
Delaware Register of Regulations

Issue Date: October 1, 2018

Volume 22 - Issue 4, Pages 243 - 317



IN THIS ISSUE:

Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

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

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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.

Proposed Regulations

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

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Section 10306 (16 **Del.C.** §10306)
1 **DE Admin. Code** 103

PUBLIC NOTICE

103 Delaware Health Care Claims Database Data Collection Regulation

Agency: Delaware Health Information Network

Contact: Dr. Jan Lee
Chief Executive Officer
(302) 678-0220

Submit Comments by email to info@dhin.org by October 31, 2018

Title of Proposed Regulation: Delaware Health Care Claims Database Data Collection Regulation

Summary of the Regulation:

This regulation is promulgated under 16 **Del.C.** §10306 and supports implementation of 16 **Del.C.** Ch. 103, Subchapter II, The Delaware Health Care Claims Database. It summarizes the requirements for submission of claims data by a mandatory reporting entity, to include a reporting schedule and a template for a data submission and use agreement to be entered into between DHIN and each reporting entity.

The 149th General Assembly enacted SB 227 and the Governor signed it into law on August 29, 2018. This statute expands the definition of "Mandatory Reporting Entity" in 16 **Del.C.** §10312. Proposed amendments to the "Definitions" section of the Health Care Claims Database Data Collection Regulation remove language which merely quotes definitions established in the code and replaces it with a statement that the terms have the meaning assigned in the code. These changes will ensure that the regulation is always congruent with the governing statute.

*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/october2018/proposed/22 DE Reg 251RFA 10-01-18.pdf>

103 Delaware Health Care Claims Database Data Collection Regulation (Break in Continuity of Sections)

2.0 Definitions

The following words, terms, and phrases, when used in this regulation, shall have the following meaning, and use of the singular shall include the plural, unless the context clearly indicates otherwise:

~~"Claims Data" includes Required Claims Data and any additional health care information that a voluntary reporting entity elects, through entry into an appropriate Data Submission and Use Agreement, to submit to the Delaware Health Care Claims Database means as defined in 16 Del.C. §10312.~~

(Break in Continuity Within Section)

~~"Health care services" means as defined in 18 Del.C. §6403 means as defined in 16 Del.C. §10312.~~

~~"Health insurer" shall mean as defined in 18 Del.C. §4004(b). "Health insurer" does not include providers of casualty insurance, as defined in 18 Del.C. §906; providers of group long-term care insurance or long-term care insurance, as defined in 18 Del.C. §7103; or providers of a dental plan or dental plan organization, as defined in 18 Del.C. §3802 means as defined in 16 Del.C. §10312.~~

~~"Mandatory Reporting Entity" means the following entities, except as prohibited under federal law: means as defined in 16 Del.C. §10312.~~

- ~~• The State Employee Benefits Committee and the Office of Management and Budget, under each entity's respective statutory authority to administer the State Group Health Insurance Program in 19 Del.C. Ch. 96, and any Health Insurer, Third Party Administrator, or other entity that receives or collects charges, contributions, or premiums for, or adjusts or settles health claims for, any State employee, or their spouses or dependents, participating in the State Group Health Insurance Program, except for any carrier, as defined in 29 Del.C. §5290, selected by the State Group Health Insurance Plan to offer supplemental insurance program coverage under 29 Del.C. Ch. 52C.~~
- ~~• The Division of Medicaid and Medical Assistance, with respect to services provided under programs administered under Titles XIX and XXI of the Social Security Act.~~
- ~~• Any Health Insurer or other entity that is certified as a qualified health plan on the Delaware Health Insurance Marketplace for plan year 2017 or any subsequent plan year.~~
- ~~• Any federal health insurance plan providing Health Care Services to a resident of this State, including Medicare fee for service, Medicare Part C/Medicare Advantage and Medicare Part D Prescription Drug plans and the Federal Employees Health Benefits Plan.~~

(Break in Continuity Within Section)

~~"Provider" means a hospital, facility, or any health care practitioner licensed, certified, or authorized under State law to provide Health Care Services and includes hospitals and health care practitioners participating in group arrangements, including accountable care organizations, in which the hospital or health care practitioners agree to assume responsibility for the quality and cost of health care for a designed group of beneficiaries means as defined in 16 Del.C. §10312.~~

~~"Pricing information" includes the pre-adjudicated price charged by a Provider to a Reporting Entity for Health Care Services, the amount paid by a Member or insured party, including co-pays and deductibles, and the post-adjudicated price paid by a Reporting Entity to a Provider for Health Care Services means as defined in 16 Del.C. §10312.~~

~~"Reporting Date" means a calendar deadline for test, historical and periodic update file submission to be scheduled on a regularly recurring basis, by which Required Claims Data must be submitted by a Reporting Entity to the Health Care Claims Database, as shown in the Data Submission Guide means as defined in 16 Del.C. §10312.~~

(Break in Continuity Within Section)

~~"Voluntary Reporting Entity" includes any of the following entities that has chosen to submit or has been instructed to submit data at the request of an employer or client and enters into a Data Submission and Use Agreement, unless such entity is a Mandatory Reporting Entity: means as defined in 16 Del.C. §10312.~~

- ~~• Any Health Insurer.~~
- ~~• Any Third Party Administrator not otherwise required to report.~~
- ~~• Any entity, which is not a Health Insurer or Third Party Administrator, when such entity receives or collects charges, contributions, or premiums for, or adjusts or settles health care claims for, residents of this State.~~

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

103 Delaware Health Care Claims Database Data Collection Regulation

DEPARTMENT OF AGRICULTURE HARNESS 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 maintain compliance with the United States Trotting Association, particularly related to improvements in horse identification technology, and thereby allowing rules more favorable to the welfare of the horse.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on June 12, 2018, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On August 29, 2018, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publicly noticed open meetings. Subsequent to a 30-day comment period from October 1 to 31, 2018 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on November 13, 2018 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 October 31, 2018. 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/october2018/proposed/22 DE Reg 253RFA 10-01-18.pdf>

501 Harness Racing Rules and Regulations

1.0 Definitions

(Break in Continuity Within Section)

"Length" is the distance defined as extending from a horse's nose to the posterior of the hindquarters. A length shall not include the space occupied by the driver or sulky beyond the horse's hindquarters.

(Break in Continuity of Sections)

PROPOSED REGULATIONS

3.0 Officials

(Break in Continuity Within Section)

3.5 Horse Identifier / Equipment Checker

3.5.1 General Authority. The Horse Identifier / Equipment Checker shall be present for each race. The duties of the Horse Identifier / Equipment Checker are:

3.5.1.1 Maintain a listing of all equipment worn, including shoes, and the tattoo or freeze brand, or Micro Chip number for each horse racing at the meeting;

3.5.1.2 Each time a horse races, identify the horse by checking the lip tattoo or freeze brand, or Micro Chip; ~~and~~

3.5.1.3 Compare the type and condition of equipment actually being used by each horse for each race with the approved equipment listed; and

3.5.1.4 Maintain and ensure the proper working condition of Micro Chip readers.

3.5.2 Report Violations. The Horse Identifier / Equipment Checker shall report to the Paddock Judge immediately any discrepancies or faulty equipment discovered by the investigations specified in this Rule, which findings are to be reported immediately to the Presiding Judge. Such discrepancies shall be forwarded to the USTA. The Presiding Judge's ruling in these matters is final.

(Break in Continuity of Sections)

7.0 Rules of the Race

7.1 Declarations and Drawing

(Break in Continuity Within Section)

7.1.7 Scratches

7.1.7.1 Once a horse is entered, it is the responsibility of the trainer to immediately notify the Board of Judges if that horse becomes unfit to race. A written notification must accompany the scratch request identifying: Horse name, tattoo (or Micro Chip Number), trainer name, date of event, reason for scratch (sick, lame, injured or deceased) and must be signed and dated by the trainer of record.

(Break in Continuity Within Section)

7.4 Horses Permitted to Race

7.4.1 A horse shall be eligible to be declared in to race provided the following conditions have been met:

(Break in Continuity Within Section)

7.4.1.12 the horse has been lip tattooed or freeze-branded or Micro Chipped in accordance with the constitution and bylaws and regulations of the United States Trotting Association or Canadian Standardbred Horse Society.

(Break in Continuity Within Section)

7.6 Racing Rules

(Break in Continuity Within Section)

7.6.13 Conduct of the Race

(Break in Continuity Within Section)

7.6.13.24 In the event a driver is involved in an incident on or off the track that requires medical attention, the driver must provide medical clearance from a licensed medical professional or an on-track emergency medical technician (EMT) stating that he/she can resume his/her duties.

~~7.6.13.247~~ 6.13.25 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

***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

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 DE Admin. Code 1001

PUBLIC NOTICE

1001 Thoroughbred Racing Rules and Regulations

Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 8 Jockeys and Apprentice Jockeys to add new Rule 8.2.7 relating to Consent to Treatment forms for the athletic trainer and to revise Rule 8.10.2 to allow jockeys to use mobile electronic devices in the jockeys room subject to certain provisions. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the October 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 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.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before November 1, 2018. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after November 1, 2018, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

***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/october2018/proposed/22 DE Reg 255RFA 10-01-18.pdf>

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

8.0 Jockeys and Apprentice Jockeys

(Break in Continuity Within Section)

8.2 Qualification for Permit:

(Break in Continuity Within Section)

8.2.5 Must have ridden in at least two races; and

PROPOSED REGULATIONS

- 8.2.6 Must, when required by the Stewards, provide a medical affidavit certifying he or she is physically and mentally capable of performing the activities and duties of a Jockey; and
- 8.2.7 Must provide a signed Consent to Treatment form as required by the athletic training contractor providing training services to jockeys at the track.

(Break in Continuity Within Section)

- 8.10 Presence in Jockey Room:

(Break in Continuity Within Section)

- 8.10.2 Each rider reporting to the Jockey room shall remain in the Jockey room until he or she has fulfilled all his riding engagements for the day, except to ride in a race or to view the running of a race from a location approved by the Stewards. Such rider shall have no contact or communication with any person outside the Jockey room other than an Owner or Trainer for whom he or she is riding, or a racing official, or a representative of Licensee, until such rider has fulfilled all his or her riding engagements for the day, except as provided in subsection 8.10.2.1.

- 8.10.2.1 Each rider in the Jockey room may use a mobile electronic device in the confines of the Jockey room, provided that (i) for purposes of this subsection 8.10.2.1, the Jockey room does not include the balcony or any other area that might be in the view of the public; (ii) a Jockey's use of a mobile electronic device in the Jockey room signifies the Jockey's consent to a search of the mobile electronic device by or on behalf of the Commission; and (iii) a Jockey may not wear headphones while listening to a mobile electronic device if this does not allow the Jockey to hear when others are calling the Jockey to race.

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

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1108A (14 Del.C. §1108A)

PUBLIC NOTICE

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

1204 High Needs Educator Student Loan Payment Program

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §1108A (House Substitute 1 to House Bill 346 with House Amendment 2 of the 149th General Assembly), the Secretary of Education intends to create 14 **DE Admin. Code** 1204 High Needs Educator Student Loan Payment Program. This regulation is being created to provide eligibility criteria for the High Needs Educator Student Loan Payment Program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 5, 2018 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 new regulation help improve student achievement as measured against state achievement standards? The new regulation does not address improving student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is intended to continue to ensure all students receive an equitable education.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not address students' health and safety.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation continues to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does not change the decision making at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place any unnecessary reporting or administrative requirements 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 decision making authority and accountability for addressing the subject to be regulated does not change because of the new regulation.
8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the new regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this new regulation.

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

<http://regulations.delaware.gov/register/october2018/proposed/22 DE Reg 256RFA 10-01-18.pdf>

1204 High Needs Educator Student Loan Payment Program

1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and to delineate the application process for the High Needs Educator Student Loan Payment Program, pursuant to 14 Del.C. Ch. 11A, §§1101A through 1111A.

2.0 Definitions

"Award" means the Department's decision to make a Loan Payment on an applicant's behalf.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board of Education. For purposes of this regulation, Educator also includes teachers employed by the Delaware Division for the Visually Impaired who teach visually impaired students.

"English Learner" means a student with limited English proficiency and who meets the definition of English Learner as defined by the Department's rules and regulations.

"High Needs Area" means:

- (1) Any certification field the Department has identified as being difficult to staff or of critical need;
- or

PROPOSED REGULATIONS

(2) Any school either:

(a) In the top quartile in three or more of the following:

- (1) Percentage of Low-Income Students;
- (2) Percentage of English Learners;
- (3) Percentage of Students with Disabilities; or
- (4) Percentage of Minority Students; or

(b) Having 90% of its students classified as Low-Income, English Learners, or Minority;

(3) Any facility operated by the Department of Services for Children, Youth and Their Families in which education programs are provided.

"Loan Payment" means a payment by the Department to a successful applicant's lending agency to retire a portion of the applicant's Qualified Educational Loan.

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

"Minority Students" means students who are members of a racial or ethnic group other than the racial or ethnic group that represents the majority of the State of Delaware's population.

"Program" means the High Needs Educator Student Loan Payment Program.

"Qualified Educational Loan" means a government, commercial, or foundation loan for actual costs paid for tuition and reasonable educational expenses related to an Educator's undergraduate or graduate degree program.

"School" means a Delaware public school, including a vocational-technical school and a charter school.

"Secretary" means the Delaware Secretary of Education.

"Students With Disabilities" means students who because of mental, physical, emotional, developmental, speech or learning disability problems, as defined by the Department of Education, require special education and related services in order to develop their own capabilities.

3.0 Eligibility

3.1 In order to qualify to participate in the Program all of the following must apply:

- 3.1.1 The applicant shall be an Educator;
- 3.1.2 The applicant shall have secured a Qualified Educational Loan prior to submitting an application;
- 3.1.3 The applicant shall have obtained a license and certificate through Delaware;
- 3.1.4 The applicant shall have received a rating of at least "effective" on the Delaware Performance Appraisal System II or an alternate state approved evaluation system in the most recent evaluation cycle;
- 3.1.5 The applicant shall instruct or provide educational support in an identified High Needs Area; and
- 3.1.6 The applicant shall not be in default of any federal or state education loan.

4.0 Application

- 4.1 The application to participate in the Program shall require the applicant to certify that he or she meets all eligibility requirements.
- 4.2 The applicant must submit for review and approval a new, completed application each year, along with any additional information the Department may request.

5.0 Award Decision and Disbursement

- 5.1 The ability to make Awards each year is contingent upon the availability of funds.

- 5.2 If possible, the Department shall make an Award to every applicant who satisfies the requirements of this regulation, consistent with Section 6.0 Amount of Award of this regulation. Awards will be determined based on the pool of eligible applicants in the given year.
- 5.2.1 Applicants seeking eligibility based on eligible school shall maintain continuous employment by the same School as in the previous school year in order to be eligible for the Award.
- 5.2.1.1 Applicants shall still be eligible for an Award if they have separated from the School they were previously employed with if separation was involuntary, including reduction in force, or was otherwise beyond the applicant's control.
- 5.3 Where there are insufficient funds to make an Award to every applicant who satisfies Program requirements, the Secretary shall give priority to applicants who meet the following criteria:
- 5.3.1 Applicants employed in both a certification field and a School, or a facility operated by the Department of Services for Children, Youth and Their Families, that the Department has identified as a High Needs Area as defined in this regulation.
- 5.3.2 Applicants having the greatest financial need.
- 5.4 The applicants having the greatest financial need shall be determined at the sole discretion of the Secretary. Such decision shall be based upon:
- 5.4.1 The applicant's income;
- 5.4.2 The applicant's spousal income;
- 5.4.3 The number of applicant's dependents; and
- 5.4.4 The total amount of the applicant's Qualified Educational Loans.
- 5.5 The Secretary shall have the sole discretion to prioritize applications and determine Awards consistent with the requirements of the Program as noted in this regulation.
- 5.6 The Department shall make a Loan Payment directly to the applicant's lending agency on behalf of the applicant.
- 5.7 An applicant may receive only one Award per year, and may receive no more than five Awards in their lifetime.

