
Delaware Register of Regulations

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Volume 23 - Issue 3, Pages 137 - 254



IN THIS ISSUE:

Regulations:
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 15, 2019.

*The Delaware Breakwater
East End Lighthouse,
Sussex County*

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

139

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

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TABLE OF CONTENTS

Cumulative Tables.....	142
------------------------	-----

PROPOSED

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

1301 Delaware Criminal Justice Information System Rules and Regulations.....	144
--	-----

DEPARTMENT OF EDUCATION

Office of the Secretary

603 Compliance with the Gun Free Schools Act.....	147
611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems.....	149
714 Professional Employee Work Stoppage or Strike.....	153
725 School Administrator Contracts and Agreements.....	154

Professional Standards Board

1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators.....	155
1549 Dance Teacher.....	162
1558 Theater Teacher.....	167
1563 Music Teacher.....	173

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Delaware Health Care Commission

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund	178
--	-----

Division of Developmental Disabilities Services

2103 Reportable Incident Management and Corrective Measures	182
---	-----

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan - Drug Utilization Review (DUR).....	184
Acute Inpatient Hospital Readmission Claims.....	186
Title XIX Medicaid State Plan - Telehealth Services Originating Site Fees.....	188
Title XIX Medicaid State Plan - Prescribed Drugs - Obesity Drugs.....	191
Title XIX Medicaid State Plan - Excluded Earnings of Temporary Census Workers.....	193

Division of Public Health

4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders.....	195
4455 Delaware Regulations Governing a Detailed Plumbing Code.....	200

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1125 Requirements for Preconstruction Review.....	201
---	-----

DEPARTMENT OF TRANSPORTATION

Division of Planning

2309 Development Coordination Manual	203
2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund.....	204

FINAL

DEPARTMENT OF EDUCATION

Office of the Secretary

815 Health Examinations and Screening.....	208
--	-----

TABLE OF CONTENTS

141

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Over-the-Counter Drugs Without a Prescription..... 211

Division of Public Health

4452 Clean Indoor Air Act..... 213

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3723 Jonah Crab (*Cancer borealis*)..... 217

3755 Lobsters..... 217

Office of the Secretary

101 Regulations Governing Delaware's Coastal Zone..... 222

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

2400 Board of Examiners of Constables..... 226

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Division of Family Services

201 Child Placing Agencies..... 233

DEPARTMENT OF STATE

Office of the State Bank Commissioner

1103 Instructions for Preparation of Franchise Tax..... 236

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of
Out-of-State Banks..... 241

GENERAL NOTICES

DEPARTMENT OF STATE

Office of the State Bank Commissioner

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose
Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code..... 248

CALENDAR OF EVENTS/HEARING NOTICES

Delaware Criminal Justice Information System, Notice of Public Comment Period..... 249

Dept. of Education, Notice of Monthly Meeting..... 249

Dept. of Health and Social Services; Delaware Health Care Commission; Div. of Developmental
Disabilities Services; Div. of Medicaid and Medical Assistance; Div. of Public Health; Notices of
Public Comment Periods..... 249 - 252

Dept. of Natural Resources and Environmental Control, Div. of Air Quality, Notice of Public Hearing
and Public Comment Period..... 253

Dept. of Transportation, Div. of Planning, Notices of Public Comment Periods..... 253

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

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

DEPARTMENT OF EDUCATION**Office of the Secretary**

609 District and School Based Intervention Services.....	23 DE Reg.	109 (Final)
705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States.....	23 DE Reg.	111 (Final)
815 Health Examinations and Screening.....	23 DE Reg.	6 (Prop.)
901 Education of Homeless Children and Youth.....	23 DE Reg.	33 (Final)
1001 Participation in Extra Curricular Activities.....	23 DE Reg.	113 (Final)
1007 DIAA Sportsmanship.....	23 DE Reg.	114 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	23 DE Reg.	122 (Final)
1009 DIAA High School Interscholastic Athletics.....	23 DE Reg.	123 (Final)

Professional Standards Board

1510 Issuance of Initial License	23 DE Reg.	38 (Final)
1511 Issuance and Renewal of Continuing License.....	23 DE Reg.	40 (Final)

DEPARTMENT OF FINANCE**Office of the State Lottery**

204 Delaware Sports Lottery Rules and Regulations.....	23 DE Reg.	42 (Final)
--	------------	------------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**Division of Health Care Quality**

3320 Intensive Behavioral Support and Educational Residence.....	23 DE Reg.	43 (Final)
3325 Financial Capability Reporting.....	23 DE Reg.	45 (Final)
3335 Office-Based Surgery.....	23 DE Reg.	125 (Final)
4404 Free Standing Emergency Centers.....	23 DE Reg.	9 (Prop.)

Division of Medicaid and Medical Assistance

Documentation of State Residency: DSSM 14110 and 14340.....	23 DE Reg.	83 (Prop.)
Over-the-Counter Drugs Without a Prescription.....	23 DE Reg.	10 (Prop.)
PRTFs – Provision of EPSDT Services.....	23 DE Reg.	46 (Final)
SSI Related Programs: DSSM 17000.....	23 DE Reg.	127 (Final)
Title XXI Delaware Healthy Children Program State Plan - Children's Health Insurance Program (CHIP).....	23 DE Reg.	51 (Final)

Division of Public Health

4452 Clean Indoor Air Act.....	23 DE Reg.	12 (Prop.)
4458A Cottage Food Regulations.....	23 DE Reg.	52 (Final)
4465 Delaware Radiation Control Regulations.....	23 DE Reg.	89 (Prop.)

Division of Social Services

DSS Application Process: DSSM 2000.....	23 DE Reg.	53 (Final)
Income Reporting Requirements for Child Care: DSSM 11003.....	23 DE Reg.	60 (Final)
POC - Determining and Reviewing Child Care: DSSM 11004.11.....	23 DE Reg.	98 (Prop.)
TANF CMR School Attendance Requirements: DSSM 3012.....	23 DE Reg.	89 (Prop.)
TANF and GA Eligibility - Excluded Income: DSSM 4006.....	23 DE Reg.	92 (Prop.)
Temporary Assistance for Needy Families (TANF) - CMR: DSSM 3000.....	23 DE Reg.	63 (Final)

DEPARTMENT OF INSURANCE**Office of the Commissioner**

1101 Listed Surplus Lines Carriers Intending to Establish an Office in Delaware	23 DE Reg.	102 (Prop.)
2001 Insurance Premium Finance Companies.....	23 DE Reg.	129 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**Division of Waste and Hazardous Substances**

1351 Underground Storage Tank Systems.....	23 DE Reg.	104
--	------------	-----

(Prop.)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**Division of State Police**

5500 Bail Enforcement Agents.....	23 DE Reg.	72 (Final)
-----------------------------------	------------	------------

DEPARTMENT OF STATE**Division of Corporations**

102 Business Entity Name Standards and Procedures.....	23 DE Reg.	105 (Prop.)
--	------------	-------------

Division of Professional Regulation**Controlled Substance Advisory Committee**

Uniform Controlled Substance Act Regulations.....	23 DE Reg.	16 (Prop.)
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1900 Board of Nursing.....	23 DE Reg.	130 (Final)
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Office of the State Bank Commissioner

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code.....	23 DE Reg.	17 (Prop.)
--	------------	------------

1103 Instructions for Preparation of Franchise Tax.....	23 DE Reg.	21 (Prop.)
---	------------	------------

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....	23 DE Reg.	26 (Prop.)
--	------------	------------

DEPARTMENT OF TRANSPORTATION**Division of Transportation Solutions**

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	23 DE Reg.	107 (Prop.)
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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 CRIMINAL JUSTICE INFORMATION SYSTEM

Statutory Authority: 11 Delaware Code, Section 8605 (11 **Del.C.** §8605)
1 **DE Admin. Code** 1301

PUBLIC NOTICE**1301 Delaware Criminal Justice Information System Rules and Regulations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 86, Section 8605, the Delaware Criminal Justice Information System (DELJIS) Board of Managers proposes to revise its regulations. These proposed regulations are applicable to all users of the Delaware Criminal Justice Information System (CJIS) and to any agency requesting access to CJIS from the Board. The proposed regulations will ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code.

Public Comment Period

DELJIS will take written comments on these proposed revisions to Regulation 1301 of Title 1 of the Delaware Administration Code from September 1, 2019 to October 4, 2019. Any person who wishes to make written comments must submit same to DELJIS Board of Managers, c/o Lt. Frederick Calhoun, Chair, 800 Silver Lake Boulevard, Suites 101 & 102, Dover, Delaware 19904.

***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/september2019/proposed/23 DE Reg 144RFA 09-01-19.pdf>

1301 Delaware Criminal Justice Information System Rules and Regulations
(Break in Continuity of Sections)

2.0 Definitions

The definitions set forth in 11 **Del.C.** §8602 are hereby adopted and incorporated by reference in these regulations. The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise.

(Break in Continuity Within Section)

“Agency Coordinator” or **“AC”** means the staff member of a CGA who manages the agreement between the Contractor and agency.

(Break in Continuity Within Section)

“Contracting Government Agency” or **“CGA”** means a government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, that enters into an agreement with a private contractor.

“Contractor” means a private business, agency or individual that has entered into an agreement for the administration of criminal justice or noncriminal justice functions with a Criminal Justice Agency or a Noncriminal Justice Agency.

(Break in Continuity of Sections)

8.0 User Access to CJIS

(Break in Continuity Within Section)

8.2 Denial Procedure

8.2.1 The Executive Director or designee makes the initial determination to deny access. In the event that the Executive Director cannot act based on the conflict of interest provisions in the State Code of Conduct set forth in 29 **Del.C.** §5806(b), the Board Chairperson shall act as the designee.

(Break in Continuity of Sections)

10.0 Suspension of CJIS Access for Any Arrest or Criminal Offense of an Authorized User

10.1 Upon notification or discovery of an arrest for a criminal offense, violation, or serious motor vehicle offense, the Executive Director or designee will make the initial determination if the charge warrants a temporary suspension of the Authorized User's credentials. In the event that the Executive Director cannot act based on the conflict of interest provisions in the State Code of Conduct set forth in 29 **Del.C.** §5806(b), the Board Chairperson shall act as the designee.

(Break in Continuity Within Section)

11.0 Suspension of CJIS Access for Improper Access or Breach

11.1 Upon notification or discovery of any violation involving Improper Access or Breach, the Executive Director or designee will authorize an administrative investigation pursuant to Section 12.0. The Executive Director or designee will also make an initial determination as to whether the apparent violation warrants a temporary suspension of the Authorized User's credentials. In the event that the Executive Director cannot act based on the conflict of interest provisions in the State Code of Conduct set forth in 29 **Del.C.** §5806(b), the Board Chairperson shall act as the designee.

(Break in Continuity of Sections)

15.0 Responsibilities of a Contracting Government Agency (CGA)

15.1 A CGA is subject to the CJIS Security Addendum and shall appoint an Agency Coordinator (AC).

15.2 The AC shall be responsible for the supervision and integrity of the system, training and continuing education of employees and operators, scheduling of initial training and testing, and all required reports by DELJIS.

15.3 The AC shall:

15.3.1 Understand the communications, records capabilities, and needs of the Contractor that is accessing federal and state records through or because of its relationship with the CGA.

PROPOSED REGULATIONS

- 15.3.2 Receive information from the CGA (e.g., system updates) and disseminate it to appropriate Contractor employees.
- 15.3.3 Maintain up-to-date records of the Contractor's employees who access the system, including name, date of birth, social security number, date fingerprint card(s) submitted, date security clearance issued, and date initially trained, tested, certified or recertified (if applicable).
- 15.3.4 Ensure the training of Contractor personnel.
- 15.3.5 The AC must not permit unauthorized Contractor employees to access CJI or systems supporting CJI where access to CJI can be gained.
- 15.3.6 Where appropriate, ensure compliance by the Contractor with NCIC validation requirements.
- 15.3.7 Provide completed applicant fingerprint cards on each Contractor employee who accesses the system, whether direct or indirect, to the CGA for criminal background investigation prior to such employee accessing the system.
- 15.3.8 Any other responsibility for the AC promulgated by the DELJIS Board of Managers.

16.0 Responsibilities of the Contractor

- 16.1 Contractors must hold themselves to the highest ethical standards and must conduct themselves in a manner that will ensure the security, integrity, and confidentiality of the information contained within CJIS.
- 16.2 Contractors shall not access information contained within CJIS for any reason other than an authorized business related reason.
- 16.3 Contractors agree to comply with Chapters 85 and 86 of Title 11 of the Delaware Code and these regulations.
- 16.4 Contractors must annually acknowledge that they have read and understand these regulations.
- 16.5 Contractors must complete DELJIS training prior to becoming an Authorized User. The DELJIS Training Supervisor may approve temporary or conditional access to CJIS by a Contractor before completing DELJIS training.
- 16.6 Contractors are required to follow the Records Retention and Destruction procedures provided in Section 7.0, that require CJIS, NCIC or NICS information be securely disposed of.
- 16.7 Contractors who improperly access or become aware of improper access of CJIS by another user, or by any other entity, shall immediately report the violation to the CGA, or directly to the DELJIS Security Manager or designee, and shall cooperate with and assist in the conduct of any administrative investigation pursuant to Section 12.0.
- 16.8 Contractors who have been arrested, charged, convicted of a criminal offense, a serious motor vehicle offense, or a violation in any jurisdiction shall notify the CGA or designee within 24 hours of the arrest, charge, or conviction.
- 16.9 Contractors must annually read and submit a Department of Technology and Information Acceptable Use Policy to DELJIS.

