribution of Drugs and Alcohol amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 17, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of September 2020.

Department of Education

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

Approved this 17th day of September 2020

State Board of Education

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

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

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 Purpose

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

2.0 General Provisions

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

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

3.02.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.0 General Provisions

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

- 3.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.
- 3.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 3.1.3 Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug

Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search and will result in loss of the privilege to bring the vehicle on campus.

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

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

- 4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:
- 4.1.1 A system of notification of each student and their parent, guardian or ~~Relative Caregiver~~ relative caregiver at the beginning of the school year, of the state and district policies and regulations. In ~~addition~~ addition, a system for the notification of each student and their parent, guardian or ~~Relative Caregiver~~ relative caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
 - 4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.
 - 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or ~~Relative Caregivers~~ relative caregivers and to the Department of Education, while maintaining confidentiality.
 - 4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
 - 4.1.5 A written policy on search and seizure.
 - 4.1.6 A program of assistance for students with counseling and referral to services as needed.
 - 4.1.7 A policy in cases involving a Drug Like Substance or a Look Alike Substance for establishing that the student intended to use, possess or distribute the substance as a Drug.
 - 4.1.8 A policy which establishes how Prescription ~~Medications~~ medications and Nonprescription ~~Medications~~ medications shall be handled in the School Environment and when they will be considered unauthorized and subject to these state and local policies.
 - 4.1.9 A policy which sets out the conditions for return after expulsion for Alcohol or Drug infractions.
- 4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler with an individual prescription label, an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump") or Hand Sanitizer; provided, nevertheless, that the student uses the inhaler, autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the ~~parent(s) or legal custodian(s)~~ parents or legal custodians of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.

- 4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.
- 4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

(For students who use prescribed asthmatic quick relief inhalers, autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy or Hand Sanitizer, see 14 **DE Admin. Code** 817, Administration of Medications and ~~Treatments~~ Treatments.)

- 4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of ~~dose(s)~~ doses prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

5.0 Reporting Requirements and Timelines

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 738

REGULATORY IMPLEMENTING ORDER

738 Financial Goals for Instruction and Instruction-related Expenditures

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks to repeal 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures. This regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures. This regulation is being repealed because 14 **Del.C.** §1510 has been removed from Delaware Code in accordance with Senate Bill 240 of the 150th General Assembly, otherwise known as the Fiscal Year 2021 Budget Bill.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures attached hereto as Exhibit "B" is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 6, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 6th day of October 2020.

Department of Education

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

Approved this 6th day of October 2020

EXHIBIT B

738 Financial Goals for Instruction and Instruction-related Expenditures

1.0 Purpose

~~The purpose of this regulation is to outline goals for Delaware's local school districts and charter schools with respect to the percentage of cumulative revenues that shall be used for instruction and instruction-related expenditures, as those terms are used by the National Center for Educational Statistics or its successor organization, as required pursuant to 14 **Del.C.** §1510.~~

2.0 Definitions

~~"Charter School" shall mean a school pursuant to 14 **Del.C.**, Chapter 5.~~

~~"Expenditures" shall mean all amounts of money paid out by a school system, net of recoveries and other correcting transactions, other than for retirement of debt, purchase of securities, and extension of loans. Expenditures include only external transactions of a school system and exclude noncash transactions such as the provision of prerequisites or other in-kind payments. Definition from the National Center for Education Statistics NCES 2009-338 Sept 2009.~~

~~"Instruction and instruction related expenditure" shall mean payments for instruction and instruction staff support services. These are expenditures that are directly related to providing instruction and for activities that assist with classroom instruction. These include salaries and benefits for teachers, teaching assistants, librarians and library aides, in-service teacher trainers, curriculum development, student assessment, technology (for students but outside the classroom), and supplies and purchased services related to these activities. Definition from the National Center for Education Statistics NCES 2009-338 Sept. 2009.~~

~~"Local Educational Agency" or "LEA" means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of~~

school districts. The term includes an educational service agency, as defined in this section, and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

"**Local School District**" shall mean a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.**, Chapter 10.

"**Total revenues**" is the sum of revenue contributions emerging from local, state, and federal sources. Revenue received from bond sales or the sale of property or equipment is not included. Definition from the National Center for Education Statistics NCES 2009-338 Sept. 2009.

3.0 Goals for Instruction and Instruction Related Expenditures

- 3.1 Each local school district shall increase Instruction and Instruction related expenditures as a percentage of Total Revenues to exceed the national average by at least 5% from the most current data available from the U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline shall be 54.9%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.
- 3.2 Each charter school shall increase Instruction and Instruction related expenditures as a percentage of Total Revenues to meet the national average from the most current data available by the U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline for the 2010-2011 school year shall be 52.3%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.
- 3.3 Beginning with the 2009-2010 school year, local school districts and charter schools shall provide data as required by NCES for that current school year to the Department as required by timelines imposed by NCES, but no later than July 15th following the end of the school year.
- 3.4 Beginning with the 2010-11 school year, the goal for each local school district and charter school shall be to budget to reflect 3.1 and 3.2.

4.0 Department Review and Oversight

- 4.1 By December 1st of each year, the Department shall notify the local school district and charter schools the goals, based the latest NCES data, for 3.1 and 3.2.
- 4.2 By March 1, 2010 for the 2008-2009 school year, and December 31st following the end of each school year thereafter, the Department shall provide a report on its website describing each local school district's and charter school's status with respect to the goals in 3.1 and 3.2. For charter schools, the description shall at a minimum include any expenses associated with facilities.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XXI Delaware Healthy Children's Program State Plan – Health Services Initiatives – Vision Services – School-Based Initiative

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XXI Delaware Health Children's Program State Plan regarding Health Services Initiatives, specifically, to revise language for Delaware's CHIP State Plan Health Service Initiative to align with the Delaware Department of Education's (DDOE's) definition of low-income in its Vision Services - School-Based Initiative, and to revise the data collection process to aid in identification of uninsured children. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by

31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del.C. §10115 in the January 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 2.2 of Title XXI Delaware Health Children's Program State Plan regarding Health Services Initiatives, specifically, to revise language for Delaware's CHIP State Plan Health Service Initiative to align with the Delaware Department of Education's (DDOE's) definition of low-income in its Vision Services - School-Based Initiative, and to revise the data collection process to aid in identification of uninsured children.

Background

Changes in USDA programs have affected how schools determine which students are eligible for free or reduced price lunches. With these changes, the ability to determine individual student status is no longer possible in all districts and schools. Section 104(a) of the Healthy, Hunger Free Kids Act of 2010 (HHFKA) amended section 11(a)(1) of the Richard B. Russell National School Lunch Act(NSLA)(42 U.S.C. 1759a(a)(1)) to provide an alternative to household applications for free and reduced price meals in high poverty local educational agencies (LEAs) and schools. This alternative is called the Community Eligibility Provision (CEP). CEP permits eligible schools to provide meal service to all students at no charge, regardless of economic status, while reducing burden at the household and local levels by eliminating the need to obtain eligibility data from families through a separate collection; schools can use only "direct certification" data, such as data from the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) program to determine the Federal cash reimbursement for school lunches provided by USDA. A school is eligible for CEP if at least 40% of its students are "directly certified" and the school provides free breakfast and lunch to all of its students.

As a result, the Delaware Department of Education (DDOE) has changed the methodology used to calculate the low income measure for Delaware schools. Whereas DDOE previously determined low income by identifying students that received TANF, SNAP, Medicaid, or free or reduced price lunch, low income is now determined by students who receive any one of the following benefits: TANF, SNAP (Direct Certification).