6.0 Amount of Award

An Award shall be a minimum of \$1,000 and shall not exceed \$2,000.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1517

PUBLIC NOTICE

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

1517 Paraeducator Permit

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1517 Paraeducator Permit. The regulation applies to the issuance of a paraeducator permit pursuant to 14 **Del.C.** §1205(b). On August 1, 2018, the Board published proposed changes. The Board did not receive any written comments on the changes

that were published on August 1, 2018. However, the Board, in consultation and cooperation with the Department, made additional substantive changes, including adding definitions of the terms "DEEDS" and "PDMS" to Section 2.0; adding subsections 3.1.3.1, 4.1.3.1, and 5.1.3.1 concerning the requirements for paraeducators whose permits have expired more than one time; clarifying the requirements for renewal in Section 7.0; and clarifying the language concerning professional development transcripts in subsection 8.2. This regulation includes the changes that were published on August 1, 2018 and the additional changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 31, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses permits for paraeducators, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses permits for paraeducators, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 Del.C. Ch. 12 relating to licensure and certification of educators and paraprofessional qualifications and training.
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:

(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/october2018/proposed/22 DE Reg 259RFA 10-01-18.pdf>

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

1517 Paraeducator Permit

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Sections 4805(a) (29 **Del.C.** §4805(a))
10 **DE Admin. Code** 202

PUBLIC NOTICE

202 Delaware Lottery Rules and Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of proposed amendments to 10 **DE Admin. Code** 202 relating to the Delaware Lottery Rules and Regulations.

The Director seeks to adopt general overall revisions to the main rules of the State Lottery's existing regulations, the Delaware Lottery Rules and Regulations (10 **DE Admin. Code** 202), to update and clarify these regulations. These collective changes are primarily administrative in nature. The revisions also serve in part to clarify the intent of the Director as enacted through these regulations. These revisions should not pose additional burdens on licensees or consumers. The Delaware Code authority for these proposed revisions is 29 **Del.C.** §§4805(a), 4805(b), 4806 to 4810, 4812 to 4814, 4818, 4823, and 4830.

The Office of the State Lottery does not plan to hold a public hearing on the proposed revisions to the existing regulation. The proposed revisions appear below. Members of the public may also request a copy of the revisions by visiting the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

Any person may submit written comments, suggestions, or other materials regarding the proposed revisions to the existing regulation to the Office of the State Lottery at the same address noted above. Any written submission in response to this notice and the relevant proposed revisions to the existing regulation must be received by the Office of the State Lottery by no later than 4:30 p.m. (EST) on October 31, 2018.

*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/october2018/proposed/22 DE Reg 261RFA 10-01-18.pdf](http://regulations.delaware.gov/register/october2018/proposed/22%20DE%20Reg%20261RFA%2010-01-18.pdf)

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

202 Delaware Lottery Rules and Regulations

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4805(a)(14), (a)(31), and (b)(13) (29 **Del.C.** §4805(a)(14), (a)(31), and (b)(13))
10 **DE Admin. Code** 203

PUBLIC NOTICE

203 Video Lottery and Table Game Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of amendments to 10 **DE Admin. Code** 203 relating to the Video Lottery and Table Games Regulations.

The Director seeks to adopt substantive and procedural revisions to the State Lottery's existing regulations on video lottery and table games (10 **DE Admin. Code** 203) to clarify certain sections of the Delaware Code, to update the regulations to allow exemptions for certain ownership interests in video lottery agents, and to allow waivers for institutional investors. These revisions should not pose additional burdens or costs on individual licensees or small business licensees. The statutory authority for these revisions is 29 **Del.C.** §4805(a)(14), (a)(31), and (b)(13). The Office of the State Lottery does not plan to hold a public hearing on the proposed

PROPOSED REGULATIONS

revisions to the existing regulations. The revisions appear below. Members of the public may also request a copy of the revisions by visiting the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

Any person may submit written comments, suggestions, or other materials regarding the proposed revisions to the existing regulations to the Office of the State Lottery at the same address noted above. Any written submission in response to this notice and the relevant proposed revisions to the existing regulations must be received by the Office of the State Lottery by no later than 4:30 p.m. (EST) on October 31, 2018.

***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/october2018/proposed/22 DE Reg 261aRFA 10-01-18.pdf>

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

[203 Video Lottery and Table Game Regulations](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Health Home Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Health Home Services, specifically, *to expand Delaware's Assertive Community Integration Support Team (ACIST) program which supports individuals with Severe and Persistent Mental Illness (SPMI) and intellectual and developmental disabilities (I/DD).*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2018. Please identify in the subject line: Health Home Services.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Health Home Services.

Statutory Authority

- Section 1902(a) of the Social Security Act and 42 CFR 447

Background

Delaware's ACIST (Assertive Community Integration Support Team) program supports individuals with Severe and Persistent Mental Illness (SPMI) and intellectual and developmental disabilities (I/DD) or Autism to receive a comprehensive, holistic team-based approach to crisis intervention, intensive case management, behavior analysis, psychiatric supports and monitoring of medical conditions in a multi-disciplinary model. The ACIST Health

Home program is designed to provide a whole-person approach to supports and services to individuals with dual diagnosis and to ensure strong integration across behavioral health, somatic health and long-term supports and services. The ACIST program is tailored to individuals with chronic conditions of SPMI and I/DD who may require additional and/or different services or modalities to ensure effective intervention. The goals of the ACIST Health Home are:

- a) To lessen or eliminate critical health and safety issues that each member might experience, working toward preventing or mitigating these signs, symptoms, and/or social issues that could lead to crisis situations and the need for hospitalization or re-hospitalization
- b) To provide transitional support and post psychiatric hospitalization follow along that will assist the individual in ameliorating the effects of their mental health condition and dual diagnosis and prevent avoidable readmissions
- c) To improve the overall medical and physical health of the individual
- d) To meet basic human needs and enhance quality of life
- e) To improve the person's opportunity to be successful in social and employment roles and activities
- f) To increase active participation in the person's community
- g) To partner with families, support systems and/or significant other in supporting the individual's recovery

Summary of Proposal

Purpose

The purpose of this proposed regulation is to expand Delaware's Assertive Community Integration Support Team (ACIST) program which supports individuals with Severe and Persistent Mental Illness (SPMI) and intellectual and developmental disabilities (I/DD).

Summary of Proposed Changes

Effective for services provided on and after October 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 3.1-H and 4.19 B Page 28 of Title XIX Medicaid State Plan regarding Health Home Services.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of 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 must be received by 4:30 p.m. on October 31, 2018.

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

PROPOSED REGULATIONS

The following fiscal impact is projected:

	State Fiscal Year 2019	State Fiscal Year 2020
General (State) funds	\$36,338	\$48,450
Federal funds	\$327,038	\$436,050

***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/october2018/proposed/22 DE Reg 262RFA 10-01-18.pdf>

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

Health Home Services

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Child Care Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Child Care Eligibility, specifically, to amend authorization requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2018. Please identify in the subject line: Child Care Eligibility.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend Division of Social Services Manual regarding Child Care Eligibility, specifically, to amend authorization requirements.

Statutory Authority

45 CFR 98.21 - Eligibility determination processes
Child Care and Development Block Grant (CCDBG) Act

Background

The Child Care and Development Block Grant Act of 2014, requires authorization of 12 months of child care to any child who is determined eligible to receive subsidized child care and cases may only be closed based on limited changes in household circumstances. In 2014, the Child Care Development Block Grant Act was reauthorized with the focus on safety and continuity of care for children receiving child care subsidy funds. States

are required to revise policies to support the requirements.

Summary of Proposal

Purpose

The policy amendments establish the requirement that child care cases are to be authorized for 12 months, the circumstances that would preclude a child from receiving a 12 month authorization, and the circumstances in which a child care case will close during the eligibility period.

Summary of Proposed Changes

Effective for services provided on and after December 12, 2018, Delaware Health and Social Services/Division of Social Services proposes to amend sections 11004.9.5 and 11004.12 of the Division of Social Service Manual regarding Child Care Eligibility, specifically, *to amend authorization requirements*.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on October 31, 2018.

Fiscal Impact

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program. The policy amendment does not require any additional staff, system changes, agency costs, etc.

***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/october2018/proposed/22 DE Reg 264RFA 10-01-18.pdf>

AMENDED

POLICY – AMENDMENT

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

11004.9.5 Establishing 12-Month Authorization for Child Care

45 CFR 98.21

Families approved for Purchase of Care must be authorized for 12 months of child care.

1. **DSS case workers must set Purchase of Care authorizations for a 12-month period.**
2. **Purchase of Care authorizations may be set for a shorter period only if the client provides a written statement verifying the length of time requested for child care. The written statement may be from:**
 - The parent or caretaker;
 - A medical professional verifying the length of time child care is required for a special need;
 - The Delaware Division of Family Services (DFS) verifying the length of time child care is needed to prevent child abuse or neglect.

PROPOSED REGULATIONS

3. Purchase of Care authorizations must continue during the following circumstances:

- The child turns 13 years old during the authorization period;
- The child is temporarily out of state;
- The parent or caretaker experiences a temporary change in work, education, or training, including an injury resulting in time off of work, a break from approved educational study, or a transition from past employment to new employment.

AMENDED

POLICY – AMENDMENT

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

11004.12 Closing Child Care Cases

~~A parent/caretaker's authorization for service should end when any of the following occurs:~~

- ~~A. the parent/caretaker need no longer exists,~~
- ~~B. the parent/caretaker's income exceeds income limits,~~
- ~~C. the parent/caretaker fails to pay the child care fees or fails to make arrangements to pay past fees owed,~~
- ~~D. the parent/caretaker refuses to provide requested information or verification of eligibility,~~
- ~~E. the parent/caretaker is a Food Stamp Employment & Training (FS E&T) participant who is sanctioned,~~
- ~~F. a protective case fails to follow the Division of Family Services case plan,~~
- ~~G. at the request of the parent/caretaker,~~
- ~~H. if program funds should be reduced, and,~~
- ~~I. if a parent/caretaker is a TANF child care participant who is sanctioned.~~

~~When closing cases, send the appropriate closing notice which provides a ten-day notice. DSS programmed the DCIS II Child Care Sub-system to allow for ten-day notice before an authorization closes, and informs the participant of his/her right to a Fair Hearing.~~

~~When a case and the authorization is closed the system will end date the case and authorization the last day of the current month or the next month if 10-day notice can not be given.~~

45 CFR 98.21 (a)

This policy applies when DSS ends child care eligibility and authorization for services.

1. DSS will close child care cases prior to redetermination or during graduated phase-out due to:

- Excessive unexplained absences of the child from the child care site;
- A permanent change in the child's residency;
- The family's income exceeding 85% of the state median income (SMI);
- Substantiated fraud or intentional program violations;
- A written request to close the case or to authorize child care for a specific length of time (see DSSM 11004.9.5); or
- The death of the case head or of the authorized child.

2. DSS case workers must complete the following steps prior to closing child care cases for excessive unexplained absences:

- Mail Form 330 "Request for Contact" to the parent or caretaker to request clarification regarding the child's absences;
- Close the child care case if the parent or caretaker does not contact the DSS office by the requested due date.

3. The DSS eligibility system will:

- Provide a 10-day closing notice informing the parent or caretaker of their right to a fair hearing;
- End date the authorization on the last day of the current month. If a 10-day notice cannot be given, the authorization will end on the last day of the next month.

Note: Excessive unexplained absence is defined as 10 or more unexplained absences per month.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b), (e), (f) and (i) (7 Del.C. §§901 & 903(a), (b), (e), (f) and (i))
7 DE Admin. Code 3505

REGISTER NOTICE #2018-13

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

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

Delaware's commercial striped bass fishery is allocated through an annual quota in accordance with the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Striped Bass. Delaware's annual commercial striped bass quota allocation is apportioned by regulation to two gear types - commercial gill net (GN) and commercial hook and line (HL). These are managed as separate fisheries, with different size limits, seasons and allocations in an effort to maximize fishing opportunities for each fishery, minimize dead discards and prevent growth overfishing. Eligible participants in each fishery are provided with an allotment of tags based on the number of participants, predicted size of the fish and annual quota. Tags are used to assist the Department with quota tracking and accountability. During the period 1990 - 96, 90% of Delaware's quota was allocated to the GN fishery and 10% was allocated to the HL fishery. In 1997, to better ensure full use of Delaware's quota, the striped bass allocation to the GN fishery was increased to 95%, but the less efficient commercial HL fishery was kept at 10% to maintain individual H&L quotas. This over-allocation improved quota attainment as the GN fishery routinely landed its 95% while the HL fishery, for various reasons, never landed more than 3% of the quota. Despite the over-allocation, Delaware did not have any quota overages during 1997 through 2017 because quota could not be transferred between the GN and HL fisheries.

The recent adoption of 7 Del.C. §903A provides for the transfer of striped bass quota (tags) between the GN and HL fisheries. This resulted in improved landing efficiency and, ultimately, a commercial quota overage in 2018. To prevent subsequent overages, the Department is ending over-allocation of the quota and is proposing two alternative allocation strategies. Option 1 would allocate 90% of Delaware's striped bass commercial quota to the gill net fishery and 10% to the H&L fishery. This option would match the proportions used prior to 1997. Historically, this option resulted in an underutilization of the quota. Option 2 would allocate 95% of Delaware's striped bass commercial quota to the gill net fishery and 5% to the H&L fishery. Option 2 is the allocation strategy recommended

by the Advisory Council on Tidal Fin Fisheries as a way to better ensure full use of Delaware's quota.

In addition, the Department proposes to adjust the required registration date to participate in the commercial HL fishery from March 15 to February 1 to align with the commercial GN fishery and better accommodate tag transfers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901 & §903(a), (b), (e), (f) & (i)

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

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements will open October 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. A public hearing on the proposed amendment will be held on Wednesday, October 31, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, November 15, 2018.

7. PREPARED BY:

Stewart Michels

Stewart.Michels@state.de.us

(302) 739-9914

***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/october2018/proposed/22 DE Reg 267RFA 10-01-18.pdf](http://regulations.delaware.gov/register/october2018/proposed/22%20DE%20Reg%20267RFA%2010-01-18.pdf)

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.
- 2.0 It is unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein.

Except as otherwise provided, a commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by ~~March 15~~ February 1.

~~3.0~~ It is unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to land striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

~~4.03.0~~ The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department as follows: ~~95~~[TBD from Table]% for the February 15 - May 31 gill net fishery, ~~40~~[TBD from Table]% for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

Table. Annual quota allocation options for the commercial striped bass fishery pertaining to proposed amendments to 7 DE Admin. Code 3505 (3.0).