17.0 Indirect Access by Contractors

The CGA may only share CJIS information with a Contractor orally or via a secured and encrypted email, such as egress. Such email shall disable the ability of the Contractor to forward or print the information.

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 144 09-01-19.htm>

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1457(j) (11 Del.C. §1457(j))
14 DE Admin. Code 603

PUBLIC NOTICE

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

603 Compliance with the Gun Free Schools Act

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 11 Del.C. §1457(j), the Secretary of Education intends to amend 14 DE Admin. Code 603 Compliance with the Gun-Free Schools Act. This amendment is needed to update the statutory reference, make minor clarifications and comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation helps 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 intends to ensure all students receive an equitable education.

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

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 147RFA 09-01-19.pdf>

603 Compliance with the ~~Gun-Free~~ Gun-Free Schools Act

1.0 Written Policy Required

1.1 Each school district and charter school ~~requesting assistance under the Elementary and Secondary Education Act (ESEA)~~ shall have a written policy implementing the ~~Gun-Free~~ Gun-Free Schools Act [~~(20 USC 4144) (20 USC 7151)~~ (20 U.S.C. §7961)] and complying with 11 Del.C. §1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

- ~~4.11.1.1~~ A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.
- ~~4.21.1.2~~ Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.
- ~~4.31.1.3~~ The definition of "**Firearm**" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.

2.0 Submission of the Policy to the State Department of Education

2.1 Each school district and charter school ~~requesting assistance under the ESEA~~ shall submit the following to the Delaware Department of Education ~~by June 1 each year~~ annually, in such form as the Department requires:

- ~~2.12.1.1~~ ~~An assurance that its policies comply with this regulation and~~ An electronic copy of its policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 Del.C. §1457(j) or its successor statute. ~~statute; and~~
- 2.1.2 An electronic copy of any revised policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 Del.C. §1457(j) or its successor statute under the policy implemented in accord with this regulation within ninety (90) days of such revision regardless of whether revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies; and
- ~~2.22.1.3~~ Descriptions of the expulsions imposed under 11 Del.C. §1457(j) or its successor statute and under the policy implemented in accord with this regulation.

3.0 Individuals with Disabilities Act

Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

4.0 ~~Reporting Requirements and Timelines~~

- ~~4.1~~ Each public school district and charter school shall have an electronic copy of its policy implementing the ~~Gun-Free Schools Act [(20 USC 4141) (20 USC 7151)]~~ and ~~11 Del.C. §1457(j) or its successor statute on file with the Department of Education.~~
- ~~4.2~~ Each public school district and charter school shall provide an electronic copy of any policy implementing the ~~Gun-Free Schools Act [(20 USC 4141) (20 USC 7151)]~~ and ~~11 Del.C. §1457(j) or its successor statute within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 611

PUBLIC NOTICE

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

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 14 Del.C. §122(b), the Secretary of Education intends to amend 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. This amendment is needed to update the statutory reference(s), make minor clarifications and comply with 29 Del.C. §10407 which requires regulations to be reviewed every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 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 regulation help improve student achievement as measured against state achievement standards? The amended regulation helps to improve student achievement as measured against state achievement standards by providing guidelines for the treatment of severe discipline problems.

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

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

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 149RFA 09-01-19.pdf>

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

1.0 Eligible Students

- 1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site.
- 1.2 Subject to Section 11.0, local school districts shall place a an eligible student at a Consortium Discipline Alternative Program site if the district board:
 - 1.2.1 Has expelled the student for a violation of the district's discipline code or, determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as ~~behavioural~~ behavioral contracts or counseling or, determined that the student has exhibited such severe discipline problems that expulsion is ~~imminent; and imminent.~~
 - ~~1.2.2 Determined the student is not ineligible for placement at a Consortium Discipline Alternative Placement pursuant to the conditions in 2.0.~~
- 1.3 School districts may place a student in a Consortium Discipline Alternative Program for classroom or school environment disruptions only if:
 - 1.3.1 Such disruptions are chronic and repetitive; and
 - 1.3.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

2.0 Ineligible Students

- 2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.
 - 2.1.1 11 **Del.C.** §613 Assault in the First Degree; class ~~G~~ B felony; or
 - 2.1.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F: class A or B misdemeanor; or
 - 2.1.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or
 - 2.1.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or
 - 2.1.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or
 - 2.1.6 11 **Del.C.** §771 Rape in the third degree; class B felony; or
 - 2.1.7 11 **Del.C.** §772 Rape in the second degree class B felony; or
 - 2.1.8 11 **Del.C.** §773 Rape in the first degree class A felony; or
 - 2.1.9 ~~16 **Del.C.** §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or~~ 16 **Del.C.** §4752 Drug dealing—Aggravated possession; class B felony; or
 - 2.1.10 Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.
 - 2.1.10 16 **Del.C.** §4752B Drug dealing — Resulting in death; class B felony; or
 - 2.1.11 16 **Del.C.** §4753 Drug dealing—Aggravated possession; class C felony; or
 - 2.1.12 16 **Del.C.** §4754 Drug dealing—Aggravated possession; class D felony; or
 - 2.1.13 Any behavior equivalent to or greater than the offenses in subsections 2.1.1 through 2.1.12.
- 2.2 Provided further, any student expelled or suspended pending expulsion may not be placed at a Consortium Discipline Alternative Program if the school district determines, by a preponderance of the evidence, the student is inappropriate for such placement. When determining whether a student is inappropriate for placement in a Consortium Discipline Alternative Program, the school district shall

consider the availability of space in the program to serve the student, ~~and~~ the student's age and the student's educational and behavioral modification needs.

3.0 Written Decision Required

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program, the school district's decision shall be in writing and address with specificity the ~~reason~~ reasons for ~~non-placement~~ non-placement and the evidence in support thereof. Such decisions shall be submitted to the Delaware Department of Education's Office of School Climate ~~and Discipline~~ within five working days of such decision with a copy to the student's parent, guardian, or Relative Caregiver.

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (If the Student is Age 18 or Older)

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's ~~individual~~ eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade ~~Level~~ Levels to be Served

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through ~~Alternative Program~~ CDAP funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

- 6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.
 - 6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a ~~district-level~~ district-level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.
 - 6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.
 - 6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 **DE Admin. Code** 925.

7.0 September 30 Enrollment Count

- 7.1 Students enrolled at a Consortium Discipline Alternative ~~Programs~~ Program site shall be counted in the enrollment of the sending school.
- 7.2 Students shall be reported for the level of special education service as defined by the current IEP.

- 7.3 If a student was enrolled the previous year in a Career and Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

8.0 Consortium Discipline Alternative Program Setting

- 8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.
- 8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

- 9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.
- 9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, ~~test-taking~~ test-taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.
- 9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.
- 9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 **DE Admin. Code** ~~505~~ 507.

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

- 11.1 Nothing in this regulation shall alter a district's or charter school's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nor shall this regulation prevent a district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Department regulations.
- 11.2 Nothing in this regulation shall alter a district's or charter ~~schools's~~ school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district or charter school from providing supportive instruction to such students.

12.0 Charter School Students

- 12.1 A charter school, subject to the limitations of 14 **Del.C.** 504A(8), shall pursue referral of any student meeting the requirements of ~~Section~~ subsection 1.2 into a Consortium Discipline Alternative Program pursuant to the provisions of Chapter 16 of Title 14 of the **Delaware Code**.
- 12.2 To the extent applicable, a charter school placing a student in a Consortium Discipline Alternative Program shall be subject to the provisions of this regulation.

13.0 Evaluation

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. In addition, the Department of Education shall annually review the decisions acquired pursuant to Section 3.0 to assess the reasons for non-placement of students in the alternative programs, including lack of space and number, age, race and special education status of excluded students by district and charter school. Grantees shall compile and submit data based on uniform standards and format established by the Department.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 714

PUBLIC NOTICE

Pursuant To 29 Del.C. Section 10115

714 Professional Employee Work Stoppage or Strike

A. Type of Regulatory Action Required

Repeal of Existing Regulation

B. Synopsis of Subject Matter (29 Del.C. §10115(a)(1))

Under authority granted in 14 Del.C. §122, the Secretary of Education intends to repeal 14 DE Admin. Code 714 Professional Employee Work Stoppage or Strike in the form attached hereto as *Exhibit "A"*. The Department of Education reviewed this regulation as part of its ongoing regulatory review as required by 29 Del.C. §10407. The Department is repealing this regulation because the duties of local Boards of Education and charter school boards regarding professional employee work stoppages or strikes are specified in Delaware Code, e.g., 14 Del.C. Ch. 40, and therefore the regulation is superfluous.

C. Manner In Which Persons May Present Their Views (29 Del.C. §10115(a)(2))

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this Public Notice may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office, located at the address listed above.

***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/september2019/proposed/23 DE Reg 153RFA 09-01-19.pdf>

714 Professional Employee Work Stoppage or Strike

4.0 ~~Work Stoppage or Strike~~

~~4.1 If it is determined that illegal activity such as a work stoppage or strike has taken place, the local Board of Education or charter school shall:~~

~~4.1.1 Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 Del.C. §4016, and such organization as the exclusive representative will be revoked at a time to be determined by the local Board of Education or charter school;~~

PROPOSED REGULATIONS

- 1.1.2 ~~Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine;~~
- 1.1.3 ~~Deduct salary for unexcused absence in accordance with 14 Del.C. §1320;~~
- 1.1.4 ~~Execute items 1.1.2 and 1.1.3 above in the preparation of the next regular payroll;~~
- 1.1.5 ~~Require a medical certificate for each employee absent claiming sick leave during the period of the strike.~~

2.0 School Days Lost

- 2.1 ~~As a part of any settlement following a strike or work stoppage, the local Board of Education or charter school shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled.~~
- 2.2 ~~Similarly, the local Board of Education or charter school shall not agree to extend the school year or to request such an extension from the Secretary of Education.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 725

PUBLIC NOTICE

Pursuant To 29 Del.C. Section 10115

725 School Administrator Contracts and Agreements

A. Type of Regulatory Action Required

Repeal of Existing Regulation

B. Synopsis of Subject Matter (29 Del. C. §10115(a)(1))

Under authority granted in 14 Del.C. §122, the Secretary of Education intends to repeal 14 DE Admin. Code 725 School Administrator Contracts and Agreements in the form attached hereto as *Exhibit "A"*. The Department of Education reviewed this regulation as part of its ongoing regulatory review as required by 29 Del.C. §10407. The Department is repealing this regulation to preserve the necessary authority and flexibility of local school board decision-makers to negotiate and execute school administrator contracts and agreements without unnecessary administrative requirements or mandates. Therefore, the regulation is unnecessary.

C. Manner In Which Persons May Present Their Views (29 Del. C. §10115(a)(2))

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this Public Notice may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office, located at the address listed above.

***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/september2019/proposed/23 DE Reg 154RFA 09-01-19.pdf>

725 School Administrator Contracts and Agreements

4.0 Duties of a School Administrator

~~The Administrator shall faithfully perform those duties which may be assigned by the local Board of Education and shall serve the School District in a professional manner. The Administrator shall observe and comply with the laws of the State of Delaware and with the regulations of the State Department of Education and the local Board of Education as currently in force and as from time to time amended, enacted or promulgated.~~

2.0 Non-Renewal of the Existing Contract and Agreements

~~Failure on the part of the local Board of Education or the Administrator to notify the other in writing by certified mail, no later than six (6) months prior to the expiration of the Agreement, of either party's intent not to renew the Agreement, will automatically result in a one-year extension of the existing Agreement.~~

3.0 Termination of a Contract with a School Administrator Prior to Expiration of the Agreement

- ~~3.1 The Administrator shall not vacate his or her position during the term of this Agreement without the written consent of the local Board of Education.~~
- ~~3.2 The local Board of Education shall not terminate the Contract, prior to the expiration date, except for good and just cause and shall provide the opportunity for a fair hearing before the local Board of Education or before a Hearing Officer designated by the local Board of Education. Prior to any hearing in regard to the termination of the Administrator, the local Board of Education shall serve the Administrator with a written statement of the reasons for termination.~~
- ~~3.3 If the local Board of Education designates a Hearing Officer to conduct such a hearing, a majority of the local Board of Education shall convene to review the record of the proceedings before the Hearing Officer and the Hearing Officer's report and recommendation to the local Board of Education, and within fifteen (15) days of the hearing before the Hearing Officer, shall submit to the Administrator its decision in writing.~~
- ~~3.4 If the Administrator chooses to be represented by legal counsel, all legal expenses incurred by the Administrator in connection with any termination hearing shall be borne by the Administrator.~~
- ~~3.5 Appeal from a decision of the local Board of Education concerning the provisions of the Agreement may be made to the State Board of Education.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1305(o) (14 **Del.C.** §§1203 & 1305(o))
14 **DE Admin. Code** 1501

PUBLIC NOTICE

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

1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators

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** 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 **Del.C.** §1305(k), national certification salary supplements pursuant to 14 **Del.C.** §1305(l), and additional responsibility assignment salary supplements pursuant to 14 **Del.C.** §1305(n). The proposed amendments include adding definitions of the terms "Lead Mentor," "Mentor," and "National Certification" to Section 2.0; striking terms that do not appear in the body of the regulation from Section 2.0; removing references

to clusters; adding Section 4.0, which concerns national certification; revising Section 5.0, which concerns additional responsibility assignments; striking the eligibility requirements for knowledge and skills salary supplements from Section 6.0 and the payment requirements for knowledge and skills salary supplements from Section 7.0 because there currently are not any approved knowledge and skills salary supplements; and revising Section 8.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The 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 students' health and safety are adequately protected? The amended regulation concerns salary supplements for educators and does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns salary supplements for educators and does not address 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 amended regulation does not change decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the 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? The Department of Education provides for funding salary supplements in its annual budget. The proposed amendments are consistent with the FY20 Appropriations Act (House Bill No. 225) that went into effect on July 1, 2019.