Statutory Authority

Healthy, Hunger Free Kids Act of 2010 (HHFKA)

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 29 Del.C. Ch. 101, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2020.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact Statement

These changes are revisions in how the program is run and low-income children are identified for services. These are not new or expanded services, thus no fiscal impact is expected.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters opposed the definitional change because this change may result in fewer children receiving school-based vision services outlined under this plan.

Agency Response: The change in definition is necessary due to changes in the school-based nutrition program.

Comment: Two commenters recommended that DMMA not remove the requirement for parental consent, as required by state law.

Agency Response: DMMA will comply with state law requiring parental consent.

Comment: Two commenters recommended that DMMA include a timeline of when students can expect to receive corrective eyewear once insurance information is provided.

Agency Response: DMMA appreciates the input and will take this recommendation under consideration

Comment: One commenter recommended that, in addition to not removing the requirement for parental consent for the provision of the eye screening and examination, DMMA also include the request for insurance information in the initial consent form.

Agency Response: DMMA appreciates the input and will continue to collect the insurance information after the screening.

Comment: One commenter asked how children outside of CEP schools get access to vision services?

Agency Response: Vision services are a covered benefit for all children enrolled in the CHIP program.

Comment: One commenter recommended before a screening and prescription that earnest efforts be made to connect to the child's medical home or eye doctor.

Agency Response: Each of DMMA's health plans assist families in connection children to a medical home and eye care as needed. For those children who are uninsured, the mobile vision service provider each child with information on where to apply for CHIP or Medicaid.

Comment: One commenter recommended DMMA hold any provider of vision services under Section 2.2. to the same standard of care provided by eye care professionals (optometrists and ophthalmologists) when providing an "eye exam" to this underserved patient population.

Agency Response: The vision to learn service provider has licensed eye care professionals providing this service.

Comment: One commenter inquired about the processes in place to ensure collaboration with a child's current medical provider(s) and current specialist for eye care (if applicable)?

Agency Response: Each of DMMA's health plans has care coordinators who coordinate care for children enrolled in CHIP.

Comment: One commenter inquired about processes in place to ensure that families do not "use up" their annual vision benefit at school if they are already connected to an optometrist or ophthalmologist?

Agency Response: The Mobile Vision Services Program provides vision services in Community Eligibility Provision (CEP) qualified schools for children facing hardships accessing vision services. It is not meant to replace vision services for children who are already connected to an optometrist or ophthalmologist.

Comment: One commenter recommended that specific language be added to all informational materials and forms for school-based vision services that coverage for school-based services/eyeglass prescriptions are billed to the child's current insurance should they be insured.

Agency Response: DMMA appreciates the input and will take this recommendation under consideration.

Comment: One commenter inquired if DMMA had processes in place or would be established to connect an uninsured child to comprehensive health services?

Agency Response: The Mobile Vision Services contractor has been distributing brochures to uninsured at each visit to take home to let families know that they may qualify for Medicaid/CHIP benefits and provides information where they can contact DSS to apply.

Comment: One commenter recommend the division focus on the identification of uninsured children and developing methods for ensuring that they are able to access needed vision services.

Agency Response: While uninsured children in need of vision services are also identified through vision to learn program, DMMA appreciates and takes under consideration your recommendation for focused attention on this population.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Delaware Academy of Ophthalmology
- Delaware Optometric Association
- Governor's Advisory Council for Exceptional
- Nemours Children's Health System
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the August 2020 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy, is adopted and shall be final effective November 11, 2020.

10/12/20

Date of Signature

Molly K. Magarik, Secretary, DHSS

2.2. Health Services Initiatives- Describe if the State will use the health services initiative option as allowed at 42 CFR 457.10. If so, describe what services or programs the State is proposing to cover with administrative funds, including the cost of each program, and how it is currently funded (if applicable), also update the budget accordingly. (Section 2105(a)(1)(D)(ii)); (42 CFR 457.10)

Pursuant to Section 2105(a)(1)(D)(ii) of the Social Security Act, Delaware ~~with~~ will use administrative funds to offer health services initiatives under this plan with the goal of improving the health of children, defined as "individual(s) under the age of 19 including the period from conception to birth," per 42 CFR 457.10. Delaware assures that it will use no more than 10% of the total expenditures under this Plan, as specified in 42 CFR 457.618, to fund the State's health service initiatives.

Vision to Learn Services – School-Based Initiative

Access to vision exams and glasses is critical for students' educational achievements and health outcomes, as 80% of all learning during a child's first 12 years is vital. It comes as no surprise that students with vision problems tend to have lower academic performance, as measured by test scores and grades, and that students' performance in school impacts future employment earnings, health behaviors, and life expectancy. As such, Delaware seeks to use the health services initiative option to improve the health of low-income children by increasing their access to needed vision services and glasses through a targeted, school-based initiative. Delaware intends to contract with a ~~non-profit~~ Medicaid participating provider to offer these services on-site at certain Delaware schools. ~~(Delaware is currently engaged with Vision to Learn (VTL), which has been serving Delaware children since 2014 and is a certified Medicaid participating provider. VTL is a non-profit, philanthropically funded entity that provides free eye exams and glasses to students at schools in low income communities.)~~

The following describes how the CHIP HSI will be operationalized:

- The qualified provider will target Delaware's low-income children by identifying ~~Title I schools in which at least 51% of the student body receives free or reduced price meals~~ Community Eligibility (CEP) Schools. A school is eligible for CEP if at least 40% of its students are "directly certified" through the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) and the school provides free breakfast and lunch to all of its students.

FINAL REGULATIONS

- These schools will provide the qualified provider with a list of children who have failed the school-supplied vision screening. ~~The qualified provider will give these children parental consent forms to take home.~~
- ~~The qualified provider will send a~~ **[notice parental/guardian consent form]** ~~home with these children informing the parent/guardian that their child~~ **[will has the opportunity to]** ~~receive~~ **[a vision screening, eye exam vision services]**, and, if necessary, corrective lenses and frames **[following the procedure set forth in this policy]**. ~~The parent/guardian has the opportunity to return the form and~~ **[accept or]** ~~refuse these services.~~ **[If no form is returned, no services will be provided to the child.]**
- ~~For children whose return with parental consent,~~ **[The For children who return with parental/guardian consent the]** qualified provider will ~~[give one vision screening and eye exam provide vision services]~~ and, if needed, corrective lenses and frames (including replacements, as-needed) on-site in a mobile eye clinic.
- ~~If the vision~~ **[screening and eye exam service]** ~~results determine that corrective lenses and frames are needed, the qualified provider will send a notice home to the child's parent/guardian informing them of the results and requesting insurance information.~~
- ~~The qualified provider will collect identifying information from all children it serves (for example, name and date of birth) or and submit this information to the Delaware Division of Medicaid and Medical Assistance (DMMA). Based on this data, DMMA will identify children who are enrolled in Medicaid or CHIP and their managed care organization (MCO) and return this information to the qualified provider, who will then submit bills for Medicaid and CHIP enrollees directly to the MCOs. The MCOs will pay based on negotiated, standard fees.~~
- **[The qualified provider is then scheduled to return to the school to fit the child for glasses.]**
- ~~The qualified provider will collect the following information, at a minimum, from all children it serves, and submit it to the Delaware Division of Medicaid and Medical Assistance (DMMA):~~
 - ~~Child's first and last name;~~
 - ~~Child's date of birth;~~
 - ~~Name of the parent or guardian;~~
 - ~~Name of the school the services were provided at and~~ **[its]** ~~CEP status;~~
 - ~~Indication that the insurance information form was or was not returned; and if it was returned,~~
 - ~~The insurance information that was provided.~~
- ~~Based on this data, DMMA will identify children on this list who are enrolled in Medicaid or CHIP and their managed care organization (MCO) and return this information to the qualified provider, who will then submit bills for Medicaid and CHIP enrollees directly to the MCOs. The MCOs will pay based on negotiated, standard fees.~~
- ~~The qualified provider will submit information about services provided to DMMA for the children ages 18 or younger who DMMA has not identified as enrolled in Medicaid or CHIP. DMMA will remit payment for these services through CHIP HSI funding.~~
- ~~The qualified provider will use this data and submit a second report to DMMA to include only those children that are 18 years of age or under, returned the insurance information form, did not indicate a private insurance carrier, and were not identified by DMMA as enrolled in Medicaid or CHIP on the previous submission.~~
- ~~DMMA will remit payment for these services through CHIP HIS funding.~~
- DMMA will perform outreach by supplying the provider with brochures and information about the CHIP and Medicaid Programs to provide to children that are not currently enrolled in Medicaid or CHIP.