<u>Option</u>	<u>Commercial Gill Net Allocation</u>	<u>Commercial Hook & Line Allocation</u>
<u>1</u>	<u>90%</u>	<u>10%</u>
<u>2</u>	<u>95%</u>	<u>5%</u>

~~5.04.0~~ It is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

~~6.05.0~~ It is unlawful for any commercial food fisherman to possess any landed striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department.

~~7.06.0~~ The Department may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said participant's assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

~~8.07.0~~ It is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, ~~authorized to participate in the same striped bass fishery,~~ provided said transfer is made prior to said tags being issued by the Department.

~~9.08.0~~ It is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

~~40.09.0~~ It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.

~~44.010.0~~ It is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the State unless said striped bass has been weighed and tagged at an official weigh station.

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~~42.011.0~~The Department may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations, if requested, shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

~~43.012.0~~Each commercial food fisherman participating in a striped bass fishery shall file a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file a complete and accurate report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

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

7 DE Admin. Code 1302

REGISTER NOTICE

SAN # 2016-16

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Hazardous Waste* (DRGHW)

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

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the DRGHW to incorporate federal amendments into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act (RCRA) program delegation and remain current with the federal hazardous waste program. The SHWMS is also making certain technical changes for the purpose of correcting errors and to add consistency or clarification to the existing regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

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

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed amendments to DRGHW will be held on Monday, October 29, 2018 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will open on October 1, 2018. Interested parties shall submit comments in writing by November 13, 2018 and/or statements and testimony may be presented either orally or in writing at the October 29, 2018 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer,

DNREC, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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

***Please Note:**

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

<http://regulations.delaware.gov/register/october2018/proposed/22 DE Reg 270RFA 10-01-18.pdf>

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

<http://regulations.delaware.gov/register/october2018/proposed/DRGHWProposedRegs.pdf>

Within the proposed regulation, selected tables are available in PDF format at the following locations:

Appendix IX to Part 264 - Groundwater Monitoring List

<http://regulations.delaware.gov/register/october2018/proposed/Groundwater Monitoring List.pdf>

DRGHW 268.40 - Treatment Standards For Hazardous Wastes Table

<http://regulations.delaware.gov/register/october2018/proposed/Treatment Standards For Hazardous Wastes.pdf>

DRGHW 268.42 - Table 1 - Technology Codes and Description of Technology Based Standards

<http://regulations.delaware.gov/register/october2018/proposed/Technology Codes and Description.pdf>

DRGHW 268.45 - Table 1 - Alternative Treatment Standards for Hazardous Debris

<http://regulations.delaware.gov/register/october2018/proposed/Alternative Treatment Standards.pdf>

DRGHW 268.48 - Table - Universal Treatment Standards

<http://regulations.delaware.gov/register/october2018/proposed/Universal Treatment Standards.pdf>

Appendix VII to Part 268 - Table 1 - LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes

<http://regulations.delaware.gov/register/october2018/proposed/LDR Effective Dates Surface Disposed.pdf>

Appendix VIII to Part 268 - LDR Effective Dates of Injected Prohibited Hazardous Wastes

<http://regulations.delaware.gov/register/october2018/proposed/LDR Effective Dates Injected.pdf>

Appendix XI to Part 268 - Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit

<http://regulations.delaware.gov/register/october2018/proposed/Metal Bearing Wastes.pdf>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DELAWARE SEX OFFENDER MANAGEMENT BOARD

Statutory Authority: 11 Delaware Code, Section 4120A(c)(8) (11 **Del.C.** §4120A(c)(8))
1 **DE Admin. Code** 1100

PUBLIC NOTICE

1100 Delaware Sex Offender Management Board

The Sex Offender Management Board (SOMB), pursuant to 11 **Del.C.** §4120A(c)(8), proposes to revise its regulations. The proposed amendments, which were voted on in a General Meeting by the SOMB on April 30, 2018, seek to update, clarify and provide more detailed information regarding qualifications for Sex Offense Service Providers and the credentialing process.

The SOMB will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Criminal Justice Council Attn: Bridget V. Poulle, Carvel State Office Building, 10th Floor, 820 N French Street, Wilmington, Delaware 19801-3590 or e-mail BridgetV.Poulle@state.de.us. Any written

PROPOSED REGULATIONS

submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on October 31, 2018. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Sex Offender Management Board does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Robert M. Coupe, Chairman SOMB

***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/october2018/proposed/22 DE Reg 271RFA 10-01-18.pdf>

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

1100 Delaware Sex Offender Management Board

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING

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

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations to bring them into conformity with the current enhanced Nurse Licensure Compact law, 24 **Del.C.** §1900A, *et. seq.* The proposed changes strike the outdated regulations and incorporate by reference the current enhanced Nurse Licensure Compact regulations.

The Board will hold a public hearing on the proposed regulation changes on November 14, 2018 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 29, 2018 pursuant to 29 **Del.C.** §10118(a).

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

<http://regulations.delaware.gov/register/october2018/proposed/22 DE Reg 272RFA 10-01-18.pdf>

1900 Board of Nursing
(Break in Continuity of Sections)

14.0 Nurse Licensure Compact Rules and Regulations

~~24 Del.C.~~ Ch. 19A, Articles 6D and 8C of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact. The Board hereby incorporates by reference the enhanced Nurse Licensure Compact rules and regulations as adopted on January 1, 2019 and found at www.ncsbn.org/enlcrules.

14.1 Definition of terms in the Compact:

14.1.1 For the Purpose of the Compact:

- 14.1.1.1 **“Board”** means party state’s regulatory body responsible for issuing nurse licenses.
- 14.1.1.2 **“Information System”** means the coordinated licensure information system.
- 14.1.1.3 **“Primary State Of Residence”** means the state of a person’s declared fixed permanent and principal home for legal purposes; domicile.
- 14.1.1.4 **“Public”** means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

14.1.2 Other terms used in these rules are to be defined as in the Interstate Compact.

14.2 Issuance of a license by a Compact party state.

14.2.1 For the purpose of this Compact:

As of July 1, 2005, no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

- 14.2.1.1 A nurse applying for a license in a home party state shall produce evidence of the nurse’s primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:
 - 14.2.1.1.1 Driver’s license with a home address;
 - 14.2.1.1.2 Voter registration card displaying a home address; or
 - 14.2.1.1.3 Federal income tax return declaring the primary state of residence.
 - 14.2.1.1.4 Military Form No. 2058—state of legal residence certificate; or
 - 14.2.1.1.5 W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.

(Statutory basis: ~~24 Del.C.~~ Ch. 19A, Articles 2E, 4C, and 4D)

- 14.2.1.2 A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.
- 14.2.1.3 A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.
- 14.2.1.4 When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states—a single state license, the license shall be clearly marked with words indicating that it is valid only in the state of issuance.
- 14.2.1.5 A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse’s licensure application in the new home state for a period not to exceed ninety days. (Statutory basis: ~~24 Del.C.~~ Ch. 19A, Articles 4B, 4C, and 4D[1])
- 14.2.1.6 The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ninety day processing period shall be stayed until resolution of the pending investigation.

(Statutory basis: ~~24 Del.C.~~ Ch. 19A, Article 5[B])

- 14.2.1.7 The former home state license shall no longer be valid upon the issuance of a new home state license. (Statutory basis: ~~24 Del.C.~~ Ch. 19A, Article 4D[1])

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~~14.2.1.8 If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's laws and rules.~~

~~14.3 Limitations on multi-state licensure privilege.~~

~~Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/ or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards. (Statutory basis: 24 ~~Del.C.~~ Ch. 1902A)~~

~~An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.~~

~~14.4 Information System:~~

~~14.4.1 Levels of access~~

~~14.4.1.1 The Public shall have access to nurse licensure information limited to:~~

~~14.4.1.1.1 the nurse's name,~~

~~14.4.1.1.2 jurisdiction(s) of licensure,~~

~~14.4.1.1.3 license expiration date(s),~~

~~14.4.1.1.4 licensure classification(s) and status(es),~~

~~14.4.1.1.5 public emergency and final disciplinary actions, as defined by contributing state authority, and~~

~~14.4.1.1.6 the status of multi-state licensure privileges.~~

~~14.4.1.2 Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.~~

~~14.4.1.3 Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Statutory basis: 24 ~~Del.C.~~ Ch. 19A, Article 7G)~~

~~14.4.2 The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System. (Statutory basis: 24 ~~Del.C.~~ Ch. 19A, Article 7G)~~

~~14.4.3 The Board shall report to the Information System within ten (10) business days~~

~~14.4.3.1 disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority);~~

~~14.4.3.2 dismissal of complaint, and~~

~~14.4.3.3 changes in status of disciplinary action, or licensure encumbrance. (Statutory basis: 24 ~~Del.C.~~ Ch. 19A, Article 7B)~~

~~14.4.4 Current significant investigative information shall be deleted from the Information System within ten(10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Statutory basis: 24 ~~Del.C.~~ Ch. 19A, Articles 7B, 7F)~~

~~14.4.5 Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a Board. (Statutory basis: 24 ~~Del.C.~~ Ch. 19A, Articles 7B, 7F)~~

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

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

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

PUBLIC NOTICE

2925 Real Estate Commission Education Committee

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on November 8, 2018 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be November 27, 2018. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to the Guidelines to provide that instructor and course application denials are subject to a written request for reconsideration. Instructor qualifications for pre-licensing, broker and continuing education courses have been revised to ensure instructor competence and experience. Pursuant to proposed amendments, continuing education programs must be a minimum of three hours and must be delivered in three hour increments. Finally, the proposed revisions emphasize that course sponsors and providers are responsible for the qualifications and conduct of course instructors.

***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/october2018/proposed/22 DE Reg 275RFA 10-01-18.pdf>

2925 Real Estate Commission Education Committee

1.0 Objective

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby supporting the Delaware Real Estate Commission's primary objective of protection of the public. This supplement to the Rules and Regulations of the Delaware Real Estate Commission shall set forth the ~~guidelines~~ Guidelines for all Real Estate Prelicensing Courses and Continuing Education as mandated under 24 **Del.C.** §2906(a)(6).

2.0 Administration

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor approval and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission. Any Commission decision pursuant to this Section shall be subject to a written request for reconsideration. A request for reconsideration shall be submitted to the Commission no later than 30 days after the date of the letter setting forth the Commission's decision. The Commission's decision on a request for reconsideration is final and not subject to further review.

3.0 Education Committee

(Break in Continuity Within Section)

3.3 Term of Office

3.3.1 With the expiration of the terms of the members of the Committee in office as of the effective date of this Rule, each appointment shall be for three (3) full years. Each appointed committee member may succeed himself or herself for one (1) additional term. ~~Committee members in office as of April 11, 2013, may serve an additional three (3) year term after completion of their current terms.~~ No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

3.3.2 As of the effective date of this ~~Rule~~ Guideline, a majority of the members holding appointed office at any given time members shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend three (3) consecutive regular business meetings without a valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

(Break in Continuity Within Section)

3.4 Committee Responsibilities

(Break in Continuity Within Section)

3.4.4 If the Commission denies a course or instructor application, the applicant may submit a written request for reconsideration to the Commission. Such request for reconsideration shall be submitted to the Commission no later than 30 days after the date of the denial letter. The Commission's decision on a request for reconsideration is final and not subject to further review.

~~3.4.43.4.5~~ 3.4.4.5 The Education Committee shall undertake such other duties and responsibilities directly related to education as the Commission shall direct from time to time.

~~3.4.53.4.6~~ 3.4.5.4.6 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

~~3.4.63.4.7~~ 3.4.6.4.7 Notwithstanding any rule, regulation, or guideline to the contrary, members of the Education Committee who attend at least eighty percent (80%) of the meetings of the Education Committee during a biennial licensure period may receive one hour of continuing education for each meeting attended and said hour may be applied to any continuing education required for renewal.

(Break in Continuity of Sections)

5.0 Requirements for the Salesperson Prelicensing Course

(Break in Continuity Within Section)

5.13 Coordinator: The institution or distance education program sponsoring the course shall appoint a course coordinator who shall have the following responsibilities:

5.13.1 Selection of instructors as required by ~~the guidelines~~ these Guidelines

(Break in Continuity Within Section)

5.14 Instruction: Instruction

5.14.1 ~~Three~~ The following three individuals, each of whom shall have at least five years' experience in their area of expertise, are ~~preferred~~ required for instruction of the course:

~~5.14.15.14.1.1~~ 5.14.15.14.1.1 a Delaware attorney ~~whose practice has an emphasis on real estate transactions, who~~ has been practicing in the area of Delaware real estate law;

~~5.14.25.14.1.2~~ 5.14.25.14.1.2 a practicing Delaware licensed resident broker ~~with a minimum of 5 years of experience as a Delaware licensee, or a practicing Delaware licensed nonresident broker with 5 years broker practice experience or Delaware associate broke;~~ and

~~5.14.35.14.1.3~~ 5.14.35.14.1.3 an individual knowledgeable in performing real estate business mathematics, ~~computations~~

~~5.14.4 no more than 1 primary instructor from any one real estate firm will be allowed. Additionally, when~~
5.14.2 When a specialized topic is presented, it is encouraged that a specialist be used for that particular session, e.g., an environmentalist to cover environmental concerns including soil analysis, septic systems, etc.

5.14.2.1 No more than 10 hours of the 99 hour course may be taught by a specialist; and

5.14.2.2 At least one approved instructor must be present when the specialist is providing instruction.

5.14.3 Except for a mathematics instructor, prior to making application, an applicant for approval to teach pre-licensing must have either taught at least three Commission-approved continuing education courses or obtained at least 60 positive instructor evaluations within the 5 years immediately preceding application.

~~5.14.5~~5.14.4 Because there is some overlapping of material among the three major topics, it is desirable, where appropriate, that the course coordinator schedule a meeting of the instructors prior to orientation to: (1) coordinate the presentation of material, and (2) decide who will give major emphasis to specific topics. During this meeting, it must be remembered that some of the students may not, because of exemption, be attending the mathematics portion of the course.

(Break in Continuity Within Section)

5.21 Evaluation: At the conclusion of the course, the course coordinator shall conduct a student evaluation of the course, facilities, instructors and the coordination of the course on the form approved by the Commission. They shall submit those evaluations to the Delaware Real Estate Commission's Education Committee within fifteen (15) days of completion of the course with the evaluation summary report form mandated by ~~Education Guideline subsection~~ subsection 9.5. Prelicensing providers will also conduct a regular post prelicensing survey on the form following as the final page of this course guideline. Completed forms received by the provider must be retained for a two year period. The provider must furnish the forms upon request from the Commission.

(Break in Continuity Within Section)

5.24 The License Law and the Rules and Regulations of the Commission are readily available on the Commission's web site at www.dpr.delaware.gov. The current Delaware Code is available on line at ~~www.delcode.state.de.us~~ www.delcode.delaware.gov. The Real Estate Candidate Handbook is available from the testing service at www.pearsonvue.com.

6.0 Requirements for the Associate Broker and Broker Licensing Course

(Break in Continuity Within Section)

6.9 Instructor and Coordinator: Refer to Sections 9.0 and 11.0.

6.9 Instruction:

6.9.1 The following three individuals, each of whom shall have at least five years' experience in their area of expertise, are required for instruction of the course:

6.9.1.1 a Delaware attorney who has been practicing in the area of Delaware real estate law or real estate transactions;

6.9.1.2 a practicing Delaware broker or Delaware associate broker; and

6.9.1.3 an individual knowledgeable in performing real estate business mathematics.