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 155RFA 09-01-19.pdf>

1501 ~~Knowledge, Skills, and Responsibility~~ Based Salary Supplements for Educators

1.0 Content

- 1.1 The following requirements shall be met in order to receive the salary supplements established by 14 Del.C. §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the ~~state State~~ portion of an ~~educator's Educator's~~ annual salary paid in accordance with the provisions of 14 Del.C. §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving national certification from the National Board for Professional Teaching ~~Standards, Standards~~ or from

an equivalent program, and for accepting ~~additional responsibility assignments~~ Additional Responsibility Assignments that impact student achievement.

1.2 Supplements are available subject to an annual appropriation from the Legislature General Assembly.

2.0 Definitions

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

"Additional Responsibility Assignments" means additional assignments for ~~educators~~ Educators that are academic in nature and that impact student achievement. For purposes of this regulation and pursuant to 14 ~~Del.C. §1305(e)(n)~~ extra curricular or noninstructional supervisory activities are specifically excluded from responsibility assignments.

"Approved Cluster" means ~~a professional development cluster that meets the criteria specified in 3.1 of this Regulation and that has been approved by the Standards Board and the State Board as the basis for awarding a specific salary supplement.~~

"Base Salary" means the salary earned by ~~the educator~~ an Educator as determined by ~~their~~ the Educator's level of education and years of service on the Delaware educators' salary schedule pursuant to 14 ~~Del.C. §1305(a) and (b).~~

"Delaware Administrator Standards" means ~~standards for education administrators approved by the Standards Board and the State Board of Education, as per 14 DE Admin. Code 1590, Delaware Administrator Standards.~~

"Delaware Content Standards" means ~~K to 12 curriculum content standards approved by the Secretary of Education and the State Board of Education, as per 14 DE Admin. Code 501, State Content Standards.~~

"Delaware Professional Teaching Standards" means ~~standards for teachers approved by the Standards Board and the State Board of Education, as per 14 DE Admin. Code 1597, Delaware Professional Teaching Standards.~~

"Department" means the Delaware Department of Education.

"Educator" means ~~a public school employee who holds a license issued under the provisions of 14 Del.C. Ch.12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers~~ person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration, or other related professional support services in Delaware public schools, including charter schools, pursuant to the rules and regulations developed by the Standards Board, in consultation and cooperation with the Department, and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Hours of Engagement" means ~~time spent in classes, seminars, workshops, collaborative work groups, learning communities, cohort, school, or district teams, and time engaged in research-based activities which result in the acquisition of knowledge and skills which lead to more effective instruction.~~

"Knowledge and Skills" means ~~understandings and abilities that, when acquired by educators~~ Educators, lead to more effective instruction.

"Lead Mentor" means ~~an Educator who holds a Continuing or Advanced License, has participated in the training approved by the Department for Lead Mentors, is employed by an employing authority as a Lead Mentor, and performs the duties and responsibilities assigned to that position. Educators serving as Lead Mentors must be rated as highly effective or effective on Delaware Performance Appraisal System II (DPAS II) evaluations, or the equivalent thereof on a state-approved alternative educator evaluation system, and may not be on a DPAS II improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system.~~

"Mentor" means ~~an Educator who holds a Continuing or Advanced License and has participated in the training for Mentors specified by the Department and the employing authority. Educators serving as Mentors must be rated as highly effective or effective on DPAS II evaluations, or the equivalent thereof~~

PROPOSED REGULATIONS

on a state-approved alternative educator evaluation system, and may not be on a Delaware Performance Appraisal System II (DPAS II) improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system.

"National Certification" means an Educator has achieved and maintains a current national certification as provided in 14 Del.C. §1305(l).

"NSDC Standards for Staff Development" means standards adopted by the National Staff Development Council for high-quality staff and professional development.

"Professional Development Cluster" or "Cluster" means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Provider" means a local school district, charter school, college, educationally related organization, or professional organization that delivers professional development clusters approved by the Standards Board and the State Board to educators.

"Reauthorization of an Approved Cluster" means the process a provider uses to seek continued approval, after the initial five year approval period, of a previously approved cluster.

"Replication of Approved Clusters" means an approved cluster being delivered by a provider other than the original approved cluster provider.

"Salary Supplement", when referring to knowledge, skills, national certification, and additional responsibility based supplements, means additional state salary, State salary as described in 14 Del.C. §1305.

"Standards Board" means the Professional Standards Board of the State of Delaware established in response pursuant to 14 Del.C. §12051201.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 Del.C. §104.

3.0 Knowledge and Skills Salary Supplements

- 3.1 ~~The Standards Board shall, on no less than an annual basis, submit to the State Board for approval, lists of proposed new professional development clusters in specific areas of knowledge and skills which shall serve as the basis for awarding salary supplements.~~
- 3.2 ~~The criteria for evaluating professional development clusters designed to promote acquisition of knowledge and skills are based upon:~~
 - 3.2.1 ~~Delaware Professional Teaching Standards or Delaware Administrator Standards or their equivalent (i.e., national standards from educators' specialty area organizations that complement the Delaware standards).~~
 - 3.2.2 ~~Delaware content standards or their equivalent (i.e., national standards from content specialty groups, if there are no Delaware standards for the content area).~~
 - 3.2.3 ~~National Staff Development Council Standards for Staff Development (NSDC, 2001).~~
- 3.3 ~~Clusters may include a combination of formal courses at graduate or undergraduate levels, and other research based activities which conform to the NSDC Standards for Staff Development.~~
- 3.4 ~~Clusters may be comprised of related segments which may be completed separately over a specified period of time, not to exceed 5 years, as included in the cluster design and approved by the Standards Board and the State Board.~~
- 3.5 ~~Voluntary performance or assessment based specialty certifications awarded for meeting standards established by national professional organizations shall be evaluated as proposed clusters in accordance with this regulation.~~
- 3.6 ~~The specific percentage of salary assigned to each knowledge and skills supplement, provided that no supplement may be less than 2% nor more than 6% of an educator's base state salary, shall be submitted with the list of professional development clusters and specific areas of knowledge and skills.~~
 - 3.6.1 ~~A cluster qualifying an educator for a supplement of 2% shall consist of no less than 90 hours of engagement by the educator.~~

- ~~3.6.2 A cluster qualifying an educator for a supplement of 4% shall consist of no less than 180 hours of engagement by the educator.~~
- ~~3.6.3 A cluster qualifying an educator for a supplement of 6% shall consist of no less than 270 hours of engagement by the educator.~~
- ~~3.7 Knowledge and skills which, once acquired, are expected to lead to more effective instruction for the duration of an educator's career are designated as permanent supplements.~~
- ~~3.8 Knowledge and skills clusters related to new technologies, curriculum adoptions, and short term strategies shall have an initial approval duration of five (5) years.~~
 - ~~3.8.1 The initial five (5) year duration will begin on the date of the appropriation approval by the Controller General and the Budget Director and will terminate five (5) years from that date.~~
 - ~~3.8.2 A cluster cohort must be assembled and the provider must enter the cohort onto the DEEDS site prior to the cluster termination date. The provider will then make all efforts to complete the cluster in a timely fashion and to complete the online requirements to complete the process.~~
- ~~3.9 The provider shall present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator. The provider shall provide the Department with a list of educators who have satisfactorily completed an approved cluster.~~

Currently, there are not any approved Knowledge and Skills Salary Supplements.

4.0 Replication of Approved Clusters

- ~~4.1 The developer of an approved cluster shall decide if a cluster can be replicated, and shall set forth the conditions, if any, under which the approved cluster may be offered by a provider other than the developer of the approved cluster. The Professional Development and Associated Compensation Committee shall review and approve applications for replication of a cluster, and shall forward approved applications for replication to the Standards Board for action. The Standards Board shall forward approved applications for replication to the State Board for concurrence.~~
 - ~~4.1.1 The cluster replication may be offered to participants only within the time period for which the original cluster was approved~~
 - ~~4.1.2 A replication cohort must be assembled and the provider must enter the cohort onto the DEEDS site prior to the original cluster termination date. The provider will then make all efforts to complete the cluster in a timely fashion and to complete the online requirements to complete the process.~~

4.0 National Certification

- 4.1 An Educator may receive a Salary Supplement for achieving and currently maintaining the following certifications as provided in 14 Del.C. §1305(l):
 - 4.1.1 National Board Certification from the National Board for Professional Teaching Standards;
 - 4.1.2 Certificate of Clinical Competence in Audiology (CCC-A) or Certificate of Clinical Competence Speech-Language Pathology (CCC-SLP) from the American Speech-Language-Hearing Association;
 - 4.1.3 National Certified School Counselor from the National Board for Certified Counselors;
 - 4.1.4 Music Therapist – Board Certified (MT-BC) from the Certification Board for Music Therapists;
 - 4.1.5 Nationally Certified School Psychologist (NCSP) from the National Association of School Psychologists; or
 - 4.1.6 Nationally Certified School Nurse (NCSN) from the National Board for Certification of School Nurses.
- 4.2 In order to be eligible for a National Certification Salary Supplement, the Educator shall maintain current certification through the applicable national organization.
- 4.3 An Educator who is employed as a superintendent, assistant superintendent, or director or in a non-instructional area of transportation, finance/business management, human resources/personnel management, purchasing, community/public relations, administrative services, pupil services,

audiology, occupational therapist, physical therapist, psychologist, speech language pathologist, human relations, nurse, social work/services, information technology, or a specialized assignment comparable to these non-instructional areas shall not be eligible for a Salary Supplement for National Certification from the National Board for Professional Teaching Standards.

- 4.4 An Educator who achieves and maintains National Certification shall receive an annual Salary Supplement equal to 12 percent of the Educator's Base Salary for the certification in subsection 4.1.1 or 6 percent of the Educator's Base Salary for the certifications in subsections 4.1.2 through 4.1.6.

5.0 **Procedures for Reauthorization of Approved Clusters**

- 5.1 ~~Approval of a cluster is valid for five (5) years from the date of the appropriation approval by the Controller General and the Budget Director. A provider of a cluster may apply for reauthorization of a cluster by submitting an application for reauthorization to the Professional Development and Associated Compensation Committee, which shall review the application and, if appropriate, forward a recommendation to the Standards Board and the State Board for approval. Reauthorization approval of a cluster shall be for a period of five (5) years.~~
- 5.2 ~~Cluster providers shall, when applying for reauthorization, provide the Professional Development and Associated Compensation Committee with an evaluation of the effectiveness of a cluster in achieving the stated goals. The evaluation shall include evidence of a positive impact on educators' skills and knowledge and student learning. Evaluation reports shall be submitted on the form provided by the Standards Board.~~

6.0 **Revocation of Approval of a Cluster**

- 6.1 ~~Cluster applications are approved for a period of five years from the date of the appropriation approval by the Controller General and the Budget Director. The Standards Board may, however, revoke the approval of a cluster at any time during the five year period of approval for good cause. "Good Cause" includes, but is not limited to:~~
- 6.1.1 ~~Failure on the part of the provider to complete the delivery of a cluster; or~~
- 6.1.2 ~~Failure of the provider to submit evidence of completion to DOE; or~~
- 6.1.3 ~~Evidence, as supplied by participant evaluation and verified by the Professional Development and Associated Compensation Committee, of failure to provide content and activities as set forth in the approved application.~~
- 6.1.4 ~~Other conduct which negatively impacts the ability of educators to gain new knowledge and skill, such as misrepresentation of the cluster content on the application.~~

7.05.0 **Additional Responsibility Assignments**

- 7.1 ~~The Standards Board shall, on no less than an annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.~~
- 7.25.1 ~~Additional Responsibility assignments~~ Assignments shall be:
- 7.2.45.1.1 ~~Focused on school improvement issues that impact student achievement;~~
- 7.2.25.1.2 ~~Supported by high quality, targeted professional development;~~ development; and
- 7.2.35.1.3 ~~Academic in nature.~~
- 7.35.2 ~~In order to qualify for a responsibility assignment salary supplement~~ an Additional Responsibility Assignment Salary Supplement, an educator Educator shall have completed the state State approved training program for the ~~position,~~ position or, in the absence of a training program, shall meet the criteria set forth for the position by the ~~Standards Board or local~~ State, school district, charter school, or other employing ~~authority,~~ authority and shall provide ~~state and~~ State, school district, ~~charter school, or other employing authority~~ approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

~~7.45.3~~ ~~Extra responsibility salary supplements~~ Additional Responsibility Assignment Salary Supplements may be renewed.

5.4 The following assignment is currently an approved Additional Responsibility Assignment:

5.4.1 Lead Mentor and Mentor as provided in Section 10.0 of 14 DE Admin. Code 1503 Educator Mentoring.

~~8.0~~ **Approval of Professional Development Clusters and Responsibilities**

~~8.1~~ The Standards Board's Standing Committee on Professional Development and Associated Compensation shall provide the Standards Board with recommendations for approval of professional development clusters, reauthorized clusters, and responsibility assignments in accordance with this regulation.

~~8.2~~ The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.

~~8.3~~ If approved by the Standards Board, the lists of professional development clusters, reauthorized clusters, and responsibility assignments shall be forwarded to the State Board with a recommendation for approval.

~~8.4~~ Each district, charter school or other employing authority shall notify educators at least annually, in writing, of the clusters it disapproves from the State Board approved list of knowledge and skills clusters.

~~9.06.0~~ **Educators' Eligibility for Salary Supplements**

~~9.1~~ Skills and Knowledge Salary Supplements

~~9.1.1~~ The provider will present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator.