Delaware provides the following assurances regarding this Health Service Initiative (HSI), ~~Vision to Learn (VTL)~~—Delaware Vision Services – School-Based Initiative:

- This HSI will only target children **[under the age of 18 years of age or under]**;
- This HSI will not supplant or match CHIP Federal funds with other Federal funds nor allow other Federal funds to supplant or match CHIP Federal funds; and

-
- HSI funds will not be used for children with private coverage and will only be used to cover ~~VTL~~ services provided to uninsured children.
-

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A (16 **Del.C.** Ch. 49A)
16 **DE Admin. Code** 4470

ORDER

4470 State of Delaware Medical Marijuana Code

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing the State of Delaware Medical Marijuana Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** Ch. 49A.

On September 1, 2020 (Volume 24, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 1, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

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

Entities offering written comments include:

- American Association for Laboratory Accreditation (A2LA), Randall Querry
- State Council for Persons with Disabilities (SCPD), Terri Hancharick
- Governor's Advisory Council for Exceptional Citizens (GACEC), Ann C. Fisher

Comments

American Association for Laboratory Accreditation (A2LA):

On behalf of the American Association for Laboratory Accreditation (A2LA), I write regarding the proposed rule concerning the Medical Marijuana Code as it pertains to the accreditation of safety compliance facilities.

By way of background, A2LA is a non-profit, accreditation body with over 3700 actively accredited certificates representing all 50 states. We currently lead the country in independent, third-party accreditation bodies that provide accreditation to cannabis and hemp testing laboratories with over seventy such laboratories achieving A2LA accreditation across the US. We have been granting accreditation to testing laboratories in various industries since 1979. The criteria forming the basis for our laboratory accreditation program is ISO/IEC 17025 General requirements for the competence of testing and calibration laboratories. We ourselves, as an accreditation body, have been evaluated against rigorous standards in providing this accreditation service and are recognized globally as an International Laboratory Accreditation Cooperation (ILAC)-recognized accreditation body.

Thank you for providing the opportunity to comment on the newly proposed revisions. When proposing rules to marijuana programs, testing, and the ensuing test results, are critical to the program. Regular laboratory assessments leading to accreditation, will provide the users of the test reports with confidence that the data is backed by a quality management system, technically competent testing, qualified personnel, and the use of the appropriate facilities and testing equipment.

We support the use of accredited safety compliance facilities; however, we have concerns with the language of the current rule:

8.0 Registration and Operation of Safety Compliance Facilities

8.1.2 A safety compliance facility must be operated in accordance with the International Organization for Standardization 17025 (ISO 17025) standards as confirmed by accreditation by a third party accrediting body such as American Association for Laboratory Accreditation (A2LA) or ANSI-ASQ National Accreditation Board (ACLASS); or Certified under the Clinical Laboratory Improvement Act (CLIA) or a qualified auditing organization using ISO 17025 criteria approved by the Department.

As written, the regulations provide a variety of approaches to qualifying laboratories; whereas there should be one standardized approach which would hold all of the safety compliance facilities and accreditation bodies / auditing organizations to the same requirements. We offer the following recommendation for your consideration:

8.1.2 The safety compliance facility must achieve ISO/IEC 17025 accreditation by an International Laboratory Accreditation Cooperation (ILAC) recognized accreditation body.

By adopting this language, the Department and the safety compliance facilities will be assured that a consistent approach is implemented in conducting assessments and managing the process of accreditation. By relying on ILAC recognized accreditation bodies, the department can have confidence in a well-vetted, formally recognized accreditation framework that has been in use in the US for over two decades and that is widely used in the cannabis and hemp testing industry, while offering a choice of accreditation bodies for the safety compliance facilities to select.

ILAC-recognized accreditation bodies must operate to an ISO standard, similarly as to the safety compliance facilities. The accreditation bodies also get evaluated routinely and must demonstrate conformity to the ISO/IEC 17011 and to the ILAC policies. A few of the requirements they must have and implement include:

- Impartiality policies
- A complaint process
- An appeal process
- A program that trains and qualifies technical experts (assessors) and continues to monitor assessors over time
- Maintain a directory of accredited organizations online and provide status of adverse actions (suspensions)

Additionally, in regard to the current regulation permitting certification under the Clinical Laboratory Improvement Amendments (CLIA), please note that these requirements are written specifically for testing laboratories conducting testing on specimens derived from humans for the purpose of making a diagnosis. The CLIA requirements greatly differ from the ISO/IEC 17025 requirements and many of the CLIA requirements are not relevant to testing of medical marijuana.

Therefore, using CLIA regulations is not a suitable approach to determining if a safety compliance facility is technically competent and has the appropriate equipment and facilities to perform testing on medical marijuana.

- **Response:** This subsection of the regulations will be changed to remove the erroneous reference to Clinical Laboratory Improvement Amendments (CLIA). The section will read:

8.1.2 A safety compliance facility must be operated in accordance with the International Organization for Standardization 17025 (ISO 17025) standards as confirmed by accreditation by a third-party accrediting body or a qualified auditing organization using ISO 17025 criteria approved by the Department.

State Council for Persons with Disabilities (SCPD):

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Public Health's (DPHs)/ Office of Medical Marijuana's proposal to amend 16 Del Code 4906A which allows the Department, upon petition, to add conditions for eligibility for the Delaware Medical Marijuana Program by regulation. This proposed regulation adds anxiety as a qualifying medical condition, but only for access to "CBD Rich Oil."¹ The proposed regulation was published as 24 DE Reg. 258 in the September 1, 2020 issue of the *Register of Regulations*. SCPD has the following observations.

A petition to add anxiety was denied in 2017.² The DPH Marijuana Advisory Board has not listed any further petitions relating to anxiety on the website and SCPD is unclear how this addition came to be. Regardless, it is of some benefit for individuals with anxiety to be able to access CDB Rich oil. It is possible that the state does not wish to run afoul of SAMHSA's restriction on funding for programs that advocate or supply medicinal marijuana to anyone as treatment for a mental health or substance abuse disorder, and this is why access is restricted to CDB

Oil. This is speculation, however.