6.9.2 When a specialized topic is presented, it is encouraged that a specialist be used for that particular session, e.g., an environmentalist to cover environmental concerns including soil analysis, septic systems, etc.

6.9.2.1 No more than 20 hours of the 99 hour course may be taught by a specialist; and

6.9.2.2 At least one approved instructor must be present when the specialist is providing instruction.

6.9.3 Except for a mathematics instructor, prior to making application, an applicant for approval to teach pre-licensing must have either taught at least three Commission-approved continuing education

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courses or obtained at least 60 positive instructor evaluations within the 5 years immediately preceding application.

- 6.9.4 Because there is some overlapping of material among the three major topics, it is desirable, where appropriate, that the course coordinator schedule a meeting of the instructors prior to orientation to: (1) coordinate the presentation of material, and (2) decide who will give major emphasis to specific topics. During this meeting, it must be remembered that some of the students may not, because of exemption, be attending the mathematics portion of the course.

(Break in Continuity Within Section)

- 6.11 The License Law and the Rules and Regulations of the Commission are readily available on the Commission's web site at www.dpr.delaware.gov. The current Delaware Code is available on line at www.delcode.state.de.us ~~www.delcode.delaware.gov~~.

(Break in Continuity Within Section)

7.0 Continuing Education Course Criteria

(Break in Continuity Within Section)

- 7.4 Programs shall be a minimum of ~~one (1) hour~~ three (3) hours and delivered in ~~one (1) three (3) hour~~ increments.

(Break in Continuity of Sections)

9.0 Provider Responsibilities

(Break in Continuity Within Section)

- 9.3 Sponsors or providers of all education courses shall be wholly and completely responsible for the qualifications, including Commission approval status, and conduct of course instructors.

- 9.4 Advertising: Course sponsors or providers shall not advertise or market a course until the course and all instructors have been approved by the Commission.

- ~~9.39.5~~ A course may be approved for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and approved instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. Courses cannot be automatically renewed. Sponsors or providers will need to reapply by the course expiration date before conducting further courses. The Education Committee may recommend to the Commission that a provider's privilege of conducting an approved course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards.

- ~~9.49.6~~ Sponsors or providers of all education courses shall be wholly and completely responsible for the conduct of their attendees, including faithful and complete student attendance as well as facilities management. Faithful and complete attendance is attentive presence for at least fifty (50) minutes of each credit hour. The course sponsor or provider shall determine whether students may use electronic devices during the course. Students shall be advised whether electronic devices are permitted before the course begins. A student who arrives after the instruction has begun or leaves before instruction is complete shall not be given continuing education credit.

- ~~9.4.19.6.1~~ Sponsors and providers shall arrange for an on-site monitor in addition to the approved instructor for each course. At no time will self-monitoring be permitted for Continuing Education Course.

- ~~9.4.29.6.2~~ Monitors are appointed to assist the course sponsors or providers and instructors. As a minimum, monitors will ensure students provide their own signatures on the course roster and advise the provider of those students who do not comply with faithful and complete attendance.

- ~~9.4.39.6.3~~ Monitors may be students for educational credit for that course.

- ~~9.4.49.6.4~~ The course sponsor or provider will supply to the student at the completion of the course or program, DREC approved certificate of completion. This certificate must contain, but is not limited to, the following information:

- Student Name
- Sponsors Name
- Module Number
- Course Title
- Date course was completed
- Number of Credit Hours
- Course Approval Number
- Instructor Name(s)
- Instructor Approval Number(s)
- Student License Number
- Licensure Period

9-59.7 The organization offering the course, shall, within fifteen (15) days after the completion of the course, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational course, in the absence of a showing of good cause for that failure.

9-69.8 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Education for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

9-79.9 By the second class meeting, Prelicensing schools are to solicit the names of students interested in being contacted by recruiters. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

9-89.10 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

9-99.11 Members of the Real Estate Commission, Education Committee or Division of Professional regulation staff shall have the right to audit any approved course without notice.

10.0 Instructor Qualifications

10.1 The instructor qualifications set forth in this Section apply to all instructors teaching salesperson pre-licensing, broker and continuing education courses. In addition:

10.1.1 Instructors teaching salesperson pre-licensing must also comply with the requirements of subsection 5.14.

10.1.2 Instructors teaching the broker course must also comply with the requirements of subsection 6.9.

~~40.110.2~~ ~~It is the stated policy of the Delaware Real Estate Commission that qualified Qualified instructors must be directly involved in presenting any professional educational course. Qualifications are determined by:~~

~~40.1.110.2.1~~ ~~Competence in the subject matter. Factors demonstrating competence include, but are not limited to, (may be evidenced by experience in which command of the subject matter is as recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media); ability to demonstrate knowledge and skill in the instructional methodology. and~~

~~40.1.210.2.2~~ ~~Ability to demonstrate knowledge and skill in instructional methodology and ability to effectively communicate the educational material to the participants. Factors demonstrating these abilities include, but are not limited to, as determined by student evaluations and/or test results from previous instructional assignments and/or teaching experience;~~

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- ~~40.210.3~~ The person applying for instructor approval must have a minimum of five years full time experience in ~~a their~~ real estate related ~~topic in their~~ area of expertise, plus one of the following:
- ~~40.2.110.3.1~~ A Bachelor's degree, ~~with the exception of pre-licensing law which must have a Juris Doctorate degree except that a person teaching real estate law, either for pre-licensing, the broker course or continuing education, must be an active member of the Delaware Bar for at least five years; or~~
- ~~40.2.210.3.2~~ A Broker's or Associate Broker Brokers' License; or
- ~~40.2.310.3.3~~ Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.
- ~~40.310.4~~ The Commission may waive or make an exception of the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying any applicant who has had a disciplinary action taken against him/her either by the Commission or by another real estate licensing authority.
- ~~40.410.5~~ In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

11.0 Instructor Approval Process

(Break in Continuity Within Section)

- 11.4 The Education Committee shall have the right to recommend to the Commission that an approved instructor lose their approval for the remainder of the approval period should the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these ~~guidelines~~ Guidelines. If the Commission accepts the Education Committee's recommendation, the instructor may submit a written request for reconsideration to the Commission. Such request for reconsideration shall be submitted to the Commission no later than 30 days after the date of the Commission's notification letter to the instructor. The Commission's decision on a request for reconsideration is final and not subject to further review.
- 11.5 ~~It is the Stated Policy of the Delaware Real Estate Commission that at~~ At no time during periods of instruction shall any person involved in any approved real estate educational course, use, or attempt to use, the position of instructor, sponsor or provider etc., to solicit employees or licensees.

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

2925 Real Estate Commission Education Committee

DIVISION OF PROFESSIONAL REGULATION

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 licensing qualifications are proposed to be amended to conform to new Appraisal Qualifications Board criteria.

A public hearing will be held on November 20, 2018 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the 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 Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 Del.C. §10118(a) by December 5, 2018.

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

<http://regulations.delaware.gov/register/october2018/proposed/22 DE Reg 280RFA 10-01-18.pdf>

2930 Council on Real Estate Appraisers

1.0 Application for Appraiser License or Certificate

1.1 Application

1.1.1 A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

(Break in Continuity Within Section)

2.1.4 Licensed residential real property appraiser: The qualifications for licensure of a licensed residential real property appraiser shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation as follows:

(Break in Continuity Within Section)

2.1.4.2 Examination:

(Break in Continuity Within Section)

2.1.4.2.2 The prerequisites for taking the AQB-approved examination are completion of:

2.1.4.2.2.1 One hundred fifty (150) creditable class hours as specified in the Required Core Curriculum; and

2.1.4.2.2.2 Completion of the ~~college-level education~~ requirements specified in ~~III-A-~~ subsection 2.1.5.3 "Qualifying Education"; and

2.1.4.2.2.3 ~~Two One~~ thousand (~~2,000~~ 1,000) hours of qualifying experience in no fewer than ~~twelve (12)~~ six (6) months.

2.1.4.3 Qualifying Education:

~~2.1.4.3.1 Applicants for the Licensed Residential credential shall hold an Associate degree, or higher, from an accredited college, junior college, community college, or university.~~

~~2.1.4.3.1.1 Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:~~

- ~~• An accredited, degree-granting domestic college or university;~~
- ~~• The American Association of Collegiate Registrars and Admissions Officers (AACRAO);~~
- ~~• A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or~~
- ~~• A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting~~

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~~domestic college or university or by a state licensing board that issues credentials in another discipline.~~

- ~~2.1.4.3.2~~2.1.4.3.1 The Licensed Residential Real Property Appraiser classification requires completion of one hundred fifty (150) creditable class hours as specified in the Required Core Curriculum. As part of the 150 required hours, the applicant shall successfully complete the 15-Hour National USPAP Course, or its AQB-approved equivalent, and the examination. There is no alternative to successful completion of the USPAP Course and examination.
- ~~2.1.4.3.3~~2.1.4.3.2 Appraisers holding a valid **Trainee Appraiser** credential may satisfy the educational requirements for the Licensed Residential Real Property Appraiser credential by completing the following additional educational hours:
- | | |
|--|----------|
| • Residential Market Analysis and Highest and Best Use | 15 Hours |
| • Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| • Residential Sales Comparison and Income Approaches | 30 Hours |
| • Residential Report Writing and Case Studies | 15 Hours |
| TOTAL 75 Hours | |
- ~~2.1.4.3.4~~2.1.4.3.3 Trainee Appraisers wishing to change to the Licensed Residential Real Property Appraiser classification must also satisfy the college level education requirements as specified in subsection 2.1.4.2.1.
- ~~2.1.4.3.5~~2.1.4.3.4 Appraisers holding a valid Certified Residential Real Property Appraiser credential satisfy the educational requirements for the Licensed Residential Real Property Appraiser credential.
- ~~2.1.4.3.6~~2.1.4.3.5 Appraisers holding a valid Certified General Real Property Appraiser credential satisfy the educational requirements for the Licensed Residential Real Property Appraiser credential.
- 2.1.4.4 Experience
- 2.1.4.4.1 ~~Two thousand (2,000)~~ One thousand (1,000) hours of experience are required to be obtained in no fewer than ~~42~~ 6 months.
- 2.1.5 Certified Residential Real Property Appraiser:
- (Break in Continuity Within Section)***
- 2.1.5.2 Examination
- (Break in Continuity Within Section)***
- 2.1.5.2.2 The prerequisites for taking the AQB-approved examination are completion of:
- (Break in Continuity Within Section)***
- 2.1.5.2.2.2 Completion of the ~~college-level education~~ requirements specified in ~~III-A~~ subsection 2.1.5.3 "Qualifying Education"; and
- 2.1.5.2.2.3 ~~Two thousand five hundred (2,500)~~ One thousand five hundred (1,500) hours of qualifying experience obtained in no fewer than ~~twenty-four (24)~~ twelve (12) months. While the hours may be cumulative, the required number of months must accrue before an individual can be certified.
- 2.1.5.3 Qualifying Education
- (Break in Continuity Within Section)***
- 2.1.5.3.2 Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:
- An accredited, degree-granting domestic college or university;
 - ~~The American Association of Collegiate Registrars and Admissions Officers (AACRAO);~~
 - A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation
 - Services (NACES); or

- A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(Break in Continuity Within Section)

2.1.5.3.4 Applicants for Certified Residential credential must satisfy at least one of the following five options:

2.1.5.3.4.1 Possession of a Bachelor's Degree in any field of study:

2.1.5.3.4.2 Possession of an Associate's Degree in a field of study related to:

- Business Administration;
- Accounting;
- Finance;
- Economics; or
- Real estate.

2.1.5.3.4.3 Successful completion of 30 semester hours of college-level courses that cover each of the following specific topic areas and hours:

- English Composition (3 semester hours);
- Microeconomics (3 semester hours);
- Macroeconomics (3 semester hours);
- Finance (3 semester hours);
- Algebra, Geometry, or higher mathematics (3 semester hours);
- Statistics (3 semester hours);
- Computer Science (3 semester hours);
- Business or Real Estate Law (3 semester hours); and
- Two elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (3 semester hours each).

2.1.5.3.4.4 Successful completion of at least 30 hours of College Level Examination Program (CLEP) examinations from each of the following subject matter areas:

- College Algebra (3 semester hours);
- College Composition (6 semester hours);
- College Composition Modular (3 semester hours);
- College Mathematics (6 semester hours);
- Principles of Macroeconomics (3 semester hours);
- Principles in Microeconomics (3 semester hours);
- Introductory Business Law (3 semester hours);
- Information Systems (3 semester hours).

2.1.5.3.4.5 Any combination of 2.1.5.3.4.2 above that ensures coverage of all topics and hours identified in 2.1.5.3.4.3 or 2.1.5.3.4.4.

2.1.5.3.5 As an alternative to the requirements in subsection 2.1.5.3.4 above, individuals who have held a Licensed Residential credential for a minimum of five (5) years may qualify for a Certified Residential credential by satisfying all of the following:

2.1.5.3.5.1 No record of any adverse, final, and non-appealable disciplinary action affecting the Licensed Residential appraiser's legal ability to engage in appraisal practice within the five (5) years immediately preceding the date of application for a Certified Residential credential;

2.1.5.3.5.2 Successful completion of the additional required qualifying education as specified in subsection 2.1.5.3;

2.1.5.3.5.3 Successful completion of the required experience as specified in subsection 2.1.5;

2.1.5.3.5.4 Successful completion of the Certified Residential Real Property Appraiser examination as specified in subsection 2.1.5.2.1.

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~~2.1.5.3.4~~2.1.5.3.6 Appraisers holding a valid Trainee Appraiser credential may satisfy the educational requirements for the Certified Residential Real Property Appraiser credential by completing the following additional educational hours:

- | | |
|---|------------------------|
| 1. Residential Market Analysis and Highest and Best Use | 15 Hours |
| 2. Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| 3. Residential Sales Comparison and Income Approaches | 30 Hours |
| 4. Residential Report Writing and Case Studies | 15 Hours |
| 5. Statistics, Modeling and Finance | 15 Hours |
| 6. Advanced Residential Applications and Case Studies | 15 Hours |
| 7. Appraisal Subject Matter Electives | 20 Hours |
| | TOTAL 125 Hours |

- Residential Market Analysis and Highest and Best Use 15 Hours
 - Residential Appraiser Site Valuation and Cost Approach 15 Hours
 - Residential Sales Comparison and Income Approaches 30 Hours
 - Residential Report Writing and Case Studies 15 Hours
 - Statistics, Modeling and Finance 15 Hours
 - Advanced Residential Applications and Case Studies 15 Hours
 - Appraisal Subject Matter Electives 20 Hours
- TOTAL 125 Hours

~~2.1.5.3.5~~2.1.5.3.7 Appraisers holding a valid Licensed Residential Real Property Appraiser credential may satisfy the educational requirements for the Certified Residential Real Property Appraiser credential by completing the following additional educational hours:

- | | |
|--|---------------------------|
| 1. Statistics, Modeling and Finance | 15 Hours |
| 2. Advanced Residential Applications and Case Studies | 15 Hours |
| 3. Appraisal Subject Matter Electives | 20 Hours |
| | TOTAL 50 Hours |

- Statistics, Modeling and Finance 15 Hours
 - Advanced Residential Applications and Case Studies 15 Hours
 - Appraisal Subject Matter Electives 20 Hours
- TOTAL 50 Hours

~~2.1.5.3.6~~ Trainee Appraisers and Licensed Residential Real Property Appraisers wishing to change to the Certified Residential Real Property Appraiser classification must also satisfy the college degree requirements as specified in III.A.