~~9.1.2~~ After completing the entire cluster, the cluster provider shall submit documentation to the Department certifying that the educator fulfilled the requirements of the cluster's design.

~~9.1.3~~ Educators may receive additional salary supplements for successfully completing other approved clusters, subject to the limitations set forth in Section 11.0. No educator is entitled to payment for the same cluster more than once.

~~9.2~~ Additional Responsibility Assignments: An educator Educator shall provide the local school district, charter school school, or other employing authority with such information as may be required to enable the local school district, charter school school, or other employing authority to verify that the educator Educator has fulfilled the requirements of ~~7.3~~ subsection 5.2 of this regulation.

~~10.07.0~~ **Payment of Salary Supplements**

~~10.1~~ Salary Supplements for Clusters

~~10.1.1~~ Knowledge and skills clusters related to new technologies, curriculum adoptions, and short term strategies shall have a base salary supplement duration of five (5) years.

~~10.1.2~~ Salary supplements earned by educators who are paid in accordance with the provisions of 14 ~~Del.C.~~ §1305 as a result of completion of an approved knowledge and skills cluster shall be effective the first of the month following receipt by the Department of satisfactory completion of a cluster, and shall be paid as part of the educator's salary for the duration of the time approved for the cluster by the Standards Board and the State Board. The salary supplement shall be based on the Delaware educators' salary schedule: 14 ~~Del.C.~~ §1305 (a-b). Salary supplements are subject to an annual appropriation. All applications for a salary supplement for the current fiscal year (July 1 to June 30) must be received in the Office of Professional Accountability no later than June 1. Applications received after June 1 will be approved effective the first day of the next fiscal year. No educator is entitled to payment for the same cluster more than once.

~~10.27.1~~ Salary Supplements for Extra Additional Responsibility Assignments

PROPOSED REGULATIONS

~~10.2-17.1.1~~ Salary supplements earned by ~~educators~~ Educators who are paid in accordance with the provisions of 14 **Del.C.** §1305 as a result of fulfilling ~~extra responsibility assignments~~ Additional Responsibility Assignments shall be effective ~~the first of the month~~ following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the ~~extra responsibility assignment,~~ Additional Responsibility Assignment and shall be paid annually ~~as a single payment or as an additional salary amount spread evenly across an educator's contract period.~~

11.08.0 Limits on Salary Supplements

Salary supplements ~~shall be~~ paid to an ~~educator paid~~ Educator in accordance with the provisions of 14 **Del.C.** §1305 ~~shall not exceed 15% of the State share of the educator's salary.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1549

PUBLIC NOTICE

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

1549 Dance Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1549 Dance Teacher. The regulation concerns the requirements for a Standard Certificate for Dance Teacher pursuant to 14 **Del.C.** §1220. On May 1, 2019, proposed amendments to the regulation were published. The proposed amendments included adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; and adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications. The Board received a written submittal from the Delaware Association of School Personnel Administrators ("DASPA") concerning the proposed amendments. On August 1, 2019, the Board voted to add Section 9.0, which concerns recognizing past certification and is unrelated to DASPA's written submittal. The Board's Chairperson determined such change is substantive under 29 **Del.C.** §10118(c). Therefore, the Board repropose amendments to 14 **DE Admin. Code** 1549. The proposed amendments in this regulation include the amendments that were initially published on May 1, 2019 and the addition of Section 9.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The 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 students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators, 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.

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

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

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

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 162RFA 09-01-19.pdf>

1549 Dance Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Dance Teacher. This ~~certification~~ Certification is required for grades 9 ~~K~~ to 12, and is valid in grades 5 to 8 in a Middle Level school.

1.2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

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

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

~~“Approved Accrediting Agency” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.~~

~~“Accredited institution” means an institution that has received accreditation from an approved accrediting agency.~~

PROPOSED REGULATIONS

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

“**Department**” means the Delaware Department of Education.

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

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

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

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

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

“**Major or Its Equivalent**” means a minimum of thirty (30) semester hours of coursework in a particular content area.

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

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

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

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

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

3.0 Issuance of a Standard Certificate

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

- ~~3.1.3~~ ~~Has satisfied the additional requirements in this regulation.~~
- ~~3.1.2~~ ~~Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in dance education; or~~
- ~~3.1.3~~ ~~Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 **Del.C.** §1203.~~
- ~~3.2~~ ~~Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.~~

4.0 Additional Requirements Prescribed Education, Knowledge, and Skill Requirements

- ~~4.1~~ ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~
- ~~4.2~~ ~~If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5;~~
 - ~~4.2.1~~ ~~Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Dance, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or~~
 - ~~4.2.2~~ ~~Has obtained certification in Dance from an accredited institution.~~
- ~~4.1~~ ~~For an applicant who is applying for the applicant's first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2:~~
 - ~~4.1.1~~ ~~The applicant shall have:~~
 - ~~4.1.1.1~~ ~~Earned and currently maintain accreditation as Registered Dance Educator through the National Dance Education Organization; or~~
 - ~~4.1.1.2~~ ~~Completed a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in dance from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or~~
 - ~~4.1.1.3~~ ~~Satisfactorily completed an alternative routes for licensure or certification program to teach dance as provided in 14 **Del.C.** §§1260 - 1266; or~~
 - ~~4.1.1.4~~ ~~Satisfactorily completed a Department-approved educator preparation program in dance education; or~~
 - ~~4.1.1.5~~ ~~Completed a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactory completed fifteen (15) credits or the equivalent in Department-approved Professional Development related to dance education of which at least 6 credits must focus on pedagogy.~~
 - ~~4.1.1.5.1~~ ~~The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.~~
 - ~~4.1.1.5.2~~ ~~If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.~~
 - ~~4.1.2~~ ~~The applicant shall have achieved on the Dance Entry Level Teacher's Assessment (DELTA) a Passing Score of 91 of a possible 130 points.~~
- ~~4.2~~ ~~For an applicant who is applying for the applicant's second or subsequent Standard Certificate, the applicant shall have satisfied both of the following requirements:~~

PROPOSED REGULATIONS

4.2.1 The applicant shall have:

- 4.2.1.1 Satisfactorily completed Fifteen (15) Credits or the Equivalent in Professional Development, as provided in subsections 4.1.1.5.1 and 4.1.1.5.2, related to dance education of which at least 6 credits must focus on pedagogy; or
- 4.2.1.2 Obtained a Certificate in Dance Education (CiDE) from the National Dance Education Organization; or
- 4.2.1.3 Completed the equivalent of subsection 4.2.1.1 or subsection 4.2.1.2 in professional experience; and

4.2.2 The applicant shall have achieved on the Dance Entry Level Teacher's Assessment (DELTA) a Passing Score of 91 of a possible 130 points.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for a Standard Certificate for Dance Teacher:
 - 5.2.1 Evidence of earning and currently maintaining accreditation as Registered Dance Educator through the National Dance Education Organization, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.
 - 5.2.2.3 The Department will not accept copies of transcripts; and
 - 5.2.3 If applicable, documents verifying successful completion of Professional Development; and
 - 5.2.4 Official score on the Dance Entry Level Teacher's Assessment (DELTA) as provided in subsection 4.1.2; and
 - 5.2.5 If applicable, an experience form must be completed in full and signed by the applicant; and
 - 5.2.6 Additional documentation as required by the Department.
- 5.3 For applicants who are applying for their second or subsequent Standard Certificate, the following documentation is required in the application for a Standard Certificate for Dance Teacher:
 - 5.3.1 Official transcript from the applicant's college or university
 - 5.3.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.3.1.2 Sealed paper transcripts may be submitted.
 - 5.3.1.3 The Department will not accept copies of transcripts; and
 - 5.3.2 If applicable, documents verifying successful completion of Professional Development; and
 - 5.3.3 If applicable, evidence of completing the equivalent of Fifteen (15) Credits or the Equivalent in Professional Development, as provided in subsections 4.1.1.5.1 and 4.1.1.5.2, related to dance education or obtaining the Certificate in Dance Education (CiDE) from the National Dance Education Organization; and
 - 5.3.4 Official score on the Dance Entry Level Teacher's Assessment (DELTA) as provided in subsection 4.2.2; and
 - 5.3.5 Additional documentation as required by the Department.
- 5.4 For applicants who have met the requirements for licensure and hold a Valid and Current License or Certificate from Another State in dance education, the following documentation is required in the application for a Standard Certificate for Dance Teacher:
 - 5.4.1 An official copy of the valid and current educator license or certificate from another state or professional license.

6.0 Validity of a Standard Certificate

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

7.0 Revocation of a Standard Certificate

- 7.1 An Educator's Standard Certificate for Dance Teacher shall be revoked in the event the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's Standard Certificate application in accordance with 14 **Del.C.** §1222.
- 7.2 An Educator whose Standard Certificate is noticed for revocation is entitled to a full and fair hearing before the Standards Board.
 - 7.2.1 Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

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

9.0 Past Certificate Recognized

The Department shall recognize a Standard Certificate Dance Teacher issued prior to the effective date of this regulation. A teacher holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified as a Dance Teacher.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1558

PUBLIC NOTICE

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

1558 Theater Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1558 Theater Teacher. The regulation concerns the requirements for a Standard Certificate for Theatre Teacher pursuant to 14 **Del.C.** §1220. On May 1, 2019, proposed amendments to the regulation were published. The proposed amendments included amending the title of the regulation; adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; and adding Section 8.0, which concerns requests for the Secretary of Education to review standard

certificate applications. The Board received a written submittal from the Delaware Association of School Personnel Administrators (“DASPA”) concerning the proposed amendments. On August 1, 2019, the Board voted to add Section 9.0, which concerns recognizing past certification and is unrelated to DASPA’s written submittal. The Board’s Chairperson determined such change is substantive under 29 **Del.C.** §10118(c). Therefore, the Board repropose amendments to 14 **DE Admin. Code** 1558. The proposed amendments in this regulation include the amendments that were initially published on May 1, 2019 and the addition of Section 9.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation’s website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education’s Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The 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 students’ health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students’ health and safety.
4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses a standard certificate for educators, 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.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of this amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with this amended regulation.

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

[http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 167RFA 09-01-19.pdf](http://regulations.delaware.gov/register/september2019/proposed/23%20DE%20Reg%20167RFA%2009-01-19.pdf)

1558 ~~Theater~~ Theatre Teacher

1.0 Content

- 4.4 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for ~~Theater~~ Theatre Teacher. This certification Certification is required for grades 9 K to 12, ~~and is valid in grades 5 to 8 in a Middle Level school.~~

- 1-2 ~~Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

- 2-1 ~~The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

- 2-2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

~~“Approved Accrediting Agency” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.~~

~~“Accredited institution” means an institution that has received accreditation from an approved accrediting agency.~~

“Certification” means the issuance of a Standard Certificate, which may occur regardless of a recipient’s assignment or employment status.

“Department” means the Delaware Department of Education.

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

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

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

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

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

“Major or Its Equivalent” means a minimum of thirty (30) semester hours of coursework in a particular content area.

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

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

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

PROPOSED REGULATIONS

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate ~~as a Theater for Theatre~~ Teacher to an ~~educator~~ Educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or~~
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,~~
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~
 - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in theater education; or
 - 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

4.0 Additional Requirements Prescribed Education, Knowledge, and Skill Requirements

- 4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:
- 4.2 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5;
- 4.2.1 ~~Has satisfactorily completed fifteen (15) credits or their equivalent in professional development related to Theater, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; or~~
 - 4.2.2 ~~Has obtained certification in Theater from an accredited institution.~~
- 4.1 For an applicant who is applying for the applicant’s first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
 - 4.1.1.1 Obtained the equivalent of a certificate from the National Board for Professional Teaching Standards in theater; or
 - 4.1.1.2 Completed a bachelor’s degree from a Regionally Accredited college or university with a Major or Its Equivalent in theater education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or

- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach theater as provided in 14 Del.C. §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in theater education; or
- 4.1.1.5 Completed a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactorily completed 15 credits or the equivalent in Department-approved Professional Development related to theater education of which at least 6 credits must focus on pedagogy.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.
- 4.1.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Theatre (ETS Test Code # 5641) a Passing Score of 153.
- 4.2 For an applicant who is applying for the applicant's second or subsequent Standard Certificate, the applicants shall have satisfied both of the following requirements:
 - 4.2.1 The applicant shall have:
 - 4.2.1.1 Satisfactorily completed Fifteen (15) Credits or the Equivalent in Professional Development, as provided in subsections 4.1.1.5.1 and 4.1.1.5.2, related to theater education of which at least 6 credits must focus on pedagogy; or
 - 4.2.1.2 Completed the equivalent of subsection 4.2.1.1 in professional experience; and
 - 4.2.2 The applicant shall have achieved on the *Praxis* Subject Assessment – Theatre (ETS Test Code # 5641) a Passing Score of 153.