The proposed regulation adds the "CDB Rich" classification to the list of types of registration cards that are issued. They define "CDB Rich Oil" as having near equal components of THC and CDB. They allow home delivery but set up tracking, security and data requirements; and it makes clear that anyone with qualifying diagnoses can access CDB Rich Oils.

SCPD respectfully requests more background regarding the regulation to clarify why anxiety was not included as a qualifying medical condition eligible for access to the entire Delaware Medical Marijuana Program. In addition, SCPD would like to know if enacting the regulation has a potential impact on the current availability of CBD Oil commercially outside of the medical marijuana context.

- **Response:** SB 170 (150th GA) established a CBD-Rich medical marijuana card for the treatment of anxiety or other conditions approved by the Department for treatment with Cannabidiol-Rich medical marijuana. The State of Delaware Medical Marijuana Code regulations were updated to conform with this law.

Commercial CBD oil can be derived from hemp or medical marijuana strains rich in CBD. Compassion centers may use hemp-derived CBD as a lower cost alternative. The Office of Medical Marijuana requires that each batch of medical marijuana or hemp sold in a Delaware compassion center undergoes comprehensive testing for mold, fungus, and pesticides by batch or lot number.

¹ <http://www.cbdalive.org/benefits-cbd-rich-cannabis/>

² <https://dhss.delaware.gov/dhss/dph/hsp/medmarocpet.html>

³ <https://www.marijuanamoment.net/feds-withdraw-health-grants-for-schools-that-allow-medical-marijuana-maine-official-says/>

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Office of Medical Marijuana, Division of Public Health (DPH) and Department of Health and Social Services (DHSS) proposal to amend the State of Delaware Medical Marijuana Code. The revisions include the establishment of a Cannabidiol-Rich (CBD-Rich) registry identification card, requirements for CBD-Rich medical marijuana profile concentrations, regulations for home delivery services, the addition of anxiety to the list of qualifying conditions (restricted to CBD-Rich cards) and technical changes. Council would like to share the following questions and concerns on the proposed amendments.

Additional background on this regulation, including its potential impact on the current availability of CBD Oil commercially outside of the medical marijuana context would be greatly appreciated. Does the Substance Abuse and Mental Health Services Administration (SAMHSA) restriction on funding for programs that advocate or supply medicinal marijuana to anyone as treatment for a mental health or substance abuse disorder have any bearing on the addition of anxiety as a qualifying condition?

- **Response:** SB 170 (150th GA) established a CBD-Rich medical marijuana card for the treatment of anxiety or other conditions approved by the Department for treatment with Cannabidiol-Rich medical marijuana. The State of Delaware Medical Marijuana Code regulations were updated to conform with this law.

Commercial CBD oil can be derived from hemp or medical marijuana strains rich in CBD. Compassion centers may use hemp-derived CBD as a lower cost alternative. The Office of Medical Marijuana requires that each batch of medical marijuana or hemp sold in a Delaware compassion center undergoes comprehensive testing for mold, fungus, and pesticides by batch or lot number.

FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the State of Delaware Medical Marijuana Code is adopted and shall become effective November 11, 2020 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

10/14/2020

Date

Molly K. Magarik
Cabinet Secretary

**4470 State of Delaware Medical Marijuana Code
(Break in Continuity of Sections)**

7.0 Registration and ~~Operation of Compassion Centers~~ Operation of Compassion Centers]

8.0 Registration and Operation of Safety Compliance Facilities

8.1 General Requirements for Operation of a Safety Compliance Facility

(Break in Continuity Within Section)

- 8.1.2 A Safety Compliance Facility must be operated in accordance with the International Organization for Standardization 17025 (ISO 17025) standards as confirmed by accreditation by a ~~[third party third-party]~~ accrediting body ~~[such as American Association for Laboratory Accreditation (A2LA) or ANSI-ASQ National Accreditation Board (ACLASS); or Certified under the Clinical Laboratory Improvement Act (CLIA)]~~ or a qualified auditing organization using ISO 17025 criteria approved by the Department.

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2020 issue of the *Register* at page 258 (24 DE Reg. 258). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4470 State of Delaware Medical Marijuana Code

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3370, and 3571R (18 Del.C. §§311, 3370, & 3571R)

18 DE Admin. Code 1409

ORDER

1409 Insurance Coverage for Telemedicine and Telehealth

Regulation 1409, entitled Insurance Coverage for Telemedicine and Telehealth, sets forth requirements for insurance coverage for the delivery of healthcare using telemedicine and telehealth.

On March 12, 2020, Delaware's Governor issued a Declaration of a State of Emergency for the State of Delaware (the Declaration) due to a public health threat as a result of the COVID-19 pandemic. Thereafter, the Declaration was amended through a series of modifications and a Joint Order of the Department of Health and Social Services and the Delaware Emergency Management Agency (the Joint Order), which, in total, eased restrictions on who may provide medical services through telehealth, who may receive those services and under what circumstances, and how those services were to be paid. Those modifications and the Joint Order are more fully explained in the preamble to the Act.

On July 17, 2020, the Governor signed House Substitute 1 for House Bill 348 as modified by House Amendment 1 (150th General Assembly) (the Act). The Act, which expires on July 1, 2021, promulgates the telemedicine-related requirements in the Declaration as further modified in the Joint Order. The Act includes revisions to sections 3370 and 3571R of the Delaware Insurance Code.

With this order, the Department is updating Regulation 1409 to conform the regulation with the Act. These updates are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 Del.C. §10113(b)(5).

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

IT IS SO ORDERED.

This 5th day of October, 2020

Trinidad Navarro
Commissioner, Delaware Department of Insurance

1409 Insurance Coverage for Telemedicine and Telehealth

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 3370 and ~~3754R~~ 3571R and is promulgated in accordance with 29 **Del.C.** Chapter 101.

2.0 Definitions

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

“**Distant site**” means a site at which a health care provider legally allowed to practice in the state is located while providing health care services by means of telehealth.

“**Originating site**” means a site in Delaware or outside of Delaware if the patient is a Delaware resident at which a patient is located at the time health care services are provided to ~~him or her~~ the patient by means of telehealth, unless the term is otherwise defined with respect to the provision in which it is used; provided, however, notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

“**Store and forward transfer**” means the transmission of a patient’s medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time.

“**Telehealth**” means the use of information and communications technologies consisting of telephones, store and forward transfers, remote patient monitoring devices or other electronic means which support clinical health care, provider consultation, patient and professional health-related education, public health, and health administration services which may not require the use of technology permitting visual communication.

“**Telemedicine**” means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient’s health care by a health-care provider practicing within his or her scope of practice as would be practiced in-person with a patient, and legally allowed to practice in the State, or other jurisdiction when treating a Delaware resident, while such patient is at an originating site and the health-care provider is at a distant site.

3.0 Compliance with Statutes Regarding Telemedicine and Telehealth

Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each managed care organization and health maintenance organization providing a health care plan for health care services shall comply with the provisions of 18 **Del.C.** §§3370 and 3571R, and this regulation.

4.0 Telehealth

- 4.1 Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and

each managed care organization and health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telehealth. Coverage for health care services provided through telehealth shall be provided so long as the underlying health care service is a covered service and the health care provider providing the service is licensed to furnish the service under State law and is practicing within the scope of State law.

- 4.2 No insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; health service corporation providing individual or group accident and sickness subscription contracts; or managed care organization or health maintenance organization providing a health care plan for health care services shall impose any limitation on the ability of an insured to seek medical care through the use of telehealth service solely because the health care service is being provided through telehealth. Such prohibited limitations shall include, but not be limited to, preauthorization, medical ~~necessity~~ or necessity, homebound requirements, or requiring the use of technology permitting visual communication.