~~2.1.5.3.7~~ Appraisers holding a valid Certified General Real Property Appraiser credential satisfy the educational requirements for the Certified Residential Real Property Appraiser credential.

2.1.5.3.8 Appraisers holding a valid Trainee Appraiser credential wishing to change to the Certified Residential Real Property Appraiser classification must also satisfy the college-level education requirements as specified in 2.1.5.3.4.

2.1.5.3.9 Appraisers holding a valid Licensed Residential Real Property Appraiser credential wishing to change to the Certified Residential Real Property Appraiser classification who do not meet the requirements outlined in 2.1.5.3.5 must also satisfy the must also satisfy the college-level education requirements as specified in 2.1.5.3.4.

2.1.5.3.10 Appraisers holding a valid Licensed Residential Real Property Appraiser credential wishing to change to the Certified Residential Real Property Appraiser classification who meet the requirements outlined in 2.1.5.3.5 do not need to satisfy the college-level education requirements as specified in 2.1.5.3.4.

2.1.5.3.11 Appraisers holding a valid Certified General Real Property Appraiser credential satisfy the educational requirements for the Certified General Real Property Appraiser credential.

2.1.6 Certified General Real Property Appraiser

(Break in Continuity Within Section)

2.1.6.2 Examination

(Break in Continuity Within Section)

2.1.6.2.2 The prerequisites for taking the AQB-approved examination are completion of:

(Break in Continuity Within Section)

2.1.6.2.2.2 Completion of the ~~college-level education~~ requirements specified in ~~III-A~~ subsection 2.1.5.3 “Qualifying Education”; and

2.1.6.2.2.3 Three thousand (3,000) hours of qualifying experience obtained in no fewer than ~~thirty (30)~~ eighteen (18) months, where a minimum of one thousand five hundred (1,500) hours must be obtained in non-residential appraisal work.

2.1.6.3 Qualifying Education

2.1.6.3.1 Applicants for the Certified General credential must hold a Bachelor’s degree or higher from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a national or regional accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. Applicants with a college degree from a foreign country may have their education evaluated for “equivalency” by one of the following:

- An accredited, degree-granting domestic college or university; or
- ~~The American Association of Collegiate Registrars and Admissions Officers (AACRAO);~~
- ~~A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or~~
- A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(Break in Continuity Within Section)

2.1.6.3.4 Appraisers holding a valid Trainee Appraiser credential may satisfy the educational requirements for the Certified General Real Property Appraiser credential by completing the following additional educational hours:

1. General Appraiser Market Analysis and Highest and Best Use	30 Hours
2. Statistics, Modeling and Finance	15 Hours
3. General Appraiser Sales Comparison Approach	30 Hours
4. General Appraiser Site Valuation and Cost Approach	30 Hours
5. General Appraiser Income Approach	60 Hours
6. General Appraiser Report Writing and Case Studies	30 Hours
7. Appraisal Subject Matter Electives	30 Hours

TOTAL ~~225~~ Hours

- General Appraiser Market Analysis and Highest and Best Use 30 Hours
- Statistics, Modeling and Finance 15 Hours
- General Appraiser Sales Comparison Approach 30 Hours
- General Appraiser Site Valuation and Cost Approach 30 Hours
- General Appraiser Income Approach 60 Hours
- General Appraiser Report Writing and Case Studies 30 Hours
- Appraisal Subject Matter Electives 30 Hours

TOTAL 225 Hours

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2.1.6.3.5 Appraisers holding a valid Licensed Residential Real Property Appraiser credential may satisfy the educational requirements for the Certified General Real Property Appraiser credential by completing the following additional educational hours:

- | | |
|--|---------------------|
| 1. General Appraiser Market Analysis and Highest and Best Use | 15 Hours |
| 2. Statistics, Modeling and Finance | 15 Hours |
| 3. General Appraiser Sales Comparison Approach | 15 Hours |
| 4. General Appraiser Site Valuation and Cost Approach | 15 Hours |
| 5. General Appraiser Income Approach | 45 Hours |
| 6. General Appraiser Report Writing and Case Studies | 15 Hours |
| 7. Appraisal Subject Matter Electives | 30 Hours |

~~TOTAL 150 Hours~~

- General Appraiser Market Analysis and Highest and Best Use 15 Hours
- Statistics, Modeling and Finance 15 Hours
- General Appraiser Sales Comparison Approach 15 Hours
- General Appraiser Site Valuation and Cost Approach 15 Hours
- General Appraiser Income Approach 45 Hours
- General Appraiser Report Writing and Case Studies 15 Hours
- Appraisal Subject Matter Electives 30 Hours

TOTAL 150 Hours

2.1.6.3.6 Appraisers holding a valid Certified Residential Real Property Appraiser credential may satisfy the educational requirements for the Certified General Real Property Appraiser credential by completing the following additional educational hours:

- | | |
|--|---------------------|
| 1. General Appraiser Market Analysis and Highest and Best Use | 15 Hours |
| 2. General Appraiser Sales Comparison Approach | 15 Hours |
| 3. General Appraiser Site Valuation and Cost Approach | 15 Hours |
| 4. General Appraiser Income Approach | 45 Hours |
| 5. General Appraiser Report Writing and Case Studies | 10 Hours |

~~TOTAL 100 Hours~~

- General Appraiser Market Analysis and Highest and Best Use 15 Hours
- General Appraiser Sales Comparison Approach 15 Hours
- General Appraiser Site Valuation and Cost Approach 15 Hours
- General Appraiser Income Approach 45 Hours
- General Appraiser Report Writing and Case Studies 10 Hours

TOTAL 100 Hours

2.1.6.3.7 Trainee Appraisers, Licensed Residential Real Property Appraisers, and Certified Residential Real Property Appraisers wishing to change to the Certified General Real Property Appraiser classification must also satisfy the requirements in III.A. and III.C subsections 2.1.6.3.1 and 2.1.6.3.3.

2.1.6.4 Experience

2.1.6.4.1 Three thousand (3,000) hours of experience obtained during no fewer than ~~thirty (30)~~ eighteen (18) months is required, of which one thousand five hundred (1,500) hours must be in non-residential appraisal work. While the hours may be cumulative, the required number of months must accrue before an individual can be certified.

(Break in Continuity Within Section)

2.5 All licensees and certificate holders, except as provided in subsection 2.3.1.1, must complete as a condition of each renewal:

(Break in Continuity Within Section)

2.5.2 **Beginning November 1, 2009, and thereafter ~~three (3)~~ two (2) hours of education on Delaware Law, Rules and Regulations.**

(Break in Continuity of Sections)

EXHIBIT A (for illustrative purposes only)

License/Certification Minimum Requirements Matrix			
License Level	Qualifying Education	Minimum Experience	Education
<u>Trainee</u>	<u>Seventy-five (75) hours of qualifying education as specified in the Required Core Curriculum, including the 15-Hour National USPAP Course (or its AQB-approved equivalent) and examination.</u>	<u>None</u>	<u>No College-Level Education Required</u>
<u>Licensed Residential</u>	<u>One Hundred Fifty (150) creditable class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP Course (or its AQB-approved equivalent) and examination.*</u>	<u>1,000 hours in no fewer than six (6) months</u>	<u>No College-Level Education Required.</u>
<u>Certified Residential</u>	<u>Two Hundred (200) creditable class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP Course (or its AQB-approved equivalent) and examination.*</u>	<u>1,500 hours in no fewer than twelve (12) months</u>	<u>One of six options as noted in Section XXXX.</u>
<u>Certified General</u>	<u>Three Hundred (300) creditable class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP Course (or its AQB-approved equivalent) and examination.*</u>	<u>3,000 hours in no fewer than eighteen (18) months, of which one thousand five hundred (1,500) hours must be in non-residential appraisal work</u>	<u>Bachelor's degree or higher from an accredited college or university.</u>

* Includes credit for any previously completed creditable course hours from Required Core Curriculum

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

2930 Council on Real Estate Appraisers

**DEPARTMENT OF TRANSPORTATION
DELAWARE TRANSIT CORPORATION**

Statutory Authority: 2 Delaware Code, Section 1802(b) (2 Del.C. §1802(b))
2 DE Admin. Code 2287

PUBLIC NOTICE

2287 Public Carrier Regulations

Pursuant to the authority provided by 2 Del.C. §1802(b), the Delaware Department of Transportation (DelDOT), adopted the Public Carrier Regulations.

The Department, through the Delaware Transit Corporation, Office of Public Carrier Regulation, seeks to adopt general revisions to its existing regulation, Public Carrier Regulations, to address procedural changes and public

safety concerns. These collective changes are promote public safety and serve, in part, to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DeIDOT will take written comments on these proposed general revisions to 2 **DE Admin. Code** 2287, from October 1, 2018 through October 31, 2018. The public may submit their comments to:

Bruce R. Demeter, Director, Office of Public Carrier Regulation
(Bruce.Demeter@state.de.us) or in writing to his attention,
Delaware Transit Corporation
Office of Public Carrier Regulation
119 Lower Beech Street
Wilmington, DE 19805

***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/october2018/proposed/22 DE Reg 287RFA 10-01-18.pdf](http://regulations.delaware.gov/register/october2018/proposed/22%20DE%20Reg%20287RFA%2010-01-18.pdf)

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

2287 Public Carrier Regulations

DELAWARE TRANSIT CORPORATION

Statutory Authority: 2 Delaware Code, Section 1922 and 21 Delaware Code, Section 302 (2
Del.C. §1922 & 21 Del.C. §302)
2 DE Admin. Code 2289

PUBLIC NOTICE

2289 Transportation Network Companies

Pursuant to the authority provided by 2 **Del.C. §1922** and 21 **Del.C. §302**, the Delaware Department of Transportation (DeIDOT), adopted the Transportation Network Companies regulation.

The Department, through the Delaware Transit Corporation, Office of Public Carrier Regulation, seeks to adopt general revisions to its existing regulation, Transportation Network Companies, to safeguard public safety through a regular review of Transportation Network Company engaged vehicles. These collective changes are promote public safety and serve, in part, to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DeIDOT will take written comments on these proposed general revisions to 2 **DE Admin. Code** 2289 from October 1, 2018 through October 31, 2018. The public may submit their comments to:

Bruce R. Demeter, Director, Office of Public Carrier Regulation
(Bruce.Demeter@state.de.us) or in writing to his attention,
Delaware Transit Corporation
Office of Public Carrier Regulation
119 Lower Beech Street

Wilmington, DE 19805

***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/october2018/proposed/22 DE Reg 288RFA 10-01-18.pdf>

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

[2289 Transportation Network Companies](#)

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Section 137 (17 Del.C. §137)
2 DE Admin. Code 2406

PUBLIC NOTICE

2406 Policies and Procedures for Acquisition of Certain Real Property

Pursuant to the authority provided by 17 Del.C. §137, the Delaware Department of Transportation (DelDOT), adopted the 2406 Policy and Procedures for Acquisition of Certain Real Property.

The Department, through its Division of Transportation Solutions, seeks to adopt general revisions to its existing regulation, to address changes made to 17 Del.C. §137 by 2018 Delaware Laws Chapter 225 (H.B. 144) and Chapter 374 (H.B. 432). The changes clarify the process for DelDOT, the Advanced Acquisition Committee and the public to follow when acquiring property in advance of final plans being completed. The changes also establish a Dispute Resolution Process which allows the impacted owners the ability to go to arbitration if they so desire. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2406 of Title 2, Delaware Administrative Code, from October 1, 2018 through October 31, 2018. The public may submit their comments to:

Robert M. Cunningham, Chief of Right of Way, Division of Transportation Solutions
(Robert.cunningham3@state.de.us) or in writing to his attention,
Chief of Right of Way
Delaware Department of Transportation
P.O. Box 778
Dover, De. 19903

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

<http://regulations.delaware.gov/register/october2018/proposed/22 DE Reg 289RFA 10-01-18.pdf>

2406 Policies and Procedures for Acquisition of Certain Real Property

1.0 Purpose

- 1.1 The Department of Transportation has broad limited statutory authority to acquire public or private property and property rights in connection with the Department's jurisdiction. Traditionally, the Department has acquired the necessary property rights upon final right-of-way plan approval for a

project. In certain instances, the best interests of the state and individual property owners may be better served if such interests are either acquired or reserved by the Department prior to final right-of-way plan approval. The purpose of this regulation is to enumerate the specific policies and procedures governing the advanced acquisition and reservation of certain of real property by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

1.2 ~~In addition, the Property acquisitions pursued in accordance with an approved final right-of-way plan prepared for a Department desires to have certain project as defined herein are specifically exempt from this regulation.~~

1.3 ~~The Department, when acting as the agent of the Delaware Transportation Authority for special property transactions reviewed and approved by acquisitions in accordance with 2 **Del.C.** §1309(5), shall seek a consistency review from the Committee established under §137(a)(2), that are not necessarily tied to a highway project location. Furthermore, certain other transportation facility acquisitions are carried out pursuant to 2 **Del.C.** §1309(5), which are not prior to settlement with owners to verify the transaction is in the public interest, unless otherwise subject to approval by any other another public body or federal agency. Nonetheless, for these transactions, the Department believes it would be in the public interest to obtain a review and comment about the proposed acquisition from the Committee.~~

2.0 Definitions

“Advanced acquisition” means the acquisition by the Department of any interest in real property prior to final design approval of final right-of-way plans for the project for which such interest real property interest is being acquired. For purposes of this regulation and the Department’s Real Estate Manual, “advanced acquisitions” shall include, without limitation, reservation agreements.

“Advanced Acquisition Committee” or **“Committee”** means the committee created pursuant to ~~17 **Del.C.** §137(a)(2) and comprised of the Secretary of the Department of Natural Resources and Environmental Control; the Secretary of the Department of Transportation, the Secretary of the Department of Agriculture; the Director of the Delaware Economic Development Office; the Governor’s Chief of Staff; a member of the Senate designated by the President Pro Tempore of the Senate; a member of the House of Representatives designated by the Speaker of the House of Representatives; a member of the public designated by the President Pro Tempore of the Senate; and a member of the public designated by the Speaker of the House of Representatives and defined pursuant to 17 **Del.C.** §137(a)(2).~~

“Consistency review” shall mean the review by the Committee to determine the consistency of such action with the State’s overall goals for land use planning pursuant to 17 **Del.C.** §137(a)(2) of acquisitions for new corridors, expansion of existing corridors, the Department’s Corridor Capacity Preservation Program, or certain Special Property Acquisitions.

“Corridor” means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel needs. By way of example and not limitation, State Routes 1, 2, and 141, and U.S. Routes 13, 113, and 202 are corridors under this definition.

“Department” means the Delaware Department of Transportation.

~~**“Expansion of existing corridors”** means the proposed construction of additional through lanes for a minimum of three miles, such as to significantly increase the traffic carrying capacity of a corridor already in existence at the time of the proposed capital improvement. By way of example and not limitation, the dualization of U.S. Route 113 between Milford and Georgetown, and the State Route 1 Third Lane Project between Rehoboth Avenue Extended and the Five Points Intersection with U.S. Route 9, would have been considered expansions of existing corridors under this definition at the time of their planning and construction.~~

“Hardship acquisition” shall mean an advanced acquisition to resolve a specific hardship imposed upon the owner as a result of a project, ~~including, without limitation, long term leases and reservations between an owner and the Department.~~ Hardship acquisitions shall include situations in which an owner must demonstrate the need to relocate for personal reasons (e.g., job transfer, death in the

family, retirement plans, or medical reasons) and is unable to sell his or her property as a result of a project.