5.0 Application Requirements

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

PROPOSED REGULATIONS

5.3.1.2 Sealed paper transcripts may be submitted.

5.3.1.3 The Department will not accept copies of transcripts; and

5.3.2 If applicable, documents verifying successful completion of Professional Development; and

5.3.3 If applicable, a copy of the certification in theater from an Accredited Institution; and

5.3.4 If applicable, evidence of completing the equivalent of Fifteen (15) Credits or the Equivalent in Professional Development, as provided in subsections 4.1.1.5.1 and 4.1.1.5.2, related to theater education; and

5.3.5 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2.2; and

5.3.6 Additional documentation as required by the Department.

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

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

6.0 Validity of a Standard Certificate

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

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

7.0 Revocation of a Standard Certificate

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

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

7.2.1 Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

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

9.0 Past Certificate Recognized

The Department shall recognize a Standard Certificate Theater Teacher issued prior to the effective date of this regulation. A teacher holding such a Standard Certificate issued by the Department before the effective date of this regulation shall be considered certified as a Theatre Teacher.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))
14 DE Admin. Code 1563

PUBLIC NOTICE

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

1563 Music Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1563 Music Teacher. The regulation concerns the requirements for a Standard Certificate for Music Teacher pursuant to 14 Del.C. §1220. On May 1, 2019, proposed amendments to the regulation were published. The proposed amendments included adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; and adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications. The Board received a written submittal from the Delaware Association of School Personnel Administrators ("DASPA") concerning the proposed amendments. On August 1, 2019, the Board voted to add Section 9.0, which concerns recognizing past certification and is unrelated to DASPA's written submittal. The Board's Chairperson determined such change is substantive under 29 Del.C. §10118(c). Therefore, the Board repropose amendments to 14 DE Admin. Code 1563. The proposed amendments in this regulation include the amendments that were initially published on May 1, 2019 and the addition of Section 9.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The 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 students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a standard certificate for educators, 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.

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

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

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

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 173RFA 09-01-19.pdf>

1563 Music Teacher

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

1.0 Content

- 4.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Music Teacher. This ~~certification~~ Certification is required for grades K to 12.
- 4.2 ~~Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

2.0 Definitions

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

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

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

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

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

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

"**Fifteen (15) Credits or the Equivalent in Professional Development**" means college credits or an equivalent number of hours with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university

or a professional development provider approved by the Department. College credit means undergraduate or graduate level coursework and continuing education units (CEUs) completed at or through a Regionally Accredited college or university or other Department-approved provider.

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

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

“Major or Its Equivalent” means a minimum of thirty (30) semester hours of coursework in a particular content area.

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

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

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

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

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

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

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate ~~as a for~~ Music Teacher to an ~~educator~~ Educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced ~~License; License,~~ or a ~~Limited Standard,~~ Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; ~~and 2003 and meets the requirements set forth in Section 4.0 of this regulation; or~~
 - 3.1.2 ~~Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision there.~~
 - 3.1.2 Has met the requirements for licensure and holds a Valid and Current License or Certificate from Another State in music education; or
 - 3.1.3 Has met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for Certification if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the alleged conduct involves allegations of Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

PROPOSED REGULATIONS

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who is applying for the applicant's first Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall have:
- 4.1.1.1 Obtained and currently maintain a Music certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Completed a bachelor's degree from a Regionally Accredited college or university with a Major or Its Equivalent in music education from an educator preparation program approved or recognized by the National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach music as provided in 14 Del.C. §§1260 - 1266; or
 - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in music education; or
 - 4.1.1.5 Completed a bachelor's degree from a Regionally Accredited college or university in any content area and satisfactory completion of fifteen (15) credits or the equivalent in Department-approved Professional Development related to music education of which at least six (6) credits must focus on pedagogy.
 - 4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the Fifteen (15) Credits or the Equivalent in Professional Development subject to the Department's approval.
 - 4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the Fifteen (15) Credits or the Equivalent in Professional Development in consultation with the Department and subject to the Department's approval.
- 4.1.2 The applicant shall have achieved on the Praxis Subject Assessment – Music: Content Knowledge (ETS Test Code # 5113) a Passing Score of 155.
- 4.2 For an applicant who is applying for the applicant's second or subsequent Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.2.1 and 4.2.2.
- 4.2.1 The applicant shall have:
- 4.2.1.1 Satisfactorily completed Fifteen (15) Credits or the Equivalent in Professional Development, as provided in subsections 4.1.1.5.1 and 4.1.1.5.2, related to music education of which at least 6 credits must focus on pedagogy; or
 - 4.2.1.2 Completed the equivalent of subsection 4.2.1.1 in professional experience; and
- 4.2.2 The applicant shall have achieved on the Praxis Subject Assessment – Music: Content Knowledge (ETS Test Code # 5113) a Passing Score of 155.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 For applicants who are applying for their first Standard Certificate, the following documentation is required with the application for a Standard Certificate for Music Teacher:
- 5.2.1 Evidence of obtaining and currently maintaining a Music certificate from the National Board for Professional Teaching Standards, if applicable; and
 - 5.2.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 5.2.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
 - 5.2.2.2 Sealed paper transcripts may be submitted.

5.2.2.3 The Department will not accept copies of transcripts; and

5.2.3 If applicable, documents verifying successful completion of Professional Development; and

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

5.2.5 If applicable, an experience form must be completed in full and signed by the applicant; and

5.2.6 Additional documentation as required by the Department.

5.3 For applicants who are applying for their second or subsequent Standard Certificate, the following documentation is required in the application for a Standard Certificate for Music Teacher:

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

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

5.3.1.2 Sealed paper transcripts may be submitted.

5.3.1.3 The Department will not accept copies of transcripts; and

5.3.2 If applicable, documents verifying successful completion of Professional Development; and

5.3.3 If applicable, a copy of the certification in music from an Accredited Institution; and

5.3.4 If applicable, evidence of completing the equivalent of Fifteen (15) Credits or the Equivalent in Professional Development, as provided in subsections 4.1.1.5.1 and 4.1.1.5.2, related to music education; and

5.3.5 Official score on the *Praxis* Subject Assessment as provided in subsection 4.2.2; and

5.3.6 Additional documentation as required by the Department.

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

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

6.0 Validity of a Standard Certificate

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

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

7.0 Revocation of a Standard Certificate

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

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

7.2.1 Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

8.0 Secretary of Education Review

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

9.0 Past Certificate Recognized

The Department shall recognize a Standard Certificate Music Teacher issued prior to the effective date of this regulation. A teacher holding such a Standard Certificate issued by the Department before the effective date of this

regulation shall be considered certified as a Music Teacher.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DELAWARE HEALTH CARE COMMISSION**

Statutory Authority: 16 Delaware Code, Section 9903 (16 Del.C. §9903)

PUBLIC NOTICE

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

Pursuant to 16 Del.C. §9903, the Delaware Health Care Commission, Department of Health and Social Services, is proposing regulations governing Reinsurance. On September 1, 2019, the Delaware Health Care Commission plans to publish as “proposed” regulations for reinsurance. The regulations include establishing administrative procedures for the reinsurance program.

Copies of the proposed regulations are available for review in the September 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of the Secretary at (302) 255-4783.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Gabriela Kejner by Tuesday, October 1, 2019, at:

Gabriela Kejner
Office of the Secretary
1901 North DuPont Highway
New Castle, DE 19720
Email: Gabriela.Kejner@delaware.gov
Phone: (302) 255-4783

***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/september2019/proposed/23 DE Reg 178RFA 09-01-19.pdf>

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

1.0 Purpose

- 1.1 The purpose of these Regulations is to establish procedures for the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund established pursuant to House Bill No. 193, 150th General Assembly for the purpose of stabilizing insurance rates and premiums in the individual market and providing greater financial certainty to consumers of health insurance in the State.
- 1.2 Policies and procedures for implementation of these regulations may be established in manuals and other documents by the Executive Director of the Delaware Health Care Commission or the Cabinet Secretary of Delaware Health and Social Services.
- 1.3 Nothing in these regulations shall preempt or otherwise conflict with any applicable state and federal laws and rules.

2.0 Authority

This regulation is promulgated pursuant to the authority granted in Chapter 99, Title 16, of the Delaware Code.

3.0 Definitions

The following definitions shall apply to this regulation:

“Attachment point” means the threshold dollar amount, adopted by the Executive Director, after which point the claims costs of an insured individual’s covered benefits under a reinsurance-eligible health benefit plan in a benefit year are eligible for reinsurance payments.

“Benefit year” means a calendar year beginning on or after January 1, 2020 for which reinsurance eligible health benefit plan provides health insurance coverage.

“Cabinet Secretary” means the Cabinet Secretary of Delaware Health and Social Services.

“Coinsurance rate” means the rate at which the Executive Director may reimburse a reinsurance eligible health benefit plan for claims costs incurred after the attachment point and before the reinsurance cap for an insured individual’s covered benefits in a benefit year.

“Commission” or **“DHCC”** mean the Delaware Health Care Commission created pursuant to 16 **Del.C.** §9902.

“DHSS” means Department of Health and Social Services.

“DOI” means Department of Insurance.

“Executive Director” means the Executive Director of the Delaware Health Care Commission or designee.

“Health insurance carrier” or **“carrier”** means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. The entities providing insurance under the following types of plans do not meet the definition of carrier, per this regulation: plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq.), known as Medicare, Medicaid; Chapter 52 of Title 29 of the Delaware Code; or any other similar coverage under state or federal governmental plans. Additionally, this regulation shall not apply to stand-alone dental insurance, stand-alone vision insurance, long-term care insurance, disability income insurance and all accident-only insurance.

“Health insurance coverage” means legal entitlement to payment or reimbursement for health care costs, generally under a contract with a health insurance company, a group health plan offered in connection with employment, or a government program like Medicare, Medicaid, or the Children’s Health Insurance Program (CHIP).

“Program” means the Delaware Health Insurance Individual Market Stabilization Reinsurance Program created by 16 **Del.C.** §9903(g).

“Regulations” mean all parts of the Rules and Regulations pertaining to the Delaware Health Insurance Individual Market Stabilization Reinsurance Program.

“Reinsurance cap” means the threshold dollar amount, adopted by the Executive Director, for claims costs incurred by a reinsurance eligible health benefit plan for an insured individual’s covered benefits in a benefit year, after which threshold the claims costs for the benefits are no longer eligible for reinsurance payments.

“Reinsurance eligible claim” means a claim for services covered under a reinsurance eligible health benefit plan that is incurred by a reinsurance eligible issuer during the applicable benefit year and within the period of eligibility for the member that is paid by the reinsurance eligible issuer before June 1 of the following year. A reinsurance eligible claim shall not be adjusted for risk nor for pharmacy rebates. A reinsurance eligible claim does include a claim for certain abortion services, as defined in 45 C.F.R. §156.280(d)(1).

“Reinsurance eligible health benefit plan” means health insurance coverage offered on the individual market that:

1. Constitutes minimum essential coverage, as set forth in 26 U.S.C. §5000A(f);
2. Is approved by the State’s health insurance commissioner;
3. Is delivered or issued for delivery by a carrier in the State; and
4. Is not a grandfathered plan as defined in §1251 of the Patient Protection and Affordable Care Act, 29 CFR §2590.715-1251.

PROPOSED REGULATIONS

“Reinsurance eligible individual” means an individual who is insured in a reinsurance eligible health benefit plan on or after January 1, 2020.

“Reinsurance eligible issuer” means a health insurance carrier that offers a reinsurance eligible health benefit plan to reinsurance eligible individuals.

“Reinsurance payment” means payments issued to a reinsurance eligible issuer in accordance with Section 6.0.

“State” means the State of Delaware.

4.0 Information Reporting

- 4.1 As a condition of receiving reinsurance payments from the program, a reinsurance eligible issuer must provide the following information to the program in the form and manner prescribed by the Executive Director:
- 4.1.1 The name and company code assigned to the reinsurance eligible issuer by the National Association of Insurance Commissioners;
 - 4.1.2 The identification number assigned to the reinsurance eligible issuer by the DHCC;
 - 4.1.3 The total amount of the reinsurance eligible issuer’s reinsurance eligible claims for the benefit year;
 - 4.1.4 The portion of the reinsurance eligible issuer’s total reinsurance eligible claims for the benefit year that fall between the attachment point and reinsurance cap;
 - 4.1.5 A summary data file containing the following information for each reinsurance eligible individual with claims for which reinsurance payments are being requested:
 - 4.1.5.1 The member identification number assigned by the reinsurance eligible issuer to the reinsurance eligible individual;
 - 4.1.5.2 The start and end dates of coverage for the reinsurance eligible individual;
 - 4.1.5.3 The DHCC plan identification number for the reinsurance eligible health benefit plan in which the reinsurance eligible individual was enrolled;
 - 4.1.5.4 The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year; and
 - 4.1.5.5 The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year that fall between the attachment point and reinsurance cap.
 - 4.1.6 If requested by the Executive Director, in conjunction with the final year-end report or an audit, a detailed claims file extracted from the reinsurance eligible issuer’s claims processing system that includes the issuer’s complete record of all reinsurance eligible claims for the benefit year;
 - 4.1.7 An attestation signed by an executive officer of the reinsurance eligible issuer stating that the information is accurate as of the date of submission; and
 - 4.1.8 Any other information requested by the Executive Director that he or she deems necessary to administer the program.
- 4.2 In lieu of subsections 4.1.1 through 4.1.5, the State may enter a legal agreement with the Centers for Medicare and Medicaid Services (CMS), whereby the State shall use the CMS EDGE server for the purposes of the program.
- 4.3 Carriers must sign an attestation that they meet the submission and data requirements of the State Reinsurance Program through their participation in CMS EDGE Server.
- 4.4 As a condition of receiving reinsurance payments from the program, a reinsurance eligible issuer must submit the information required under subsection 4.1 to the DHCC:
- 4.4.1 Using a secure method of transmission approved by the Executive Director; and
 - 4.4.2 On the following timeframes:
 - 4.4.2.1 Upon request, one interim report during the benefit year for the purposes of estimating reinsurance payments;

- 4.4.2.2 One interim report due on February 15th after the benefit year, containing data from the prior benefit year with claims paid by January 31st, and an estimate of claims payments still outstanding. This report will be used to aid the Executive Director in setting parameters for future program years; and
- 4.4.2.3 One final report due June 30th after the benefit year, containing all reinsurance eligible claims incurred during the prior benefit year and paid by June 1st for the purposes of calculating final reinsurance payments to carriers.
- 4.5 DHCC shall annually receive from the Department of Insurance the actual Second Lowest Cost Silver Plan premium under the Affordable Care Act 1332 waiver, 45 U.S.C. §18052, and an estimate of the premium as it would have been without the waiver.