5.0 Severability

If any provision of this regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

6.0 Effective Date

This regulation ~~shall become~~ became effective on February 11, 2016, ten (10) days after being published as a final regulation. The amendments to the regulation shall become effective November 11, 2020, and shall expire on July 1, 2021, unless extended by order of the Commissioner.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 100 BOARD OF ACCOUNTANCY

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

ORDER

100 Board of Accountancy

On April 1, 2020, the Delaware Board of Accountancy published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 23, Issue 10. Due to a problem with the newspaper notice the Board re-published the proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 23, Issue 12. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on July 15, 2020 at a regularly scheduled meeting of the Board of Accountancy to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

No verbal testimony was provided at the public hearing. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §105(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the *Delaware Register of Regulations* on June 1, 2020. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 16th day of September, 2020.

DELAWARE BOARD OF ACCOUNTANCY

/s/ Jonathan Moll, CPA, President

/s/ Alison Houck, CPA

/s/ Renee Villano, CPA

/s/ Sarah Patterson, CPA

/s/ Araya Debessay, Education Member

/s/ Chadwick Milton, Professional Member, Secretary

/s/ Prameela Kaza, Public Member

/s/ Miriam Wilson, Professional Member

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

***Please note that no changes were made to the regulation as originally proposed and published in the April 2020 issue of the *Register* at page 843 (23 DE Reg. 843). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))

24 **DE Admin. Code** 2600

ORDER

2600 Examining Board of Physical Therapists and Athletic Trainers

Pursuant to 24 **Del.C.** §2604(a)(1), the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") proposed revisions to its rules and regulations. The proposed revisions to Section 14.0, pertaining to telehealth, are designed to increase patient access to physical therapy and athletic training services. Subsection 14.2.4.4 has been stricken to permit all evaluations, including initial evaluations, re-evaluations and scheduled discharges, to be performed via telehealth. Subsection 14.2.4.5 has been stricken to permit supervisory visits to be performed via telehealth. Finally, amendments to subsection 1.2 provide that supervising physical therapists may conduct supervision either in person or by telehealth.

On September 1, 2020, the proposed revisions to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 24, Issue 3. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on September 22, 2020 at a regularly scheduled meeting of the Board to receive verbal comments regarding the

Board's proposed amendments to its rules and regulations. The Board deliberated on October 13, 2020.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of publication of notice of the hearing

Board Exhibit 2: *Delaware State News* affidavit of publication of notice of the hearing

Board Exhibit 3: August 18, 2020 letter from Meredith Hershey Perny

Board Exhibit 4: August 11, 2020 email from George Edelman

Board Exhibit 5: August 11, 2020 email from Glenn Brown

Board Exhibit 6: August 7, 2020 letter from Stacie Larkin

There was no verbal testimony given at the public hearing on September 22, 2020. No written comments were received by the Board after the public hearing during the fifteen-day 29 **Del.C.** §10118(a) second public comment period.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2604(a)(1), the Board has the statutory authority to promulgate rules and regulations.

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 rules and regulations. In deliberations, the Board considered all comments presented by the public as set forth in Board Exhibits 3-6.

The Board first considered comments submitted by Meredith Hershey Perney, PT, DPT, Board Exhibit 3. Ms. Perny explained how the COVID-19 pandemic has changed the way she practices physical therapy. She has found that telehealth has given her a unique view into patients' homes and day to day life that's not available in an office setting. She has been able to practice safely and effectively and in many cases patients have been directed to self-care more quickly than in an office setting. Ms. Perny concluded by urging the Board to accept the proposed regulatory changes that would permanently allow physical therapy providers to use telehealth for any component of care.

The Board next addressed the comments submitted by George Edelman, MPT, OCS, MTC, Board Exhibit 4. Mr. Edelman wrote in support of the proposed changes to the telehealth language for physical therapy. Mr. Edelman described his experience when he sustained an injury which was treated by a physical therapist through virtual care. Mr. Edelman had a positive outcome and avoided a visit to the emergency room.

The Board addressed comments submitted by Glenn Brown, DPT, PT, MMSc, ATC, SCS, Board Exhibit 5. Mr. Brown first expressed support for the changes proposed by the Board. Mr. Brown stated that initial consults offer the most value for physical therapists and patients during the provision of remote care. Patients with severe pain may have difficulty getting to on-site care. Many patients miss the opportunity for early intervention due to the lack of access to physical therapy services. Mr. Brown noted that subsection 14.2.4.1 provides that the licensee is responsible for determining that telehealth is the appropriate level of care for the patient. Mr. Brown also requested revision to subsection 14.2.1.2 which provides that, during the telehealth treatment session, the patient shall be located within the borders of the State of Delaware. Mr. Brown noted that Delaware is bordered by three states and patients can visit a particular Delaware practitioner from any other state or country. Mr. Brown suggested a revision to the effect that the patient must be located in any state, country or jurisdiction which allows for remote care for patients.

Finally, the Board considered the letter submitted by Stacie Larkin, PT, DPT, the president of the Delaware Physical Therapy Association, Board Exhibit 6. Ms. Larkin expressed her support for the proposed regulatory changes. She stated that the pandemic has forced health care providers to reconsider how care can be delivered while reducing the risk of spreading the infection. During this time, it has become clear that telehealth can be beneficial to patients beyond the immediate COVID-19 health emergency. Specifically, telehealth expands access to care to patients who have difficulty leaving their homes, have underlying health conditions or lack transportation. Ms. Larkin also noted the benefits of telehealth in that the physical therapist can evaluate and treat the patient within the real-life context of their home environment.

During deliberations, the Board noted that almost all of the comments supported the proposed changes to the rules and regulations. Mr. Brown requested revision to subsection 14.2.1.2 which concerns the location of the patient during care. The Board had not proposed revision to subsection 14.2.1.2 and concluded that changes are not warranted at this time. The Board does not regulate the practice of physical therapy or athletic training in other

jurisdictions. Mr. Brown's comments highlight the future impact of the Physical Therapy Compact, which was enacted by the Board. The Board may reconsider the need for regulatory updates after the Compact is operating in Delaware.

The Board, having considered all public comments, finds no reason for further revisions and adopts the amendments to the rules and regulations as proposed as set forth in Exhibit A.

Decision and Effective Date

The Board finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

Text and Citation

The exact text of the rules and regulations, as amended, is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 13th day of October 2020 by the Delaware Examining Board of Physical Therapists and Athletic Trainers.

/s/ Angela Smith, Chairperson

/s/ Bethany Wisthoff

/s/ Mary Mundrane-Zweiacher, Vice-Chairperson

/s/ Prameela Kaza

Kimberly Lewis, Secretary (absent)

/s/ Sonja Brown

/s/ Joan Couch

/s/ Sherry Lambertson

/s/ Joshua Weber

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

***Please note that no changes were made to the regulation as originally proposed and published in the September 2020 issue of the *Register* at page 263 (24 DE Reg. 263). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2600 Examining Board of Physical Therapists and Athletic Trainers

DIVISION OF PROFESSIONAL REGULATION**2900 REAL ESTATE COMMISSION**

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

ORDER**2900 Real Estate Commission**

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

On December 1, 2019, proposed revisions to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 23, Issue 6. A public hearing was held on January 9, 2020. The Commission deliberated on February 13, 2020, and based on those deliberations, made substantive revisions to the proposed rules and regulations. Pursuant to a Public Notice published in the March 1, 2020 *Register of Regulations*, Vol. 23, Issue 9, the Commission struck the rules and regulations as proposed in the December 1, 2019 *Register of Regulations* and proposed further revisions. A hearing was scheduled for April 9, 2020. However, due to the State of Emergency related to COVID-19, the hearing was canceled.