~~“New corridor” means a proposed capital improvement for a corridor level highway, all or substantially all of which is to be built on previously unused alignment. By way of example and not limitation, the tolled portion of State Route 1 through Kent and New Castle Counties would have been considered a new corridor under this definition, at the time of its planning and eventual construction.~~

~~“Owner” shall mean the owner of the real property interest which the Department seeks to acquire or reserve.~~

~~“Preferred Alternative” means the alternative that the Department believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors.~~

~~“Project” means an undertaking for a capital improvement by the Department for a new corridor, expansion of an existing corridor, acquisition of real property as part of the Corridor Capacity Preservation Program, or certain Special Property Acquisitions, and which uses state and/or federal funds.~~

~~“Protective acquisition” shall mean an advanced acquisition to allow the Department to protect from development real property within a project area, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project. Protective acquisitions shall include, without limitation, long-term leases and reservations to allow the Department to protect from development real property within a project area.~~

~~“Real Property” means a fee simple interest in real estate for any such acquisition, and shall also include any lesser property interest proposed for acquisition under the Corridor Capacity Preservation Program (17 Del.C. §145).~~

~~“Reservation” means a commitment by the Department to compensate an owner of any interest in real property, in exchange for an agreement by the owner to refrain from further developing his or her property or designated portions thereof.~~

~~“Special Property Acquisitions” shall mean the acquisition of real property in fee simple or lesser interest for Department transportation projects that are not necessarily related to the highways and streets under its jurisdiction and control. By way of example and not limitation, these include a transit maintenance facility for the Delaware Transit Corporation, a park-and-ride lot for the convenience of commuters, or the acquisition of land to provide clear space for runway approaches for publicly owned or public use airports. These acquisitions may be made pursuant to either 2 Del.C. §1309(5) or other legal authority, including but not limited to 17 Del.C. §137 pursuant to 2 Del.C. §1309(5).~~

3.0 Hardship Acquisition

- 3.1 Depending upon the availability of funding, the Department may consider requests by owners for hardship acquisitions.
- 3.2 Written Request - The owner of the real property must submit to the Department a written request for a hardship acquisition. A request for hardship acquisition of property shall be submitted to the:
Delaware Department of Transportation
Right-of-Way Section
Chief of Right-of-Way
P.O. Box 778
Dover, DE 19903
- 3.3 Criteria. Upon receipt of a written request for a hardship acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria set forth herein. At a minimum, the request must demonstrate to the Department's satisfaction that:
 - 3.3.1 The property has been marketed for at least six (6) months; and
 - 3.3.2 The realtor, or owner in absence of a realtor, must certify and provide evidence that he or she is unable to sell the property at a reasonable price as a result of the proposed project; and

3.3.3 The owner must be able to document a compelling reason for his or her move from the property, e.g., job transfer, death in the family, retirement plans or for medical reasons.

3.4 If an owner demonstrates to the Department's satisfaction that a hardship acquisition is appropriate, then such proposed acquisition shall be considered in accordance with the procedures set forth in Section ~~5-06.0~~.

4.0 Protective Acquisition by Owner

4.1 Depending upon the availability of funding, the Department may consider requests ~~for protective acquisitions from owners to purchase all or a portion of their property. The Department will consider such requests when there is an anticipated need for the property as part of a planned project and acquiring it prior to final right-of-way plan approval would protect the availability of the property for use by the project.~~

4.2 Written Request - All requests for a protective acquisition by an owner must be in writing. A request for protective acquisition of property shall be submitted to the:

Delaware Department of Transportation
Right-of-Way Section
Chief of Right-of-Way
P.O. Box 778
Dover, DE 19903

4.3 Criteria. Upon receipt of a written request for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

4.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or

4.3.2 Development would limit location alternatives for a project.

5.0 Protective Acquisition Recommended by DeIDOT

5.1 Depending upon the availability of funding, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project, the Department may consider contacting property owners for possible protective acquisitions.

5.2 Recommendation. Prior to contacting owners of potential protective acquisition properties, the Chief Engineer must certify that all or part of the property will be required for a future project which complies with the purpose of this regulation as stated in Section 1.0 of this regulation.

5.3 Criteria. Upon the certification of need for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

5.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or

5.3.2 Development would limit location alternatives for a project;

5.3.3 The request does not violate the National Environmental Policy Act (NEPA) or other Federal or State Regulations.

~~5-06.0~~ Procedures for Review and Approval of Advanced Acquisitions

~~5-16.1~~ For advanced acquisitions satisfying the criteria set forth in ~~§§3-2 or 4-2~~ subsection 3.3, 4.3 or 5.3 or for Special Property Acquisitions, as the case may be, the Department shall have an appraisal performed by ~~its an independent appraisers~~ appraiser in accordance with the Department's Real Estate Manual.

~~5-26.2~~ Following receipt of the appraisal, the Department and its legal counsel shall discuss the potential terms of an agreement and the justifications therefor, including the nature of the interest to be acquired (i.e., acquisition, reservation, leasehold); the necessity of acquiring such interest and the existence of

any alternative transactions; the fair market value of such interest; the amount of land required; the duration of the agreement; and such other factors as may be relevant. Following such discussion, counsel shall prepare a detailed term sheet reflecting the material terms of the proposed transaction.

~~5-36.3~~ The Department will present the term sheet to the Advanced Acquisition Committee at a scheduled meeting as soon as reasonably practicable. The Committee shall consider the terms of and rationale for the proposed transaction and may either approve, ~~approve with conditions~~, or reject such transaction. If the Committee approves the proposed transaction ~~or approves with conditions~~, the Department shall negotiate the final terms with the owner.

~~5-3-16.3.1~~ For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's review shall be considered an advisory opinion.

~~5-46.4~~ The material terms of all advanced acquisitions shall be reflected in an agreement prepared or reviewed by the Department's legal counsel and signed by the owner and an authorized representative of the Department.

6-07.0 Consistency Review of ~~Certain DelDOT Real Property~~ Proposed Advanced Acquisitions

~~6-17.1~~ The Committee shall conduct a consistency review ~~for certain of~~ proposed ~~real property~~ advanced acquisitions ~~by the Department. These acquisitions consist of those real properties determined by the Department as necessary for its projects for new corridors, expansion prior to approval of existing corridors final right-of-way plans, real property affected acquisitions by the Corridor Capacity Preservation Program; and for Special Property Acquisitions. This review shall be conducted under the following time frames:~~

~~6-1.1~~ For the preferred alternative for existing corridors or the expansion of existing corridors: After the projects are approved by the Council on Transportation.

~~6-1.2~~ For the Department's Corridor Capacity Preservation Program, and Special Property Acquisitions: Prior to prior to initiating any real property acquisitions with owners.

~~6-2~~ The consistency review shall confirm that the Department's proposed real property acquisitions further the State's overall goals for land use planning, as expressed by project authorizations and appropriations adopted by the General Assembly.

~~6-37.2~~ At the scheduled meeting for the consistency review, the Department shall present to the Committee such evidence as it deems necessary to demonstrate that the proposed acquisitions are consistent with state planning goals. This evidence shall include:

~~6-3-17.2.1~~ a detailed visual depiction of the proposed acquisitions;

~~6-3-27.2.2~~ the relevant project pages from the Capital Improvement Program adopted by the Council on Transportation, pursuant to 29 **Del.C.** §§8409 and 8419;

~~6-3-37.2.3~~ the relevant project authorizations as described in the relevant Bond and Capital Improvements Acts adopted by the General Assembly;

~~6-3-47.2.4~~ where applicable, the Department's ~~adopted~~ Corridor Capacity Preservation plan for the corridor adopted in accordance with the procedures set forth in 17 Del.C. §145(d) for which the proposed acquisition would be made, along with other evidence showing how the acquisition furthers the Department's goals under that Program;

~~6-3.5~~ where applicable, the relevant project approvals obtained from the Federal Highway Administration;

~~6-3-67.2.5~~ for Special Property Acquisitions, evidence showing how the proposed acquisition furthers the Department's goals for the particular project purpose, including a cost/benefit analysis and other relevant data;

~~6-3-77.2.6~~ a description of the State's Strategies for Policies and Spending, and how the project fits with those ~~strategies; and strategies~~.

~~6-3.8~~ documentation of the State Planning Office's approval of the project.

~~6-47.3~~ If the Committee determines that the proposed acquisition is consistent with state planning goals, it shall then notify the Department in writing. The Committee shall conclude its consistency review

PROPOSED REGULATIONS

indicating its support or denial of the proposed acquisition by simple majority vote of its members. A quorum must be present. The vote shall be recorded in the meeting minutes.

~~6.4.17.3.1~~ For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's determination shall be considered an advisory opinion.

8.0 Dispute Resolution Process

~~6.58.1~~ If the Committee determines that the proposed acquisition is not consistent with state planning goals, it shall then notify the Department in writing, with an explanation of the basis for the Committee's determination. If after negotiations with the owner as identified above for advanced acquisitions satisfying the criteria set forth in subsection 3.3, 4.3 or 5.3 or for Special Property Acquisitions, the Department and the owner cannot reach an agreement upon the acquisition price or terms, the owner may request the following options:

~~6.5.4~~ For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's determination shall be considered an advisory opinion.

8.1.1 Alternative Dispute Resolution

8.1.1.1 Upon notification from the Department that an impasse has been reached, the owner may request to follow the Alternative Dispute Resolution (ADR) process as identified in DelDOT Regulation 2407.

8.1.1.2 As per Regulation 2407, the owner and the Department will agree prior to commencing the ADR if the process shall be binding or non-binding. If the process is non-binding, the owner shall retain their rights under subsection 8.1.2.

8.1.2 Ceasing Advanced Acquisition

8.1.2.1 Upon notification from the Department that an impasse has been reached, the owner may notify the Department that they are no longer interested in an Advanced Acquisition and do not wish to continue with either negotiations or ADR. The Department at that time shall cease all acquisition activities and notify the Advanced Acquisition Committee.

8.1.2.2 If the Department ceases advanced acquisition activities at the request of the owner, advanced acquisition activities may not be re-initiated without first obtaining approval of the Advanced Acquisition Committee.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **Bracketed Bold language** indicates text added at the time the final order was issued. ~~**Bracketed bold stricken through**~~ indicates language deleted at the time the final order was issued.

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

ORDER

1001 Thoroughbred Racing Rules and Regulations

The Thoroughbred Racing Commission ("Commission") issues this Order to take effect ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the Commission proposed for adoption revisions to the Commission's rule 15 to add new Rule 15.25 relating to the adoption by reference of the ARCI definition of the responsible person for an adverse finding in an out-of-competition test, new Rule 15.26 relating to the adoption by reference of the ARCI requirement for trainers to keep up-to-date records of all medications and treatments administered and to maintain 30-day records documenting all corticosteroid or other intra-articular injections to horses in their care, and new Rule 15.27 relating to the adoption by reference of the ARCI requirement for any veterinarian who treats a race horse on Commission grounds to submit a Veterinarian's Medication Report to the Commission Veterinarian. Other regulations issued by the Thoroughbred Racing Commission are not affected by this Order.

2. A copy of the proposed regulations was published in the June 1, 2018 edition of the Delaware *Register of Regulations* and has been available for inspection in the office of the Commission at 777 Delaware Park Boulevard, Wilmington, Delaware 19804 during regular office hours.

3. The Commission did not receive any written comments on the proposed regulations during the 30 day period following publication of the proposed regulations on June 1, 2018.

4. THEREFORE, IT IS ORDERED, that the proposed regulations are adopted and shall become effective October 11, 2018, after publication of the final regulation in the Delaware *Register of Regulations*.

BY ORDER OF THE DELAWARE THOROUGHBRED RACING COMMISSION

W. Duncan Patterson, Chairman

*Please note that no changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 939 (21 DE Reg. 939). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1001 Thoroughbred 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 415

REGULATORY IMPLEMENTING ORDER

415 Voluntary School Assessment

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(a), the Secretary of Education intends to amend 14 DE Admin. Code 415 Voluntary School Assessment. The regulation is being amended to delete unnecessary language that merely restates Delaware Code, delete language that conflicted with Delaware Code, and clarify the Department's definition of "adequate capacity."

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on August 1, 2018, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 415 Voluntary School Assessment in order to delete unnecessary language that merely restates Delaware Code, delete language that conflicted with Delaware Code, and clarify the Department's definition of "adequate capacity."

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 415 Voluntary School Assessment. Therefore, pursuant to 14 Del.C. §122(a), 14 DE Admin. Code 415 Voluntary School Assessment attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 415 Voluntary School Assessment 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 415 Voluntary School Assessment amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 415 Voluntary School Assessment 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(a) on September 14, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of September 2018.

Department of Education

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

Approved this 14th day of September 2018

***Please note that no changes were made to the regulation as originally proposed and published in the August 2018 issue of the *Register* at page 109 (22 DE Reg. 109). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

415 Voluntary School Assessment

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 4112(b) (14 **Del.C.** §§122(a) and 4112(b))
14 **DE Admin. Code** 608

REGULATORY IMPLEMENTING ORDER

608 Unsafe School Choice Option Policy

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.**, Chapter 1, § 122 and Chapter 41, §4112(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. This regulation is being amended to provide the current federal statutory reference, remove language that is no longer included in the amended federal statute, including Adequate Yearly Progress (AYP), modify language for school choice when a school is identified as persistently dangerous, and remove the definition of Terroristic Threatening as it is no longer a mandatory criminal report under 14 **Del.C.** §4112(b).

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on June 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and State Council for Persons with Disabilities noting that: (1) the criteria to qualify as an unsafe school is too high, making it easier to avoid being labeled "persistently dangerous." The Department notes that, based on a national review of other states' thresholds of being an "unsafe school," Delaware's definition is consistent and therefore does not need to be amended; and (2) the removal of the definition of "Terroristic Threatening" could have a large impact on the number of "unsafe incidents." The Department believes that the removal of the definition of "Terroristic Threatening" as a basis for an unsafe incident is consistent with most other states. Additionally, the Department added some clarifying language and made several grammatical corrections within this regulation to comply with drafting and style protocol.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy in order to provide the current federal statutory reference, remove language that is no longer included in the amended federal statute including Adequate Yearly Progress (AYP), modify language for school choice when a school is identified as persistently dangerous, and remove the definition of Terroristic Threatening as it is no longer a mandatory criminal report under 14 **Del.C.** §4112(b).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 608 Unsafe

School Choice Option Policy attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy 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** 608 Unsafe School Choice Option Policy amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy 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 14, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 14th day of September 2018.

Department of Education

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

Approved this 14th day of September 2018

608 Unsafe School Choice Option Policy (Break in Continuity of Sections)

2.03.0 Identification of Persistently Dangerous Schools

- 2.13.1 The Department of Education shall identify each [~~persistently dangerous school~~ **Persistently Dangerous School**] using the data reported to it pursuant to the provisions of 14 **Del.C.** §4112, 14 **DE Admin. Code** 601, and any expulsion and suspension data as required by the Department.
- 2.23.2 Notwithstanding any provision herein to the contrary, any year that a [~~school~~ **School**] fails to comply with the reporting mandates, as set forth in 2.13.1 above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the [~~school~~ **School**] as if it otherwise met the criteria to be classified as a [~~persistently dangerous school~~ **Persistently Dangerous School**] for that year until such time as it may be determined, in the sole discretion of the Department, that the [~~school~~ **School**] has met such reporting requirements.
- 2.33.3 A [~~school~~ **School**] identified as [~~persistently dangerous~~ a **Persistently Dangerous School**] will retain that designation for the entire fiscal year.