5.0 Reinsurance Parameters

Annually, the Executive Director shall set an attachment point, cap, and coinsurance rate for the reinsurance program for the upcoming year based on anticipated revenue and recently reported premium, enrollment, and claims data.

6.0 Reinsurance Payments

- 6.1 A reinsurance eligible issuer becomes eligible for a reinsurance payment when the claims costs for at least one reinsurance eligible individual's covered benefits in a calendar year exceed the attachment point.
- 6.2 The Executive Director shall calculate the total reinsurance payment owed to each reinsurance eligible issuer.
 - 6.2.1 Subject to subsections 6.2.2 and 6.2.3, the reinsurance payment made to each reinsurance eligible issuer for a benefit year will be the product of the coinsurance rate and the portion of the reinsurance eligible issuer's total reinsurance eligible claims for the benefit year that fall between the attachment point and the reinsurance cap.
 - 6.2.2 The Executive Director shall uniformly reduce or increase the coinsurance rate to the extent necessary, but at no time shall the increase exceed 100%, to ensure that reinsurance payments equal the total available funding for the benefit year, as determined by the Executive Director in his or her sole discretion.
 - 6.2.3 In making the calculation under subsection 6.2.1, the Executive Director in his or her sole discretion may disregard any or all reinsurance eligible claims reported by a reinsurance eligible issuer under Section 4.0 that cannot be verified as part of the audit described under subsection 7.1.
- 6.3 The program shall issue reinsurance payments to all reinsurance eligible issuers on an annual basis in the year following each benefit year.
- 6.4 Payments shall be made directly to reinsurance eligible issuers by a method designated by the Executive Director.
- 6.5 The program shall not issue reinsurance payments if the Executive Director determines that a reinsurance eligible issuer has substantively failed to comply with this regulation.

7.0 Duties of the Administrator

- 7.1 The program shall be administered by the Executive Director. As administrator of the program, the Executive Director may:
 - 7.1.1 Conduct an audit of the information submitted under Section 4.0.
 - 7.1.2 Notify reinsurance eligible issuers of the results of the calculation described in Section 6.0, including any modifications of the coinsurance rate.
 - 7.1.3 Issue reinsurance payments to each reinsurance eligible issuer in accordance with Section 6.0.

PROPOSED REGULATIONS

- 7.1.4 Assign the functions vested in him or her by the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and these regulations to subordinate officers and employees as he or she deems necessary. The designee shall have the same power and authority that would be afforded to the Executive Director.
- 7.1.5 Contract with other state agencies and third parties as he or she deems necessary.
- 7.1.6 Use, access, store, and disclose the information submitted to the program under Section 4.0, including disclosing the information to the Commissioner of the Department of Insurance for the purposes of ensuring the efficient administration of the program and to reduce the reporting burden on issuers.
- 7.1.7 Submit an annual report to the Governor and General Assembly, in consultation with the DHSS and DOL.
- 7.1.8 Perform other functions he or she deems reasonably necessary to administer the program.

8.0 Document Retention and Audits

- 8.1 A reinsurance eligible issuer must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate its requests for reinsurance payments made pursuant to this regulation for a minimum period of 10 years and must make those documents and records available to the program upon request by the Executive Director for purposes of verification, investigation, or audit.
- 8.2 The Executive Director may audit a reinsurance eligible issuer to assess its compliance with the requirements of this Section. The reinsurance eligible issuer must ensure that its relevant contractors, subcontractors, or agents cooperate with any audit under this Section. If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement of this Section, the reinsurance eligible issuer must complete all of the following:
 - 8.2.1 Within 30 calendar days of the issuance of the final audit report, provide a written corrective action plan to the program for approval;
 - 8.2.2 Implement that plan; and
 - 8.2.3 Provide to the program written documentation of the corrective actions once taken.
- 8.3 If, at the conclusion of the audit, the Executive Director determines that a reinsurance eligible issuer received excess reinsurance payments, at the request of the Executive Director, the reinsurance eligible issuer shall return the excess payments to the program in a manner to be determined by the Executive Director within 60 days of his or her request.

9.0 Severability

If any provisions of this regulation or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these regulations which can be given effect, and to this end the provisions of these regulations are declared to be severable.

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7909A(e) (29 Del.C. §7909A(e))

PUBLIC NOTICE

2103 Reportable Incident Management and Corrective Measures

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 Developmental Disabilities Service (DDDS) is proposing to implement oversight and monitoring of reportable incidents pursuant to DHSS Policy Memorandum 46.

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 James Dickinson, Division of Developmental Disabilities, Service Integrity and Enhancement, 1056 South Governor's Avenue, Suite 101, Dover DE 19947, E-Mail: james.dickinson@delaware.gov by October 1, 2019.

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 proposal creates regulations to ensure the health and safety of persons served in Home and Community-Based Services (HCBS) by the Division of Developmental Disabilities Services (DDDS) under its contracts with providers, consistent with Policy Memorandum 46 (PM46) of the Department of Health and Social Services (DHSS).

Under this policy, DDDS is responsible for oversight and monitoring of the prevention, discovery, investigation, and correction of Reportable Incidents and all other threats to the safety and health of DDDS service recipients.

Statutory Authority

Title 16 of the **Delaware Code**, Chapter 55, Subchapter 1, Section 5506
DHSS PM46
29 **Del.C.** §7909A(e)

Background

PM46 was updated August 2016 and requires DDDS to establish rules, standards and processes for prevention, discovery, investigation and mitigation of Reportable Incidents: abuse, financial exploitation, medication diversion, mistreatment, neglect, unanticipated death, and significant injury.

The original version of this proposed regulation was published in the June 1, 2019 *Register of Regulations* on page 989 (**22 DE Reg. 989**) for public comment through July 1, 2019. In response to public comment, substantial changes have been made to the proposed regulation. In light of this, DDDS is reposting the revised document for public comment. Due to the amount of revision and in the interest of readability, DDDS is reposting as a new proposed regulation.

Summary of Proposal

The purpose of this regulation is to ensure the health and safety of persons served in Home and Community-Based Services (HCBS) by the Division of Developmental Disabilities Services (DDDS) under its contracts with providers, consistent with Policy Memorandum 46 (PM46) of the Department of Health and Social Services (DHSS).

This regulation specifies incidents that must be reported to DDDS, the manner and timeliness within which they must be reported, and the actions DDDS and providers of DDDS services shall take regarding reportable incidents, including corrective measures that can be assessed for incidents caused by dereliction of duty by providers.

These regulations apply to DDDS and provider staff that provide direct HCBS services to DDDS service recipients, excluding; durable medical equipment suppliers; assistive technology providers; and home and vehicle modification services.

Fiscal Impact Statement

This proposed regulation is being implemented to clarify current DDDS practices and there is no projected fiscal impact.

*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/september2019/proposed/23DE Reg 182RFA 09-01-19.pdf>

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 182 09-01-19.htm>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Drug Utilization Review (DUR)

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 the DUR, specifically, to update provisions included in section 1004 of the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for patients and Communities Act* (P.L. 115-271).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Drug Utilization Review (DUR)

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 Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

Statutory Authority

- 42 CFR. §456.703
- SUPPORT Act (P.L. 115-271)

Background

All states with a Medicaid program that includes a drug benefit are required to have a Drug Utilization Review (DUR) program. New provisions for the DUR were included in Section 1004 of the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for patients and Communities Act* (P.L. 115-271) as requirements of the state plan.

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 5 Addendum of Title XIX Medicaid State Plan regarding the DUR, specifically, to update provisions included in section 1004 of the SUPPORT Act.

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 1, 2019.

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

There is no anticipated fiscal impact associated with this policy change.

***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/september2019/proposed/23 DE Reg 184RFA 09-01-19.pdf>

Attachment 3.1-A
Page 5 Addendum

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

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs Continued: Drug Utilization Review (DUR) Board

Drug Utilization Review (DUR) Board is comprised of pharmacists, physicians, and community members, appointed by the Secretary, Delaware Health & Social Services. The makeup and membership authority for the DUR Board complies with 42 U.S.C. s1396r-8. The DUR assures that prescriptions are appropriate, are medically necessary, and are not likely to result in adverse medical results.

The Board assesses data on drug use in accordance with predetermined standards. The predetermined standards shall be:

- monitoring for therapeutic appropriateness
- overutilization and underutilization
- appropriate use of generic products
- therapeutic duplication
- drug-disease contraindications
- drug-drug interactions
- incorrect drug dosage or duration of drug treatment
- clinical efficacy
- safety
- medical necessity
- potential for abuse, misuse and diversion
- experimental use opportunity, and
- cost effectiveness relative to similar therapies

PROPOSED REGULATIONS

Drug Utilization Review Board makes recommendation for:

- 1) Status on the Preferred Drug List
- 2) Guidelines to be used in the determination of medical necessity and clinical appropriateness of prescribed drugs
- 3) Safety edits including limits on quantity and duration
- 4) Concurrent utilization alerts
- 5) Provisions of Section 1004 of the SUPPORT ACT
 - a. Claim Review Limitations
 - i. Safety Edits Including Early and Duplicate Fill, and Quantity Limits: Long acting opioids are on review for clinical appropriateness. Short acting agents have a maximum of two per day for short acting low potency agents.
 - ii. Maximum Daily Morphine Milligram Equivalents (MME) Safety Edits: A maximum dosing limit on opioids limits the daily morphine milequivalents to 90 or less.
 - iii. Concurrent Utilization Alerts: A prospective drug-to-drug interaction alert will require a response from the pharmacy if an opioid and benzodiazepine are being dispensed with an overlapping period. All requests for long acting agents are reviewed for concomitant utilization of a benzodiazepine. Practitioners are asked to create a titration plan for these members. A prospective drug-to-drug interaction for opioid to antipsychotic agents will alert the pharmacist. These claims will require a response before the claim is adjudicated as paid.
 - b. Programs to monitor antipsychotic medications to children
 - i. Antipsychotic agents are reviewed for age based on the FDA product approval. The Division of Services for Children, Youth, and Families (DSCYF) employs a pharmacist consultant that reviews all foster children profiles that include behavioral health drugs. DMMA data are provided to the pharmacist for the monthly review and consultation with the prescribing practitioner.
 - c. Fraud and abuse identification
 - i. DMMA receive monthly data from the Prescription Monitoring Program. Analysis is done at the prescriber and client level. Additional steps are taken, such as audits or client lock-in to a specific pharmacy, when outliers are identified.
 - d. Managed Care Organization (MCO) Requirements
 - i. Effective October 2019, DMMA contracts require MCOs to comply with the drug reviews included in the SUPPORT Act. Our MCO partners are employing the same review processes and limits as our fee-for-service program.

TN No. SPA#	Approval Date _____
Supersedes	
TN No. <u>NEW</u>	Effective Date <u>October 1, 2019</u>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Acute Inpatient Hospital Readmission Claims

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 the Inpatient Hospital Provider Policy Manual regarding Acute Inpatient Hospital Readmission Claims,

specifically, to update policy regarding the time interval.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Acute Inpatient Hospital Readmission Claims.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Inpatient Hospital Provider Policy Manual regarding Acute Inpatient Hospital Readmission Claims, specifically, to update policy regarding the time interval.

Background

Currently, the Delaware Medical Assistance (DMAP) Medical Review Team reviews claims for acute care hospital services for patients readmitted within 10 days of discharge from the same hospital.

A hospital readmission is an episode when a patient who had been discharged from a hospital is admitted again within a specified time interval.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to update the DMAP readmission time interval from 10 days to 30 days.

Summary of Proposed Changes

Effective for services provided on and after November 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 2.2.1 and 2.2.1.1 of the Inpatient Hospital Provider Policy Manual regarding Acute Inpatient Hospital Readmission Claims, specifically, to update policy regarding the time interval.

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 1, 2019.

Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

There is no anticipated fiscal impact to the agency.

***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/september2019/proposed/23 DE Reg 186RFA 09-01-19.pdf>

2.0 Acute Care Inpatient Hospital**2.1 Overview**

2.1.1 Acute care inpatient hospital services are covered by the DMAP only if the hospital is accredited by the Joint Commission on Accreditation of Hospitals and certified by the State agency responsible for licensing and certification.

2.1.2 Reserved

2.2 Specific Billing Information

2.2.1 Readmission within ~~40~~ thirty (30) Days to Acute Care Hospital

2.2.1.1 The DMAP Medical Review Team will review claims for acute care hospital services for patients readmitted within ~~40~~ thirty (30) days of discharge from the same hospital. When submitting claims for readmission within ~~40~~ thirty (30) days of a previous admission, attach discharge summaries for both admissions.

2.2.1.2 If it is determined that the readmission resulted from a premature discharge based on information that the provider would have known or events that could have been anticipated at the time of discharge, payment will not be made for the second admission. In this situation, the second admission is considered to have been reimbursed in the discharge rate for the initial admission.

2.2.2 Transfer to a Certified Inpatient Physical Rehabilitation Unit

2.2.2.1 If a patient is transferred from an acute care bed to a certified inpatient physical rehabilitation unit, the patient must be discharged from acute care and readmitted to the physical rehabilitation unit. The hospital should bill one discharge for acute care and one discharge for physical rehabilitation using the appropriate revenue codes, provider identification numbers and taxonomy. The acute care discharge must not include any rehabilitation accommodation revenue codes.

2.2.2.2 A transfer from an acute care bed to the certified inpatient physical rehabilitation unit must be primarily for the purpose of receiving physical rehabilitation services. Admission records should include adequate documentation to justify physical rehabilitation.