The revised rules and regulations, as set forth in the March 1, 2020 *Register of Regulations*, were published again on August 1, 2020 in the *Delaware Register of Regulations*, Volume 24, Issue 2. The Notice advised that the deadline for written comments was August 31, 2020 and provided directions for submitting written comments.

The Commission's proposed regulations include a new subsection 8.5 which sets forth requirements for real

estate “teams.” New Section 9.0 addresses the scope of permissible activities under the property management licensure exemption. Revisions to the new Section 12.0, Renewal of Licenses, shortens the late renewal period from 60 to 30 days and clarifies that the late renewal period is not an extension of the deadline to complete continuing education. Requirements for licensure reinstatement are amended. As set forth in the new subsection 14.13, new licensees will be required to complete twelve hours of education designed to assist individuals new to the real estate profession. Those twelve hours must be completed within 90 days after the date of initial licensure and will not count towards the continuing education required for license renewal. New licensees will also be required to complete the continuing education applicable to all licensees pursuant to the pro-ratio schedule. Finally, as set forth in the new subsection 14.6.7, a minimum fine of \$250 will be imposed for a finding of unjustified noncompliance with continuing education requirements, and a minimum fine of \$1,000 will be imposed for a second finding of unjustified noncompliance.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

- Commission Exhibit 1: *News Journal* Affidavit of Publication
- Commission Exhibit 2: *Delaware State News* Affidavit of Publication
- Commission Exhibit 3: August 28, 2020 email from Margie Allen
- Commission Exhibit 4: August 27, 2020 email from Stephanie Talbott
- Commission Exhibit 5: August 27, 2020 email from Neil Kilian

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2906(a)(1), the Commission has the statutory authority to promulgate rules and regulations.

The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed amendments to the Commission's rules and regulations. In deliberations, the Commission considered all comments presented by the public.

The Commission first considered comments submitted by Margie Allen. Commission Ex. 3. Ms. Allen objected to the requirement in the proposed regulations that, in signage, the broker's telephone number must be larger than the salesperson's number. Ms. Allen commented that she wanted clients to call her, not the broker. The Commission found that Ms. Allen's comments reinforced the need for the proposed changes. The objective of the proposed changes regarding signage is to ensure that the public can contact the individual who is ultimately responsible, and that information needs to be emphasized.

The Commission next addressed the comments submitted by Stephanie Talbott. Commission Ex. 4. Ms. Talbott offered comments on Section 5.0 of the Rules and Regulations, which sets for the requirements for obtaining a license by reciprocity. The current proposal does not include changes to Section 5.0, and the Commission found that discussion regarding Section 5.0 was not warranted at this time. The Commission made the same finding as to Ms. Talbott's comments in reference to subsection 14.3 regarding continuing education requirements for individuals who complete the prelicensing course but do not take the prelicensing examination within a year. The Commission had not proposed changes to subsection 14.3. Ms. Talbott further presented objection to subsection 14.13 pertaining to supplemental education requirements for new licensees. Ms. Talbott argued that requiring, in addition to the new licensee education, the usual 21 hours needed for renewal was excessive. The Commission disagreed. This topic had been debated at length both by the Commission's Education Committee and the Commission. The Education Committee, with its significant expertise, recommended the need for additional education for licensees new to the profession. The Commission gave that expertise great weight and declined to make any changes to subsection 14.13.

Finally, the Commission considered the email submitted by Neil Kilian. Mr. Kilian's email consisted of questions posed to the Commission concerning subsections 8.6, 8.8.7 and 14.12.3. Specifically, Mr. Kilian asked if subsection 8.6, pertaining to advertising, applied to unaffiliated licensees from other jurisdictions who advertise online. Mr. Kilian also posed several questions regarding affiliation between a salesperson or broker licensed in another jurisdiction, and a Delaware licensee, as set forth in subsection 8.8.7. Mr. Kilian concluded his email with questions regarding subsection 14.12.3, pertaining to advanced courses' eligibility for continuing education credit. The Commission found that Mr. Kilian's questions did not constitute comments on the proposed changes. Mr. Kilian made no suggestions as to further revisions. The process of promulgating regulatory changes is not the proper forum for the Commission to answer questions. Further, Mr. Kilian's questions did not provide a basis for any

changes to the proposed regulations.

The Commission, having considered all public comments, finds no reason for substantive revisions and adopts the amendments to the rules and regulations as set forth in Exhibit A.

Decision and Effective Date

The Commission finds that the rules and regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

Text and Citation

The exact text of the rules and regulations is attached to this Final Order as Exhibit A.

IT IS SO ORDERED this 8th day of October 2020 by the Delaware Real Estate Commission.

/s/ Nikki Lane, Chairperson

/s/ Lynette Scott

/s/ Randy Marvel, Vice Chairperson

/s/ Jason Giles

/s/ Nora Martin, Secretary

/s/ Lynn Rogers

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

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

2900 Real Estate Commission

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

GENERAL NOTICE

Secretary's Order No.: 2020-A-0027

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
*Delaware 2017 Base Year State Implementation Plan (SIP) Emissions Inventory under the 2015 Ozone National Ambient Air Quality Standard (NAAQS)***

Date of Issuance: October 09, 2020

Effective Date of the Amendment: November 11, 2020

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the Delaware 2017 Base Year SIP Emissions Inventory under the 2015 Ozone National Ambient Air Quality Standard ("NAAQS"). Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the NAAQSs established by the EPA.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1972. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

On October 1, 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 0.070 parts per million. Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NO_x), and carbon monoxide (CO) in the presence of sunlight, is a serious air pollutant that harms human health and the environment. The revised NAAQS for ground-level ozone is expected to provide better protections of public health and environment. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation.

On June 14, 2018 EPA published a final rule for the designations of areas as nonattainment for the 2015 ozone NAAQS. Effective on August 3, 2018, the EPA designated Delaware's New Castle County as marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area, and Delaware's Kent and Sussex Counties were designated as attainment areas, for the 2015 ozone NAAQS. The CAA requires nonattainment counties within a state to submit SIP revisions to demonstrate how they are complying with the mandatory plan submission requirements for nonattainment areas.

On December 6, 2018, EPA issued the final rule of implementation plan requirements for the 2015 ozone NAAQS. The final rule is an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS. More specifically, the final rule addresses a range of nonattainment area and SIP requirements for the 2015 ozone NAAQS, including attainment demonstrations, reasonable further progress and associated milestone

demonstrations, reasonably available control technology, reasonably available control measures, major nonattainment new source review, emissions inventories, the timing of required SIP submissions and compliance with emission control measures in the SIP.

According to Section 182(a)(1) of the CAA and EPA's implementation rule for the 2015 ozone NAAQS (83 FR 62998), Delaware is required to submit the Base Year Emissions Inventory SIP revision to EPA by August 3, 2020. In late April 2020, EPA released the emissions data necessary for Delaware to complete the 2017 Base Year Emissions Inventory. It should be noted that Delaware was unable to complete the 2017 Base Year Emissions Inventory until this data was released by EPA.