3.04.0 Students Attending Schools Labeled as Persistently Dangerous

- 3.14.1 A student attending a [~~persistently dangerous school~~ **Persistently Dangerous School**] shall be allowed to choose to a safe Safe [~~school~~ **School**] in the same school district, including a charter school[;] provided [~~such as that a charter school~~] option exists in [~~the district that school district's boundaries~~]; the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.
- 3.24.2 Each public school district having one or more [~~persistently dangerous schools~~ **Persistently Dangerous Schools**] and any charter school identified as a [~~persistently dangerous school~~ **Persistently Dangerous School**] shall develop a plan and time line that describes the process for notifying parents of the [~~school's~~ **School's**] status and for relocating any student who exercises the right to choice to a safe Safe [~~school~~ **School**]. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15th of the year that the [~~school~~ **School**] is identified.

4-05.0 Students Who are Victims of a Violent Felony

- 4-15.1 A student who is the victim of a Violent Felony while in or on the grounds of a ~~[school School]~~ in which the student is enrolled shall be allowed to choice to a safe Safe ~~[school School]~~ in the same school district, including a charter school **[provided that a charter school option exists in that school district's boundaries]**; ~~the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring. Each school district and charter school shall have an electronic copy of the current policies and procedures on file with the Department of Education.~~
- 4-25.2 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a ~~[violent felony Violent Felony]~~, including the process for notifying parents.
- 4-35.3 Each school district and charter school shall ~~provide an electronic copy of any new or revised policies and procedures within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies post the policy and procedures on the [school] district's or charter school's website, with hard [copy copies] provided to any requesting parties.~~

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2018 issue of the *Register* at page 947 (21 DE Reg. 947). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

608 Unsafe School Choice Option Policy

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 18700

ORDER

CHIP Premium Requirements

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, *to update CHIP Premium Requirements*. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend XXI Delaware Healthy Children Program State Plan sections 8.2. & 8.5 and Delaware Social Services Manual (DSSM) 18700, specifically, to update CHIP Premium Requirements.

Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health

Insurance Program (SCHIP)" by adding Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's SCHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the Delaware Code.

Modified Adjusted Gross Income (MAGI) Conversion Plan

Under the Affordable Care Act, to complete the transition to the MAGI-based methodology, states developed MAGI-based income eligibility standards for the applicable eligibility groups that "are not less than the effective income levels" that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards account for any income disregards now used. Finally, under section 1902(e)(14)(E) of the Act, each state must submit to the Secretary for approval its proposed MAGI-equivalent income eligibility standards and the methodologies and procedures that support those proposed standards, for each applicable eligibility group. This submission is referred to as the state's "MAGI Conversion Plan". Delaware's conversion plan was approved on September 17, 2013.

The conversion to MAGI-based income eligibility standards impacts the percentages of the Federal Poverty Level (FPL) used to set the premium levels under CHIP. The Centers for Medicare and Medicaid Services (CMS) advised Delaware that the State needed to amend the Delaware's Children's Health Insurance Program (CHIP) State Plan to update the premium levels to account for the MAGI-based conversion standards. Therefore, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) drafted a proposed CHIP State Plan Amendment (SPA) to change the percentages of the Federal Poverty Level (FPL) applied to the premium levels and to describe the incentives for pre-payment of premiums. The proposed regulation was published in the September 2014 Delaware *Register of Regulations* for public comment. The final regulation was published in the November 2014 Delaware *Register of Regulations* and the SPA was submitted to CMS on December 17, 2014. DMMA worked with CMS over the course of two (2) years to re-work the language in Delaware's CHIP State Plan to reflect the new ACA requirements, and update the CHIP family premium cost sharing amounts to be consistent with the state's approved Modified Gross Income conversion plan. The SPA was approved on May 19, 2016.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152), together known as the Affordable Care Act
- Title XXI of the Social Security Act, *State Children's Health Insurance Program*
- 42 CFR Part 457, *State Children's Health Insurance Programs (SCHIPs)*
- 16 Delaware Code, Section 9909

Purpose

The purpose of this SPA is to update the CHIP family premium structure to align with federal regulation.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of 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 August 31, 2018.

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

The following fiscal impact is projected:

	Federal Fiscal Year 2019	Federal Fiscal Year 2020
Federal funds	\$46,179	\$40,432
General (State) funds	\$3,321	\$9,068

Summary of Comments Received with Agency Response and Explanation of Changes

There were no comments received during the comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan and the Delaware Social Services Manual (DSSM) regarding Cost Sharing and Payment, specifically, to *update CHIP Premium Requirements*, is adopted and shall be final effective October 12, 2018.

Date of Signature: 9/17/18
Kara Odom Walker, MD, MPH, MSHS
Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the August 2018 issue of the *Register* at page 122 (22 DE Reg. 122). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

CHIP Premium Requirements

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Asset Verification System

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after October 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan pages Supplement 16 to Attachment 2.6 A Pages 1 - 3 regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system.

Background

In a letter dated February 8, 2012, CMS approved DE SPA# 11-011 which proposed to implement an Asset Verification System, a system for verifying the assets of aged, blind or disabled applicants for and recipients of Medicaid.

Individuals whose eligibility is being determined or redetermined (and others whose finances are relevant to eligibility) must authorize the State agency to obtain records from any financial institution in connection with the eligibility determination in order to verify the individual's assets. The verification program is to be "consistent with the approach of the Commissioner of Social Security" under Section 1631 of the SSA, i.e., an electronic verification system. Individuals who refuse or revoke their authorization may be determined ineligible for medical assistance.

For purposes of implementing an asset verification program under this section, a State may select and enter into a contract with a public or private entity. The DE SPA# 11-011 did not identify a contractor.

Although Delaware has been complying with and meeting the requirements of AVS, in an effort to provide increased efficiency and oversight, a Request for Proposal was issued in 2017 and a contractor identified.

Statutory Authority

- Supplemental Appropriations Act of 2008, Public Law 111-148, Title VII, Section 7001(d)
- Social Security Act §1940, *Asset Verification through Access to Information Held By Financial Institutions*

Purpose

The purpose of this proposed regulation is to identify the contractor selected to implement the Asset Verification System.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of 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 August 31, 2018.

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

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
Federal funds	\$570,906	\$217,536
General (State) funds	\$91,137	\$72,512

Summary of Comments Received with Agency Response and Explanation of Changes

There were no comments received during the comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Asset Verification System, specifically, to identify the contractor selected to implement the system, is adopted and shall be final effective October 12, 2018.

Date of Signature: 9/18/18
 Kara Odom Walker, MD, MPH, MSHS
 Secretary, DHSS

(Break in Continuity of Sections)

FINAL

Supplement 16 to Attachment 2.6 A
 Page 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
 STATE/TERRITORY: **DELAWARE**
 ASSET VERIFICATION SYSTEM

[2-3.] Provide the AVS implementation description and other information requested for the implementation approach checked in Section 2.

- ~~The contractor is not known at this time.~~
~~The Agency will select a contractor through the Request for Proposal (RFP) process.~~
Delaware has contracted with Public Consulting Group Incorporated to provide an Asset Verification System (AVS), to identify assets of Medicaid applicants and recipients held at various Financial Institutions (FI's). This system complies. The system and entity chosen will be able to comply with the following requirements of Supplement 16 to Attachment 2.6-A, Page 1:
- A. An electronic request and response process for asset verification;
 - B. A database of financial institutions (FIs) that provide data to the entity meeting the geographic requirements of the entity;
 - C. A 5-year look-back of the assets on individual applicants, recipients, spouses and partners;
 - D. A secure system based on a recognized industry standard as defined by the United States Commerce Department's National Institute of Standards and Technology, or NIST;
 - E. Verification request will include both open and closed asset account information as determined by the State;

- F. *The acceptable asset verification entity will provide adequate data for the generation of all required reports expected to meet federal reporting requirements such as the number of requests, number of responses and amounts of undisclosed assets found.*

TN No. SPA 18-026

Approval Date

TN No. SPA 11-011

Effective Date July 1, 2018

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2018 issue of the *Register* at page 127 (22 DE Reg. 127). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

Asset Verification System

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903 (7 **Del.C.** §§901 and 903)
7 **DE Admin. Code** 3511

Secretary's Order No.: 2018-F-0051

Date of Issuance: September 19, 2018

Effective Date of the Amendment: October 11, 2018

3511 Summer Flounder Size Limits; Possession Limits; Season

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 any other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Seasons*. This action is being taken by the Department to adopt provisions consistent with federal measures proposed for the recreational Summer Flounder management, in compliance with Addendum XXVIII to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass. Specifically, the proposed action will allow Delaware to reduce its Summer Flounder minimum size limit by a half-inch to 16.5 inches.

The Atlantic States Marine Fisheries Commission ("ASMFC") and Mid Atlantic Fisheries Management Council ("MAFMC") extended the regional approach to recreational Summer Flounder management outlined in Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass through 2018. Addendum XXVIII allows states or regions to develop measures that will achieve the coast wide recreational harvest limit of 4.42 M pounds. Based on Summer Flounder stock status, states or regions may liberalize their 2017 recreational Summer Flounder regulations to allow for up to a 17% harvest increase in 2018.

By extending the provisions of Addendum XXVIII, Delaware continued to be grouped in a region ("DelMarVa") with Maryland and Virginia. The DelMarVa region submitted an analysis to the ASMFC Summer Flounder Technical Committee for a four (4) fish possession limit, a 365-day season, and a 16.5-inch minimum size limit that is estimated to result in a 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board in February 2018, and allowed Delaware to reduce its Summer Flounder minimum

size limit by a half inch.

The procedural requirements of 29 **Del.C.** §§10115 - 10118 did not afford the Department sufficient time to complete its formal regulatory amendment process prior to the beginning of the 2018 Summer Flounder recreational fishery. Therefore, pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), the Department adopted emergency regulations with the issuance of Secretary's Order No. 2018-F-0026 on April 13, 2018, in order to immediately implement the aforementioned necessary regulatory change. Shortly thereafter, the Department commenced its formal regulatory amendment process with Start Action Notice #2018-10 (May 15, 2018). It should be noted that the Department renewed its emergency regulations on Summer Flounder for an additional ninety (90) days with the issuance of Secretary's Order No. 2018-F-0041 (July 18, 2018), in order to ensure that the provisions of the aforementioned emergency regulations would not expire prior to the formal finalization of these proposed Amendments.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Seasons*, pursuant to 7 **Del.C.** §901 and §903(a), (b), and (e). The Department published its initial proposed regulation Amendments in the July 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 26, 2018. No members of the public attended that public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on August 10, 2018, with no comment having been received by the Department during any phase of this proposed regulatory promulgation. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Vest prepared a Hearing Officer's Report dated September 14, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these revised regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Seasons*, pursuant to 7 **Del.C.** §901 and §903(a), (b), and (e);

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

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 26, 2018, and during the 15 days subsequent to the hearing (through August 10, 2018), before making any final decision;

4. Promulgation of the revised proposed Amendments to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* will enable the Department to bring Delaware's existing Summer Flounder Regulations into compliance with current federal measures proposed for the recreational Summer Flounder fishery, consistent with Addendum XXVIII to the ASMFC's Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, specifically, by allowing Delaware to reduce its Summer Flounder minimum size limit by a half inch to 16.5 inches;

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

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

for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the July 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits, Seasons* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin,
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2018 issue of the *Register* at page 24 (22 DE Reg. 24). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3511 Summer Flounder Size Limits; Possession Limits; Season

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE
5500 BAIL ENFORCEMENT AGENTS

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

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on March 1, 2018 (Vol. 21, Issue 9). Following notice and a public hearing on the proposed adoption of amendments to Rule 5.0 Baton, Inflammatory Agent Sprays, Chemical Sprays and Handcuffs, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to eliminate the approval of those instructors by Professional Licensing.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will eliminate the approval of those instructors by Professional Licensing.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to eliminate the approval of those instructors by Professional Licensing.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be October 11, 2018.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 30th day of August, 2018.

Major Melissa A. Zebley, Chairman
Director John Yeomans
Ms. Robin David
Mr. Michael J. Dellose
Alexander W. Funk, Esquire (absent)

Mr. Jack McGhee, II (absent)
Mr. Brandon Habron (absent)
Kevin Hamilton, Bail Bondsman
Mr. Harry O. Jennings (absent)

August 30, 2018

***Please note that no changes were made to the regulation as originally proposed and published in the March 2018 issue of the Register at page 683 (21 DE Reg. 683). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1444(f) (11 **Del.C.** §1444(f))

ORDER

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)

NATURE OF THE PROCEEDINGS

At 22 **DE Reg.** 145 (August 1, 2018), The Department of Safety and Homeland Security (DSHS), pursuant to 11 **Del.C.** §1444(f)(1) and in accordance with 29 **Del.C.** §10115, published notice of intent to adopt regulations that will clarify and provide more detailed information regarding the Destructive Weapons Compensation Program (DWCP). At the same time, the DSHS submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed regulation, as required by 29 **Del.C.** Ch. 104. The DSHS solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed regulation was published in the Delaware *Register of Regulations*. The public comment period was open from August 1, 2018 through August 31, 2018. During this period, the DSHS did not receive any written responses.

FINDINGS OF FACT

The public was given the required notice of the DSHS's intention to adopt the proposed regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation was submitted. No written response was received during the comment period. Thus, the DSHS finds that the proposed regulation should be adopted as submitted with one non-substantive change identified by the DSHS.

EXPLANATION OF CHANGES

§ 2.1.1 Funds will be distributed to the law enforcement agency locations in the form of gift cards.

DSHS: The DSHS has decided to add cash as an option due to the difficulty of obtaining gift cards in the amount of \$15.00. The revision will read "Funds will be distributed to the law enforcement agency locations in the form of gift cards [**or cash**]".

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the DSHS pursuant to 11 **Del.C.** §1444(f)(1). The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Department of Safety and Homeland Security does hereby ORDER this 10th day of September, 2018 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

Robert M. Coupe, Secretary, Department of Safety and Homeland Security

102 Regulations Governing the Destructive Weapon Compensation Program (DWCP)**1.0 Definitions**

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

"Bump stock" means an after-market device that increases the rate of fire achievable with a semi-automatic rifle by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

"Destructive weapon" means a destructive weapon as described in 11 **Del.C.** §1444(a)(6).

"DSHS" means Delaware Department of Safety and Homeland Security.

"DWCP" means the Destructive Weapon Compensation Program.

"Gift card" means type of payment used by a law enforcement agency to pay for surrendered destructive weapons such as a VISA or MasterCard gift card.

"Law enforcement agency" means the Delaware State Police.

"Program period" means July 1, 2018 to June 30, 2019.

"Secretary" means the Secretary of Delaware Department of Safety and Homeland Security.

"Trigger crank" means an after-market device designed and intended to be added to a semi-automatic rifle as a crank operated trigger actuator capable of triggering multiple shots with a single rotation of the crank.