2.2.2.3 Patients must be admitted to the physical rehabilitation unit using the appropriate accommodation code(s) on the claim.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Telehealth Services Originating Site Fees**

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 telehealth services specifically, to add facilities to which originating site fees can be paid.

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 1, 2019. Please identify in the subject line: Telehealth Services Originating Site Fees.

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 Title XIX Medicaid State Plan regarding telehealth services specifically, *to add facilities to which originating site fees can be paid.*

Statutory Authority

- 42 CFR 410.78, *Telehealth services*
- 42 CFR Part 440, *Services*

Background

For the purposes of Medicaid, telehealth seeks to improve a patient's health by permitting two-way, real time interactive communication between the patient, and the physician or practitioner at the distant site. This electronic communication means the use of interactive telecommunications equipment that includes, at a minimum, audio and visual equipment.

According to the Centers for Medicare and Medicaid Services (CMS), the Medicaid program and the federal Medicaid statute (Title XIX of the Social Security Act) do not recognize telehealth as a distinct service. CMS does note, however, that telehealth "is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care" (e.g., face-to-face consultations or examinations between provider and patient) that states can choose to cover under Medicaid and that there is "flexibility inherent in federal law to create innovative payment methodologies for services that incorporate telemedicine technology."

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add facilities to which originating site fees can be paid, specifically Federally Qualified Health Centers and School Based Wellness Centers.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 4.19-B Page 24 of Title XIX Medicaid State Plan regarding telehealth services originating site fees.

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 1, 2019.

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

There is no anticipated fiscal impact. There is the potential to improve access to services and implementation will likely reduce cost in higher cost settings such as emergency rooms.

***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/september2019/proposed/23 DE Reg 188RFA 09-01-19.pdf>

Attachment 4.19-B
Page 24

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

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES (Continued)

Payment for the telehealth originating site facility fee is made at the same percentage of the Medicare rate that is used for practitioner services on the date of service. The State currently pays practitioners at 98% of Medicare rates. The originating site fee will also be paid at 98% of the Medicare fee for the same service.

~~If either the delivering or originating site telemedicine fee methodology conflicts with the State-defined reimbursement methodology for the particular provider type, the existing reimbursement methodology will apply. For Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs), where federal regulations mandate specific reimbursement methodologies, that requirement will take precedence over the originating site fee.~~

The site fee is only for the originating site and the site provider would not be entitled to any other payment for the telemedicine service which was delivered by the distant site.

Qualifying provider services include office visits, consultations, psychotherapy, medication management, psychiatric interview or examination, substance abuse screening and brief intervention, neurobehavioral examination, end stage renal disease services and medical nutrition therapy, etc.

Federally Qualified Health Centers and School-Based Wellness Centers acting in the role of an originating site provider with no other separately identifiable service being provided will only be paid the originating site telehealth fees and will not receive reimbursement for an encounter.

The telemedicine payment methodology shall be effective with dates of service on or after ~~July 2, 2012~~ September 1, 2019.

Fee schedules for telemedicine provided services are available on the DMAP website at: <http://www.dmap.state.de.us/downloads> <https://medicaid.dhss.delaware.gov/provider>.

Except as otherwise noted in the Medicaid State Plan, State-developed fee schedule rates are the same for both government and private providers.

Separate reimbursement is not made for the use of technological equipment and systems associated with a telemedicine application to render the service.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>12-011</u>	Effective Date <u>January 1, 2020</u>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Obesity Drugs

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 Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Obesity Drugs.

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 Title XIX Medicaid State Plan regarding Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity.

Statutory Authority

42 CFR §440.120

Background

Delaware is a founding member of My Healthy Weight, an initiative committed to working with providers and beneficiaries to increase utilization of standardized benefits and to encourage the collection of obesity metrics. The initiative will provide millions of individuals nationally with consistent coverage to support healthy weight change.

As a result of that initiative, DMMA has begun a review of policies related to obesity covered services.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to clarify policy related to drugs indicated for the treatment of obesity.

Summary of Proposed Changes

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 5 of Title XIX

Medicaid State Plan regarding Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity.

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 1, 2019.

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

There is no anticipated fiscal impact.

***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/september2019/proposed/23 DE Reg 191RFA 09-01-19.pdf>

Revision: HCFA-PM-85-3 (BERC)
May 1985

Attachment 3.1-A
Page 5
OMB No. 0938-0193

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

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs:

Drug Coverage

- 1) Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.
- 2) The State will cover agents when used for cosmetic purposes or hair growth only when the state has determined that use to be medically necessary.

-
- 3) The State will cover drugs indicated for the treatment of obesity to address weight loss with co-morbid conditions with prior authorization.
- 4) Drugs excluded from coverage by Delaware Medicaid as provided by Section 1927(d)(2) of the Act, include:
- Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
 - Drugs when used to promote fertility;
 - Drugs that have an investigational or experimental or unproven efficacy or safety status;
 - Drugs when used for anorexia, ~~weight loss or weight gain, or weight loss for the sole purpose of cosmetic reasons.~~ Drugs indicated for the treatment of obesity to address weight loss with co-morbid conditions are covered by the DMAP with prior authorization.
- 5) Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

Quantity and Duration

- Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

TN No. SPA#	Approval Date _____
Supersedes	
TN No. <u>#17-005</u>	Effective Date <u>October 1, 2019</u>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Excluded Earnings of Temporary Census Workers

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 Excluded Earnings of Temporary Census Workers, specifically, *to add additional eligibility groups to that exclusion.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Excluded Earnings of Temporary Census Workers.

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 Title XIX Medicaid State Plan regarding Excluded Earnings of Temporary Census Workers, specifically, to add additional eligibility groups to that exclusion.

Statutory Authority

CMS, Informational Bulletin dated July 3, 2019, *Temporary Census Income and Medicaid and CHIP Eligibility*.

Background

The Centers for Medicare and Medicaid Services (CMS) allows states to exclude the earned income of temporary census workers for purposes of eligibility. The Delaware state plan currently excluded earnings of temporary census workers to ensure that individuals (and their families), who are temporarily hired by the Census Bureau to assist in Census activities, do not lose eligibility for Medicaid because of the income they receive from employment with the Census Bureau. The purpose of this amendment is to add additional eligibility groups to that exclusion.

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after October 1, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Supplement 8A to Attachment 2.6 A Page 2 of Title XIX Medicaid State Plan regarding Excluded Earnings of Temporary Census Workers, specifically, *to add additional eligibility groups to that exclusion*.

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 1, 2019.

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

There is no anticipated fiscal impact.

***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/september2019/proposed/23 DE Reg 193RFA 09-01-19.pdf>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: **DELAWARE**LESS RESTRICTIVE METHODS OF TREATING INCOME
UNDER SECTION 1902(r)(2) OF THE ACT

- All wages paid by the U.S. Census Bureau for temporary employment related to ~~Decennial~~ Decennial Census activities are excluded for the eligibility groups listed below:

For 1902 mandatory eligibility groups:

- Poverty level pregnant women and infants (133% - 200% FPL) under 1902(a)(10)(A)(i)(VI);
- Poverty level children under age 6 (133% FPL) under 1902(a)(10)(A)(i)(VI);
- Poverty level children under age 19 (100% FPL) under 1902(a)(10)(A)(i)(VII), and;
- Qualified Pregnant Women and Children under 1902(a)(10)(A)(i)(III).

For optional categorically needy groups under 1902 as listed below:

NOTE: The Special Income Level Group under 1902(a)(10)(A)(ii)(V), the Individuals Who Would be Eligible if In an Institution Group under 1902(a)(10)(A)(ii)(VI) and the Hospice Group under 1902(a)(10)(A)(ii)(VII) cannot be included in this disregard.

- Individuals Eligible for Cash Except for Institutionalization under 1902(a)(10)(A)(ii)(IV);
- Individuals in Institutions Eligible under a Special Income Level under 1902(a)(10)(A)(ii)(V);
- Ticket to Work Basic Group 1902(a)(10)(A)(ii)(XV); and
- Individuals who would be eligible for case assistance (AFDC of SSI) if they were not in a medical institution under 1902(a)(10)(A)(ii)(IV).

For 1905(p) eligibility groups:

- Qualified Medicare Beneficiaries (QMBs) under 1902(a)(10)(E)(i);
- Specified-Low Income Medicare Beneficiaries (SLMBs) under 1902(a)(10)(E)(iii); and,
- Qualifying Individuals (QIs) under 1902(a)(10)(E)(iv)(I).

TN No. SPA #	Approval Date
Supersedes	
TN No. SPA #09-001	Effective Date

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(1), 122(3)h, and Ch. 8C (16 Del.C. §§122(1), 122(3)h, & Ch. 8C)
16 DE Admin. Code 4107

PUBLIC NOTICE**4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders**

Pursuant to 16 Del.C. §122(1), §122(3)h, and Ch. 8C, Family Health Services, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Screening of

Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders. On September 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders regulations. The revisions include eliminating the mandatory second screening requirement, including midwives in the regulated community, and updating the timeline that a specimen should be collected and sent to the lab.

Copies of the proposed regulations are available for review in the September 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Wednesday, October 2, 2019, at:

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

***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/september2019/proposed/23 DE Reg 195RFA 09-01-19.pdf>

4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders

1.0 Authority and Purpose

Under the authority granted the Department of Health and Social Services, Division of Public Health under 16 **Del.C.** §122(1), 16 **Del.C.** §122(3)(h), 16 **Del.C.** Ch. 8C and 29 **Del.C.** §7904 the Department adopts the following regulations pertaining to the screening of newborns for various disorders.

The purpose of these regulations is to describe the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic, endocrinologic, and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death.

The responsibility for implementation of the regulations rests with the institution in which the infant is born. If an infant is born outside a facility, the responsibility for implementation of the regulations rests with the attending delivering physician or midwife, the newborn’s primary health care provider and the parent or legal guardian.

2.0 Definitions

“**Blood Specimen for Metabolic, Hematologic and Endocrinologic Disorders**” means a dried blood spot on a special filter paper utilized for screening (not diagnostic) tests to establish the likely presence of metabolic, hematologic or endocrinologic disorders.

“**Certain Structural Disorders**” includes critical congenital heart defects and other structural disorders.

“**Designated Laboratory**” is the laboratory or laboratories, which have been selected by the Division of Public Health to perform these services.

“**Endocrinologic Disorder**” means the absence or deficiency of a hormone resulting in interference with normal health, growth or development. These disorders include Congenital Hypothyroidism (CH) and Congenital Adrenal Hyperplasia (CAH).

“**Hematologic Disorder**” means, in these regulations, a condition in which a variation in one or more of the hemoglobin structural genes or in one or more of the genes involved in hemoglobin synthesis produces a variation in hemoglobin structure or synthesis, which results in variation in hemoglobin function. The term “**hemoglobinopathies**” includes sickle cell anemia, sickle cell hemoglobin C

disease (SC disease), sickle beta thalassemia, beta thalassemia, alpha thalassemia, hemoglobin C disease and other clinically important variations in hemoglobin structure or synthesis.

“**Kit**” means any or all parts of the combined materials, laboratory filter paper ~~paper~~, specimen forms, Newborn Screening Program brochure, and/or other components provided by the State Newborn Screening Program for the purposes of collection of the blood spot specimen and for submission of the blood spot specimen for laboratory screening.

“**Metabolic Disorder**” means a disorder caused by a genetic alteration, which results in a defect in the structure or function of a specific enzyme or other protein. These disorders include, but are not limited to, Phenylketonuria (PKU), Galactosemia, Maple Syrup Urine Disease (MSUD), and Medium Chain Acyl-CoA Dehydrogenase (MCAD) Deficiency.

“**Newborn Infant**” means any infant born in the state who is under 4 weeks of age.

“**Pulse Oximetry Screening**” is non-invasive test allowing for determination of the oxygen saturation of a patient’s hemoglobin to screen for a critical congenital heart defect.

“**Satisfactory Specimen**” means a blood spot specimen on which an accurate laboratory analysis for the various disorders can be performed.

“**The Newborn Screening Advisory Committee**” means a committee, established through the Division of Public Health Newborn Screening Program, convened to provide advice and guidance to the Program. Members are appointed by the Governor and include, but are not limited to: three individuals or parents of individuals with one of the disorders for which screening is performed affected by disorders identified by the screening panel; physicians not employed by the Division of Public Health who have expertise in the disorders for which screening is performed; an ethicist; an attorney not employed by the Division of Public Health State; an ethicist not employed by the Division of Public Health; three pediatric physicians; the Medical Director for the Division of Public Health, or their designee; the Laboratory Director for the Division of Public Health, or their designee; a representative from the Department of Services for Children, Youth, and Their Families; the Chair of the Midwifery Advisory Council, or their designee; and a member of the public. representatives of relevant agencies within the Department of Health and Social Services. The Committee will ~~meets~~ meet at least semi-annually. The Director of the Division of Public Health will appoint members ~~after recommendation by the Newborn Screening Program.~~

“**Unsatisfactory Specimen**” means a blood spot specimen ~~which that~~ is of insufficient quantity; or a blood spot specimen on which an accurate analysis for the various disorders cannot be performed.

3.0 Determination of Required Screens

The Director of the Division of Public Health or designee shall determine the disorders subject to screening tests.

4.0 Persons Responsible for Submitting Blood Spot Specimens and Pulse Oximetry Results for Screening for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders

- 4.1 The person or facility responsible for assuring that a satisfactory blood spot specimen and pulse oximetry results are submitted for screening newborns for metabolic, hematologic, endocrinologic and certain structural disorders shall be, in order of responsibility:
 - 4.1.1 ~~the~~ The hospital, birthing facility or other licensed health care facility in which the newborn is ~~born~~, born;
 - 4.1.2 ~~the~~ The newborn’s primary health care provider; or, if no provider is identified;
 - 4.1.3 ~~the~~ The parent or legal guardian.
- 4.2 In cases of newborns entering a health care facility before 48 hours of age as result of transfer from another facility or of an infant not born in a hospital or other licensed health care facility, the receiving facility shall be responsible for the timely collection of the blood spot specimen and pulse oximetry screening results.