Pursuant to Sections 182(a)(1) and 172(c)(3) of CAA, the Department developed emission inventories for New Castle County to meet the criterion of CAA every three years since 1990. The Department's latest comprehensive, accurate inventory of actual emissions from all sources of VOC, NO_x, and CO in the State, covered calendar year 2017.

The Division of Air Quality prepared the 2017 Periodic Emission Inventory for criteria pollutants to include emissions of VOC, NO_x, and CO summarized in the SIP. The reports include source coverage categories of stationary point sources, stationary nonpoint sources, and nonroad and onroad mobile sources. To meet the requirements of the Section 182(a)(1) of the CAA and EPA's implementation rule for the 2015 ozone NAAQS, the Department utilized EPA MOVES models, formulas, and data from the aforementioned sources, to establish the 2017 Base Year Emissions Inventory.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 **Del.C.** Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the August 26, 2020 public hearing to be held in this matter, in the August 1, 2020 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through September 10, 2020. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Newman, prepared a Hearing Officer's Report dated September 29, 2020 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware's SIP document, thus enabling the Department to provide EPA with Delaware's calendar year 2017 emissions inventory as its base year emissions inventory under the 2015 ozone NAAQS, to meet the requirements of the 2015 ozone NAAQS, as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP addresses the Delaware 2017 Base Year SIP Emissions Inventory under the 2015 Ozone NAAQS. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 **Del.C.** Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through September 10, 2020), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed SIP revisions will enable the Department to establish Delaware's 2017 base year emissions inventory to meet the requirements according to Section 182(a)(1) of the Clean Air Act and the US Environmental Protection Agency's implementation rule for the 2015 ozone NAAQS;

GENERAL NOTICES

6. The Department's proposed SIP revision, as published in the August 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;

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

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

Shawn M. Garvin
Secretary

***Please Note: Due to the size of the SIP, it is not being published here. A PDF version is available at the following location:**

[DNREC 2017 Base Year SIP Emissions Inventory - Final.pdf](#)

http://regulations.delaware.gov/register/november2020/general/DNREC_2017_Base_Year_SIP_Emissions_Inventory_-_Final.pdf

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Sections 6010 (7 **Del.C.** §6010)

GENERAL NOTICE

General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware

1. TITLE OF PERMIT:

NPDES Permit Number DE 0051268 "General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware", also referenced as the Delaware Construction General Permit (Delaware CGP).

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

The Delaware Construction General Permit (CGP) under the National Pollutant Discharge Elimination System (NPDES) program is being converted from a permit by regulation, which currently falls under 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3. to a stand-alone general permit authorizing discharges from construction. The effective date of the Delaware CGP will be concurrent with the effective date of proposed revisions to 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

The Delaware CGP expires five years from the effective date of the permit at which time the permit must be re-authorized.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §6010
40 CFR §123.1

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

None

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control (DNREC), Division of Watershed Stewardship will conduct a virtual public hearing (Docket #2020-R-W-0012) on proposed revisions to 7 **DE Admin. Code** 7201 Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Stormwater Discharges from Construction Activities, subsections 9.2-9.2.7.2.3.

Concurrently a virtual public hearing will be conducted for proposed NPDES Permit Number DE 0051268 "General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware", also referenced as the Delaware Construction General Permit (Delaware CGP).

The virtual public hearing will be held on **Tuesday, December 1, 2020, beginning at 6:00 PM.**

Virtual Meeting Information

A web link to the virtual meetings will be posted on the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>.

To access the audio-only portion of the virtual hearing, dial in at 408-418-9388 and enter event code 173 792 2277. If prompted for a password, please use WaterPollAmend.

The proposed regulation revisions and the proposed permit may be inspected in the *Delaware Register of Regulations* after November 1, 2020 at https://regulations.delaware.gov/register/current_issue.shtml

The proposed regulation revisions and proposed permit may also be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/pages/sedimentstormwater.aspx>

For additional information contact Elaine Webb, 285 Beiser Boulevard, Suite 102, Dover, DE 19904; by phone at 302-739-9921; or by email at elaine.webb@delaware.gov.

For more information about the virtual hearing, visit <https://dnrec.alpha.delaware.gov/public-hearings/>

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register using the form at <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>.

Written comments may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Wednesday, December 16, 2020.

Lisa Vest, Hearing Officer
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Elaine Z. Webb
Elaine.webb@delaware.gov
(302) 739-9921

NPDES Construction General Permit (CGP) Fact Sheet

http://regulations.delaware.gov/register/november2020/general/NPDES_Construction_General_Permit_Fact_Sheet.pdf

General Permit Authorization for Discharges from Construction Activities Under the National Pollution Discharge Elimination System and the Laws of the State of Delaware

http://regulations.delaware.gov/register/november2020/general/NPDES_Construction_General_Permit_Authorization_for_Discharges_from_Construction_Activities.pdf

GENERAL NOTICES

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2930 COUNCIL ON REAL ESTATE APPRAISERS

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

PUBLIC NOTICE

2930 Council on Real Estate Appraisers

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to value limitations for Licensed Residential Real Property Appraisers and AQB approved continuing education are proposed to be amended.

A public hearing was originally scheduled for October 20, 2020 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. The original *Register* notice was published on September 1, 2020 in Volume 24, Issue 3 of the *Register* beginning at page 265. The October 20 public hearing could not go forward due to the lack of publication of required newspaper notices. A rescheduled public hearing will occur at the Board's meeting on January 19, 2021, where members of the public can offer comments on the proposed amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until February 3, 2021 in accordance with 29 **Del.C.** §10118(a).

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Thursday, November 12, 2020** beginning at **1:30 p.m.** In light of COVID-19 mitigation measures in effect for DRBC member states, the Commission will conduct the public hearing on a remote platform. Please check the Commission's website, www.drbc.gov, on or after October 28, 2020 for details regarding the resolutions and draft docket decisions that will be subjects of the public hearing and for information on how to attend and participate in this remote public hearing.

The Commission's quarterly business meeting will be held the following month, on **Wednesday, December 9, 2020**, beginning at **10:30 a.m.** The business meeting will also be conducted remotely. Please check the Commission's website, www.drbc.gov, on or after October 28, 2020 for details about the meeting format and how to attend.

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

DEPARTMENT OF AGRICULTURE
DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION
PUBLIC NOTICE**702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 9, Section 904(b)(20) and (21), the Agricultural Lands Preservation Foundation (the "Foundation") is proposing amendments to regulations governing the Delaware Agricultural Forestlands Preservation Program.

The regulations are being revised to create a more efficient and flexible application and appraisal process by eliminating the references to unnecessary form information and review procedures. The revisions also eliminate the bonus for properties located in a State Resource Area (SRA) and replace it with a bonus for properties located in a Forest Legacy Area (FLA). Other changes are typographical.

A copy of the proposed regulations is being published in the November 1, 2020 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 S Dupont Hwy, Dover, Delaware 19901, and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml.

A virtual public hearing will be held on November 24, 2020 at 10:00 a.m. via Zoom. Members of the public may join using the link: <https://us02web.zoom.us/j/83411172427>, with the mobile app: Meeting ID: 834 1117 2427, or by call in (voice only): 646-558-8656. Persons wishing to submit written comments may forward these to the Foundation at the above address. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be December 9, 2020, which is 15 days following the public hearing.

The Board will deliberate on all the public comments at its regularly scheduled meeting.