2.0 Authorization

2.1 Funds allocated pursuant to 11 **Del.C.** §1444 shall be maintained in the DSHS, Office of the Secretary.

- 2.1.1 Funds will be distributed to the law enforcement agency locations in the form of gift cards [or cash].
- 2.2 The Secretary will designate which law enforcement agency locations will participate in the DWCP.
- 2.2.1 An agency location designated to participate in the DWCP and receive funds shall make public notice upon designation by the Secretary, at least 14 days in advance of starting their program, indicating the following:
 - 2.2.1.1 The dates, times, location and duration for collection;
 - 2.2.1.2 The contact person for the DWCP responsible for maintaining the funds and/or inventory allocated by DSHS.
- 2.3 Within seven (7) days after the conclusion of the DWCP program period, the law enforcement agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.
- 2.4 All unused funds shall be returned to DSHS in the form it was received, within seven (7) days of the conclusion of the DWCP program period.

3.0 Collection and Disposition of Recovered Destructive Weapon

- 3.1 Upon surrender, all destructive weapons shall be tagged or marked by the collecting agency as to where collected, whom collected by, who collected from, the date of collection, make, model and serial number if applicable.
- 3.2 Funds shall be issued for destructive weapons which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:

<u>Bump Stock</u>	<u>\$100.00</u>
<u>Trigger Crank</u>	<u>\$15.00</u>
- 3.3 The law enforcement agency shall not have the discretion to pay an amount exceeding the amounts as described in subsection 3.2 during the DWCP program period.
- 3.4 Within seven (7) business days after the conclusion of the DWCP program period, a complete list of all destructive weapons collected shall be supplied to the Secretary containing information listed in subsection 3.1 of these regulations.
- 3.5 It shall be the responsibility of the law enforcement agency participating in the DWCP to dispose of the destructive weapons collected. Disposal may include any, or a combination, of the following:
 - 3.5.1 Destruction in a manner causing total destruction of the weapon through such methods as crushing, melting or shredding.
- 3.6 Agencies, upon destruction of weapons, shall furnish a list of all disposed destructive weapons to the Secretary within seven (7) business days.

4.0 General Rules

- 4.1 An agency conducting a DWCP shall be responsible for the security of the site, the surrounding area, the surrendered destructive weapons, transportation, unused funds and inventory.
- 4.2 To ensure safety, any agency conducting a DWCP shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.3 Any individual who elects to surrender a destructive weapon anonymously at a DWCP designated location may do so; however, the individual will not be eligible for compensation.
- 4.4 Personal identification showing proof of Delaware residency shall be required to be presented at the time of the redemption.
- 4.5 The DWCP is only intended for individuals and does not apply to wholesale, retail, manufacturers and distributor business entities.
- 4.6 Destructive weapons relinquished to a law-enforcement agency of the state as part of the DWCP may be destroyed by that agency 30-days after relinquishment.

- 4.7 Notwithstanding any law to the contrary, any person, provided the person is, in good faith, on an immediate, direct route to a designated law enforcement agency in the DWCP shall be immune from criminal prosecution for the criminal offenses defined in 11 Del.C. §1444.
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DELAWARE HEALTH INFORMATION NETWORK**PUBLIC NOTICE****103 Delaware Health Care Claims Database Data Collection Regulation**

This regulation is promulgated under 16 **Del.C.** §10306 and supports implementation of 16 **Del.C.** Ch. 103, Subchapter II, The Delaware Health Care Claims Database. It summarizes the requirements for submission of claims data by a mandatory reporting entity, to include a reporting schedule and a template for a data submission and use agreement to be entered into between DHIN and each reporting entity.

The 149th General Assembly enacted SB 227 and the Governor signed it into law on August 29, 2018. This statute expands the definition of "Mandatory Reporting Entity" in 16 **Del.C.** §10312. Proposed amendments to the "Definitions" section of the Health Care Claims Database Data Collection Regulation remove language which merely quotes definitions established in the code and replaces it with a statement that the terms have the meaning assigned in the code. These changes will ensure that the regulation is always congruent with the governing statute.

DEPARTMENT OF AGRICULTURE**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 maintain compliance with the United States Trotting Association, particularly related to improvements in horse identification technology, and thereby allowing rules more favorable to the welfare of the horse.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on June 12, 2018, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On August 29, 2018, 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 a 30-day comment period from October 1 to 31, 2018 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on November 13, 2018 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 October 31, 2018. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

THOROUGHBRED RACING COMMISSION**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 8 Jockeys and Apprentice Jockeys to add new Rule 8.2.7 relating to Consent to Treatment forms for the athletic trainer and to revise Rule 8.10.2 to allow jockeys to use mobile electronic devices in the jockeys room subject to certain provisions. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the October 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 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.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data,

briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before November 1, 2018. Written materials submitted will be available for inspection at the above address.

On or after November 1, 2018, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, October 25, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY
PUBLIC NOTICE
202 Delaware Lottery Rules and Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of proposed amendments to 10 **DE Admin. Code** 202 relating to the Delaware Lottery Rules and Regulations.

The Director seeks to adopt general overall revisions to the main rules of the State Lottery's existing regulations, the Delaware Lottery Rules and Regulations (10 **DE Admin. Code** 202), to update and clarify these regulations. These collective changes are primarily administrative in nature. The revisions also serve in part to clarify the intent of the Director as enacted through these regulations. These revisions should not pose additional burdens on licensees or consumers. The Delaware Code authority for these proposed revisions is 29 **Del.C.** §§ 4805(a), 4805(b), 4806 to 4810, 4812 to 4814, 4818, 4823, and 4830.

The Office of the State Lottery does not plan to hold a public hearing on the proposed revisions to the existing regulation. The proposed revisions appear below. Members of the public may also request a copy of the revisions by visiting the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

Any person may submit written comments, suggestions, or other materials regarding the proposed revisions to the existing regulation to the Office of the State Lottery at the same address noted above. Any written submission in response to this notice and the relevant proposed revisions to the existing regulation must be received by the Office of the State Lottery by no later than 4:30 p.m. (EST) on October 31, 2018.

OFFICE OF THE STATE LOTTERY
PUBLIC NOTICE
203 Video Lottery and Table Game Regulations

The Director of the Office of the State Lottery (Director) hereby gives notice of amendments to 10 **DE Admin. Code** 203 relating to the Video Lottery and Table Games Regulations.

The Director seeks to adopt substantive and procedural revisions to the State Lottery's existing regulations on video lottery and table games (10 **DE Admin. Code** 203) to clarify certain sections of the Delaware Code, to update the regulations to allow exemptions for certain ownership interests in video lottery agents, and to allow waivers for institutional investors. These revisions should not pose additional burdens or costs on individual licensees or small business licensees. The statutory authority for these revisions is 29 **Del.C.** §4805(a)(14), (a)(31), and (b)(13). The Office of the State Lottery does not plan to hold a public hearing on the proposed revisions to the existing regulations. The revisions appear below. Members of the public may also request a copy of the revisions by visiting the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904.

Any person may submit written comments, suggestions, or other materials regarding the proposed revisions to

the existing regulations to the Office of the State Lottery at the same address noted above. Any written submission in response to this notice and the relevant proposed revisions to the existing regulations must be received by the Office of the State Lottery by no later than 4:30 p.m. (EST) on October 31, 2018.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Health Home Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Health Home Services, specifically, *to expand Delaware's Assertive Community Integration Support Team (ACIST) program which supports individuals with Severe and Persistent Mental Illness (SPMI) and intellectual and developmental disabilities (I/DD).*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2018. Please identify in the subject line: Health Home Services.

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

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE
Child Care Eligibility

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Child Care Eligibility, specifically, to amend authorization requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2018. Please identify in the subject line: Child Care Eligibility.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements

Delaware's commercial striped bass fishery is allocated through an annual quota in accordance with the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Striped

Bass. Delaware's annual commercial striped bass quota allocation is apportioned by regulation to two gear types - commercial gill net (GN) and commercial hook and line (HL). These are managed as separate fisheries, with different size limits, seasons and allocations in an effort to maximize fishing opportunities for each fishery, minimize dead discards and prevent growth overfishing. Eligible participants in each fishery are provided with an allotment of tags based on the number of participants, predicted size of the fish and annual quota. Tags are used to assist the Department with quota tracking and accountability. During the period 1990 - 96, 90% of Delaware's quota was allocated to the GN fishery and 10% was allocated to the HL fishery. In 1997, to better ensure full use of Delaware's quota, the striped bass allocation to the GN fishery was increased to 95%, but the less efficient commercial HL fishery was kept at 10% to maintain individual H&L quotas. This over-allocation improved quota attainment as the GN fishery routinely landed its 95% while the HL fishery, for various reasons, never landed more than 3% of the quota. Despite the over-allocation, Delaware did not have any quota overages during 1997 through 2017 because quota could not be transferred between the GN and HL fisheries.

The recent adoption of 7 **Del.C.** §903A provides for the transfer of striped bass quota (tags) between the GN and HL fisheries. This resulted in improved landing efficiency and, ultimately, a commercial quota overage in 2018. To prevent subsequent overages, the Department is ending over-allocation of the quota and is proposing two alternative allocation strategies. Option 1 would allocate 90% of Delaware's striped bass commercial quota to the gill net fishery and 10% to the H&L fishery. This option would match the proportions used prior to 1997. Historically, this option resulted in an underutilization of the quota. Option 2 would allocate 95% of Delaware's striped bass commercial quota to the gill net fishery and 5% to the H&L fishery. Option 2 is the allocation strategy recommended by the Advisory Council on Tidal Fin Fisheries as a way to better ensure full use of Delaware's quota.

In addition, the Department proposes to adjust the required registration date to participate in the commercial HL fishery from March 15 to February 1 to align with the commercial GN fishery and better accommodate tag transfers.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements will open October 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. A public hearing on the proposed amendment will be held on Wednesday, October 31, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, November 15, 2018.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES
PUBLIC NOTICE

1302 Regulations Governing Hazardous Waste

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the DRGHW to incorporate federal amendments into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act (RCRA) program delegation and remain current with the federal hazardous waste program. The SHWMS is also making certain technical changes for the purpose of correcting errors and to add consistency or clarification to the existing regulations.

A public hearing on the proposed amendments to DRGHW will be held on Monday, October 29, 2018 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will open on October 1, 2018. Interested parties shall submit comments in writing by November 13, 2018 and/or statements and testimony may be presented either orally or in writing at the October 29, 2018 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DELAWARE SEX OFFENDER MANAGEMENT BOARD****PUBLIC NOTICE****1100 Delaware Sex Offender Management Board**

The Sex Offender Management Board (SOMB), pursuant to 11 **Del.C.** §4120A(c)(8), proposes to revise its regulations. The proposed amendments, which were voted on in a General Meeting by the SOMB on April 30, 2018, seek to update, clarify and provide more detailed information regarding qualifications for Sex Offense Service Providers and the credentialing process.

The SOMB will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Criminal Justice Council Attn: Bridget V. Poule, Carvel State Office Building, 10th Floor, 820 N French Street, Wilmington, Delaware 19801-3590 or e-mail BridgetV.Poule@state.de.us. Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on October 31, 2018. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1900 BOARD OF NURSING
PUBLIC NOTICE**

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations to bring them into conformity with the current enhanced Nurse Licensure Compact law, 24 **Del.C.** §1900A, *et. seq.*. The proposed changes strike the outdated regulations and incorporate by reference the current enhanced Nurse Licensure Compact regulations.

The Board will hold a public hearing on the proposed regulation changes on November 14, 2018 at 9:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 29, 2018 pursuant to 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION
2925 REAL ESTATE COMMISSION EDUCATION COMMITTEE
PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on November 8, 2018 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be November 27, 2018. The Commission will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to the Guidelines to provide that instructor and course application denials are subject to a written request for reconsideration. Instructor qualifications for pre-licensing, broker and continuing education courses have been revised to ensure instructor competence and experience. Pursuant to proposed amendments, continuing education programs must be a minimum of three hours and must be delivered

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in three hour increments. Finally, the proposed revisions emphasize that course sponsors and providers are responsible for the qualifications and conduct of course instructors.

DIVISION OF PROFESSIONAL REGULATION
2930 COUNCIL ON REAL ESTATE APPRAISERS
PUBLIC NOTICE

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 licensing qualifications are proposed to be amended to conform to new Appraisal Qualifications Board criteria.

A public hearing will be held on November 20, 2018 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the 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 Appraisal, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a) by December 5, 2018.

DEPARTMENT OF TRANSPORTATION
DELAWARE TRANSIT CORPORATION
PUBLIC NOTICE
2287 Public Carrier Regulations

Pursuant to the authority provided by 2 **Del.C.** §1802(b), the Delaware Department of Transportation (DelDOT), adopted the Public Carrier Regulations.

The Department, through the Delaware Transit Corporation, Office of Public Carrier Regulation, seeks to adopt general revisions to its existing regulation, Public Carrier Regulations, to address procedural changes and public safety concerns. These collective changes are promote public safety and serve, in part, to clarify the intent of the Department as enacted through these regulations.

DelDOT will take written comments on these proposed general revisions to 2 **DE Admin. Code** 2287, from October 1, 2018 through October 31, 2018. The public may submit their comments to:

Bruce R. Demeter, Director, Office of Public Carrier Regulation
(Bruce.Demeter@state.de.us) or in writing to his attention,
Delaware Transit Corporation
Office of Public Carrier Regulation
119 Lower Beech Street
Wilmington, DE 19805

DELAWARE TRANSIT CORPORATION
PUBLIC NOTICE
2289 Transportation Network Companies

Pursuant to the authority provided by 2 **Del.C.** §1922 and 21 **Del.C.** §302, the Delaware Department of Transportation (DelDOT), adopted the Transportation Network Companies regulation.

The Department, through the Delaware Transit Corporation, Office of Public Carrier Regulation, seeks to adopt general revisions to its existing regulation, Transportation Network Companies, to safeguard public safety through a regular review of Transportation Network Company engaged vehicles. These collective changes are promote public safety and serve, in part, to clarify the intent of the Department as enacted through these regulations.

DelDOT will take written comments on these proposed general revisions to 2 **DE Admin. Code** 2289 from

October 1, 2018 through October 31, 2018. The public may submit their comments to:

Bruce R. Demeter, Director, Office of Public Carrier Regulation
(Bruce.Demeter@state.de.us) or in writing to his attention,
Delaware Transit Corporation
Office of Public Carrier Regulation
119 Lower Beech Street
Wilmington, DE 19805

DIVISION OF TRANSPORTATION SOLUTIONS
PUBLIC NOTICE

2406 Policies and Procedures for Acquisition of Certain Real Property

Pursuant to the authority provided by 17 **Del.C.** §137, the Delaware Department of Transportation (DelDOT), adopted the 2406 Policy and Procedures for Acquisition of Certain Real Property.

The Department, through its Division of Transportation Solutions, seeks to adopt general revisions to its existing regulation, to address changes made to 17 **Del.C.** §137 by 2018 Delaware Laws Chapter 225 (H.B. 144) and Chapter 374 (H.B. 432). The changes clarify the process for DelDOT, the Advanced Acquisition Committee and the public to follow when acquiring property in advance of final plans being completed. The changes also establish a Dispute Resolution Process which allows the impacted owners the ability to go to arbitration if they so desire. These collective changes are administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations.

Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2406 of Title 2, Delaware Administrative Code, from October 1, 2018 through October 31, 2018. The public may submit their comments to:

Robert M. Cunningham, Chief of Right of Way, Division of Transportation Solutions
(Robert.cunningham3@state.de.us) or in writing to his attention,
Chief of Right of Way
Delaware Department of Transportation
P.O. Box 778
Dover, De. 19903