DELAWARE FOREST SERVICE
PUBLIC NOTICE
402 State Forest Regulations

3 **DE Admin. Code** 402 State Forest Regulations are being proposed for amendment to comply with current practices and agency procedures. These regulation changes are for the following sections: 5.0 General Rules and Regulations, 7.0 Camping Rules and Regulations, 8.0 Hunting Rules and Regulations, and 9.0 Forest Use Permits.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for the Delaware Department of Agriculture to promulgate necessary regulations to protect forest lands, 3 **Del.C.** §1011, and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of

CALENDAR OF EVENTS/HEARING NOTICES

the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;" 29 Del.C. §8103(8).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Department of Agriculture, Forest Service, 2320 S DuPont Hwy, Dover Delaware 19901 or by email to Kyle.Hoyd@Delaware.gov by 4:30 p.m. on December 1, 2020. Please identify in the subject line: 2020 State Forest Regulation Changes.

HARNESS RACING COMMISSION PUBLIC NOTICE 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 Del. C. §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "trainer rules" for clarity by simplifying some language, adding definitions, and specifically stating that all trainers of a horse are responsible for its fitness.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on September 1, 2020, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On September 15, 2020, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to the initial 30-day comment period from November 1 to 30, 2020 and notice in the Register of Regulations, the DHRC plans to finalize the regulations on December 8, 2020 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB December 1, 2020. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

DEPARTMENT OF EDUCATION PUBLIC NOTICE

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 Del.C. §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On November 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Control of Communicable and Other Disease Conditions regulations. The revisions clarify that all novel coronavirus causing severe acute respiratory disease, including the 2019 novel coronavirus disease COVID-19, are considered

notifiable and are required to be reported to the Division of Public Health in accordance with these regulations. Other revisions include technical changes to conform with the Delaware Administrative Code Style Manual.

Copies of the proposed regulations are available for review in the November 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Tuesday, December 1, 2020, at:

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

PUBLIC NOTICE

1124 Control of Volatile Organic Compound Emissions

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing to amend Section 33.0 to update control requirements based upon a 2012 Ozone Transport Commission model rule. The U.S. Environmental Protection Agency (EPA) has designated certain areas of Delaware in non-attainment of the federal standard for ground-level ozone. Ground-level ozone is formed through the reaction of VOC and other compounds in the air in the presence of sunlight. High levels of ground-level ozone can cause or worsen difficulty in breathing, asthma and other serious respiratory problems. These amendments will reduce emissions of volatile organic compounds from solvent cleaning operations. Delaware also will submit the amendments as a State Implementation Plan revision to the EPA.

A virtual public hearing (Docket # 2019-R-A-0029) will be held on Wednesday, December 2, 2020 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use Solvent. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 613 8246. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting November 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Renae Held by phone at 302-739-9402 or by email at renae.held@delaware.gov.

The Department will accept public comment through the close of business on Thursday, December 17, 2020. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF AIR QUALITY**PUBLIC NOTICE****1124 Control of Volatile Organic Compound Emissions**

The Division of Air Quality of the Department of Natural Resources and Environmental Control (DNREC) is proposing amendments to section 36.0 in order to update the California Air Resources Board Executive Orders referenced in this section regarding Stage I enhanced vapor recovery systems used at Delaware gasoline dispensing facilities. The proposed amendments include updates of the latest executive order numbers and effective dates, and will provide the regulated community with additional Stage I enhanced vapor recovery system component flexibility.

A virtual public hearing (Docket #2020-R-A-0022) will be held on Tuesday, December 8, 2020, beginning at 6 p.m.. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use 36VEC@GDF. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 779 4117. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The proposed amendments may be inspected online starting November 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Frank Gao by phone at 302-739-9402 or by email at Frank.Gao@delaware.gov.

The Department will accept public comment through the close of business on Wednesday, December 23, 2020. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**TANK MANAGEMENT SECTION****PUBLIC NOTICE****1351 Underground Storage Tank Systems**

The objectives of revising 7 **DE Admin. Code** 1351 "Underground Storage Tank Systems" are to clarify existing regulatory language, add clarifying language, include a federally mandated compliance deadline, and to correct typographical and grammatical errors. The State of Delaware regulations must be at least as stringent as the federal regulations under the requirements of 40 CFR 281, State Program Approval. The storage of petroleum products and other hazardous liquids in underground storage tanks has been known to be a major cause of groundwater contamination in the State. These regulatory clarifications and corrections serve to increase protection of public health and the environment, in particular Delaware's groundwater resources. The regulatory clarifications and corrections do not have any new or additional costs associated with them.

The proposed amendments may be inspected online starting November 1, 2020 at http://regulations.delaware.gov/services/current_issue.shtml or in-person, by appointment only, by contacting Jason Sunde, by phone at 302-739-9403 or by email at Jason.Sunde@delaware.gov.

A virtual public hearing will be held on Wednesday, Dec. 9, 2020, beginning at 6 p.m. The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use USTRegAmend. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 173 639 9600. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The Department will accept public comment through the close of business on Thursday, December 24, 2020. Comments pertaining to the above matter will be accepted in written form via email to

DNRECHearingComments@delaware.gov, using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address: Lisa Vest, Hearing Officer, DNREC-Office of the Secretary, 89 Kings Highway, Dover, DE 19901

DIVISION OF WATERSHED STEWARDSHIP**PUBLIC NOTICE****7201 Regulations Governing the Control of Water Pollution**

The Delaware Construction General Permit (CGP) under the National Pollutant Discharge Elimination System (NPDES) program is being converted from a permit by regulation, which currently falls under 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3, to a stand-alone general permit authorizing discharges from construction. As the Delaware CGP becomes effective, the conflicts between the language in 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3 and the Delaware CGP will be removed with the adoption of these proposed regulation revisions.

The Department of Natural Resources and Environmental Control (DNREC), Division of Watershed Stewardship will conduct a virtual public hearing (Docket #2020-R-W-0012) on proposed revisions to 7 **DE Admin. Code** 7201 subsections 9.2-9.2.7.2.3 "Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Storm Water Discharges Associated with Construction Activities".

Concurrently a virtual public hearing will be conducted for proposed NPDES Permit Number DE 0051268 "General Permit Authorization for Discharges from Construction Activities Under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware", also referenced as the Delaware Construction General Permit (Delaware CGP).

The virtual public hearing will be held on **Tuesday, December 1, 2020, beginning at 6:00 PM.**

Virtual Meeting Information

A web link to the virtual meetings will be posted on the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>.

To access the audio-only portion of the virtual hearing, dial in at 408-418-9388 and enter event code 173 792 2277. If prompted for a password, please use WaterPollAmend.

The proposed regulation revisions and the proposed permit may be inspected in the Delaware Register of Regulations after November 1, 2020 at https://regulations.delaware.gov/register/current_issue.shtml

The proposed regulation revisions and proposed permit may also be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/pages/sedimentstormwater.aspx>

For additional information contact Elaine Webb, 285 Beiser Boulevard, Suite 102, Dover, DE 19904; by phone at 302-739-9921; or by email at elaine.webb@delaware.gov.

For more information about the virtual hearing, visit <https://dnrec.alpha.delaware.gov/public-hearings/>

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register using the form at <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>.

Written comments may be submitted to the Hearing Officer via the online comment form at <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/>, via email to DNRECHearingComments@delaware.gov, or via USPS to the below address. The Department will accept public comment through the close of business on Wednesday, December 16, 2020.

Lisa Vest, Hearing Officer

DNREC - Office of the Secretary

89 Kings Highway, Dover, DE 19901