4.3 In cases of newborns not born in a hospital or other licensed health care facility, and not transferred to a health care facility, the timely collection of the blood spot specimen and pulse oximetry screening results shall be the responsibility of the following, in order of responsibility:

- 4.3.1 ~~the~~ The attending delivering physician, or ~~midwife,~~ midwife; or in the absence of such a person;
- 4.3.2 ~~the~~ The newborn's primary health care provider; or, if no provider is identified;
- 4.3.3 ~~the~~ The parent or legal guardian.

5.0 Manner of Submitting Blood Spot Specimens and Pulse Oximetry Results

- 5.1 All dried blood spot specimens submitted to the designated laboratory for testing shall be collected using kits available from the Newborn Screening Program office and/or designated laboratory.
- 5.2 Blood spot specimens collected for screening shall be forwarded from the collecting facility to the designated laboratory within 24 hours of collection, either by the designated Division of Public Health ~~courier or~~ courier, by ~~mail.~~ mail, or via the service provided by the designated laboratory.
- 5.3 Pulse oximetry screening results shall be forwarded to the Division of Public Health electronically by the 15th of each month for births occurring in the previous calendar month.

6.0 Timing of Collecting the Blood Spot Specimen and Pulse Oximetry Screening for Screening Infants By Hospitals, Birth Centers or Midwives

- 6.1 A blood spot specimen for screening for metabolic, hematologic, and endocrinologic disorders shall be collected ~~prior to hospital discharge, but no later than three days after birth as follows: by the hospital, birth center, or midwife by 72 hours of age regardless of feeding history or medical condition unless the newborn falls into one of the following categories:~~
 - 6.1.1 For infants born inside or outside of a hospital or other health care facility, or infants born outside of a hospital or other health care facility and transferred to the hospital ~~where they will remain for the next 24 hours, a specimen shall be collected 24 hours after the onset of milk feeding, but no later than three days after birth, preferably between 36 and 72 hours of birth. A second specimen is to be collected between seven and 28 days of age. for continuing care prior to 48 hours of age, the hospital to which the newborn child has been transferred shall collect a specimen from the newborn child, regardless of feeding history or medical condition, as close to arrival as possible.~~
 - 6.1.2 For pre-term or sick newborns, the initial blood spot specimen shall be collected between 24 hours and 48 hours after birth, ~~if possible. The second dried blood spot specimen on pre-term or sick newborns must be completed at hospital discharge or transfer if within seven days from birth, or otherwise may be collected prior to 24 hours of age if the infant is receiving blood products. If the first specimen is collected prior to 24 hours of age, a second specimen shall be collected at 8 – 10 days of age or prior to discharge, whichever occurs first. A third specimen on pre-term or sick newborns shall be collected between 21-24 days or at discharge, whichever comes first. For infants weighing less than 1800 grams at birth, a second specimen shall be collected at 28 days of life or prior to discharge, whichever comes first.~~
 - 6.1.3 ~~When an infant is~~ For infants discharged from a hospital or other health care facility before 24 hours of ~~milk feedings~~ age, a blood spot specimen shall be obtained immediately prior to discharge from the facility and a second dried blood spot specimen shall be obtained after 3 days of age and before 14 days of age.
- 6.2 Birth facilities or care providers responsible for screening newborns shall adopt protocols consistent with the scientific statement regarding the role of pulse oximetry from the American Heart Association and American Academy of Pediatrics (Pediatrics, Vol. 124, No. 2, August 1, 2009, pp. 823-836) 2012: 129 (1) pp. 190-192.
- 6.3 The data elements to be reported for pulse oximetry screening of newborns to the Division of Public Health are:
 - 6.3.1 The number of births in a birthing facility each ~~month~~ month;
 - 6.3.2 The number of pulse oximetry screenings on newborn infants performed each ~~month~~ month;

- 6.3.3 The number of positive and negative screens ~~reecorded~~ recorded;
- 6.3.4 For those infants who do not receive a screen, a reason for not being screened; and
- 6.3.5 The identity of the infants who fail the screen including their diagnostic evaluation and ~~disposition~~ disposition.

7.0 Procedures for Follow Up of Dried Blood Spot Specimens Designated as Abnormal or Suspicious

- 7.1 The hospital/facility of birth/midwife to which a newborn is transferred shall develop adequate procedures to ~~insure~~ ensure a satisfactory blood spot specimen is collected by the time each newborn is ~~three~~ two days of age. The sample must be taken from every newborn unless a refusal form signed by the parent or legal guardians is obtained.
- 7.2 The hospital/facility of birth/midwife to which a newborn is transferred and the primary health care provider of the newborn shall cooperate with the Newborn Screening Program in completing follow up of newborns whose blood spot specimen result is designated as ~~"abnormal" or "suspicious."~~ "unacceptable", "presumptive positive" or "inconclusive." This cooperation shall include:
 - 7.2.1 Providing appropriate demographic information to the Newborn Screening Program as requested on each ~~baby~~ baby; and
 - 7.2.2 Providing the Newborn Screening Program with clinical information on each newborn as necessary for interpretation of the results of the screening.

8.0 Reporting of Results of Newborn Screening Tests

- 8.1 The designated laboratory shall report the results to the Newborn Screening Program as designated in the contract.
- 8.2 The Newborn Screening Program shall contact with abnormal results the ~~parent or legal guardian and~~ primary health care provider in writing and/or by telephone.
- 8.3 A copy of the Newborn Screening laboratory report shall be available to the primary health care provider, the birth facility or midwife, and upon request to the parent or legal guardian ~~upon request made to the birth hospital medical record department or their primary health care provider.~~

9.0 Confidentiality of Records

- 9.1 The Newborn Screening Program shall maintain and treat as confidential all newborn screening communications with facilities, families and health care providers. The Newborn Screening Program shall maintain and treat as confidential a record of every newborn in whom a diagnosis of one or more of the various metabolic, hematologic, or endocrinologic disorders is confirmed.
- 9.2 Information may be disclosed by the Newborn Screening Program in summary forms, which do not identify individuals. Individuals or institutions requesting summary data must submit a proposal to the Newborn Screening Program and to the Institutional Review Board of the Division of Public Health.
- 9.3 Dried blood-spots will be retained for a period of three years under appropriate conditions. The stored specimens will only be used for activities to improve the screening program and/or develop new screening tests.

10.0 Fees for Newborn Screening Tests Performed in the Designated Laboratory

- 10.1 The Division of Public Health Newborn Screening Program shall bill the facility or individual for services provided for each newborn screened under these regulations including but not limited to, the cost of the kits for collection of specimens, the laboratory fee for analysis, and administrative costs. The fee will be determined annually (in July) based on cost of the program.
- 10.2 No Delaware newborn shall be denied testing for hereditary disorders because of inability of the newborn's ~~parenter~~ parent or legal guardian to pay the fee. A "Statement of Fee Exemption" form will be provided to the practitioner or parent requesting exemption from fees. This form must be completed and submitted to the Newborn Screening Program Office within 30 days of birth.

PROPOSED REGULATIONS

11.0 Religious Exemption from Screening

- 11.1 A newborn may be excused from screening if the parent or legal guardian objects to the tests because ~~the screening tests conflict with the religious tenets or practices of the parent or legal guardian for any reason.~~
- 11.2 In the event ~~a religious~~ an exemption is claimed from the requirements for screening, the person otherwise responsible for submitting the specimen for screening shall be responsible for submitting a completed affidavit-refusal form to the Delaware Newborn Screening Program Office, signed by the infant's parent or legal guardian, using the following language: guardian.
1. ~~(I) (We) (am) (are) the (parent(s)) (legal guardian(s)) of (name of child)~~
 2. ~~(I) (We) hereby (swear) (affirm) that (I) (we) subscribe to a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.~~
 3. ~~(I) (We) further (swear) (affirm) that our belief is sincere and meaningful and occupies a place in (my) (our) life parallel to that filled by the orthodox belief in God.~~
 4. ~~This belief is not a political, sociological or philosophical view of a merely personal moral code.~~
 5. ~~This belief causes (me) (us) to request an exemption from the requirements for testing for Hereditary Disorders by the Delaware Newborn Screening Program for _____ (name of child).~~

Signature of Parent (s) or
Legal Guardian(s)

SWORN TO AND SUBSCRIBED before me, a registered Notary Public, this ____ day of _____, 200____.

(Seal)

Notary Public
My Commission Expires:

44-311.2.1 The Newborn Screening Refusal Form will be provided through the Newborn Screening Program Office.

12.0 Penalty for Non-compliance

Under the Authority granted to the Department of Health and Social Services, Division of Public Health under 16 **Del.C** §107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Division shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

DIVISION OF PUBLIC HEALTH

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

PUBLIC NOTICE

4455 Delaware Regulations Governing a Detailed Plumbing Code

Pursuant to 16 **Del.C.** §122(3)e and §7903, Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the Plumbing Code. On September 1, 2019, the Division of Public Health plans to publish as "proposed" revisions to the Plumbing Code regulations. The revisions include the adoption of the 2018 International Plumbing Code with amendments.

Copies of the proposed regulations are available for review in the September 1, 2019 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public

Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Wednesday, October 2, 2019, at:

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

***Please Note:**

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

<http://regulations.delaware.gov/register/september2019/proposed/23DE Reg 200RFA 09-01-19.pdf>

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 200 09-01-19.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, §6010(a) and (c); (7 Del.C. §6010(a) and (c))
7 DE Admin. Code 1125

REGISTER NOTICE
SAN #2019-06
(Docket # 2019-R-A-0018)

1125 Requirements for Preconstruction Review

1. TITLE OF THE REGULATIONS:

Proposed amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review

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

The Division of Air Quality (DAQ) is proposing to amend 7 DE Admin. Code 1125 to incorporate by reference the most recent revisions to the Environmental Protection Agency's (EPA) Guideline on Air Quality Models, as set forth in Appendix W to 40 CFR Part 51 – Requirements for Preparation, Adoption, and Submittal of Implementation Plans (Guideline). In 1978, EPA published the Guideline and has subsequently made several revisions, therefore DAQ is proposing to amend 7 DE Admin. Code 1125 for consistency with the EPA.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

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

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

None.

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on the proposed amendments to 7 **DE Admin. Code** 1125 at 6:00 pm on Wednesday, September 25, 2019 in the DNREC R&R Auditorium, located at 89 Kings Highway, Dover, DE 19901. Persons wishing to submit comment on the proposed amendments may do so either orally or in written form at the public hearing. In lieu of attending the public hearing, written comments may be submitted electronically by clicking the "Comment" button on the following link: <https://dnrec.alpha.delaware.gov/events/460/public-hearing-requirements-for-preconstruction-review/lic> or via USPS to the following address: Theresa Newman, Hearing Officer, DNREC – Office of the Secretary, 89 Kings Highway, Dover, DE 19901. The hearing record will open on September 1, 2019 and will remain open for receipt of comment through the close of business on Thursday, October 10, 2019.

7. PREPARED BY:

Renae Held – renae.held@delaware.gov – 302-739-9402

***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/september2019/proposed/23 DE Reg 201RFA 09-01-19.pdf>

1125 Requirements for Preconstruction Review
(Break in Continuity of Sections)

12/11/2016

3.0 Prevention of Significant Deterioration of Air Quality

(Break in Continuity Within Section)

3.10 Air Quality Models.

3.10.1 All estimates of ambient concentrations required under Section 3.0 of this regulation shall be based on the applicable air quality models, databases, and other requirements specified in the "Guideline on Air Quality Models" (~~OA-QPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April, 1978 or its subsequent revisions 40 CFR Part 51, Appendix W (July 1, 2018 ed.).~~ This document is incorporated by reference.

3.10.2 When an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to the notice and opportunity for public comment under subsection 3.14 of this regulation. Written approval of the Department must be obtained for any modification or substitution. ~~Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 17711, May, 1978 or its subsequent revisions) should be used to determine the comparability of air quality models.~~ Changes are also subject to the requirements specified in 40 CFR Part 51, Appendix W for evaluation and approval of alternative models.

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

<http://regulations.delaware.gov/register/september2019/proposed/23 DE Reg 201 09-01-19.htm>

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING

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

PUBLIC NOTICE

2309 Development Coordination Manual

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

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

Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2309 of Title 2, Delaware Administrative Code, from September 1, 2019 through October 1, 2019. The public may submit their comments to:

Wendy Polasko, P.E., Process and Quality Control Engineer, Planning Development Coordination via email (Wendy.Polasko@delaware.gov) or in writing to her attention,

Division of Planning

Delaware Department of Transportation

P.O. Box 778

Dover, DE 19903

*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/september2019/proposed/23DE Reg 203RFA 09-01-19.pdf>

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

Preface (<http://regulations.delaware.gov/register/september2019/proposed/Preface.pdf>)

Chapter 1: (<http://regulations.delaware.gov/register/september2019/proposed/Chap1.pdf>)

Chapter 3: (<http://regulations.delaware.gov/register/september2019/proposed/Chap3.pdf>)

Chapter 5: (<http://regulations.delaware.gov/register/september2019/proposed/Chap5.pdf>)

Chapter 8: (<http://regulations.delaware.gov/register/september2019/proposed/Chap8.pdf>)

PROPOSED REGULATIONS

DIVISION OF PLANNING

Statutory Authority: 29 Delaware Code, Section 8422 (29 Del.C. §8422)

PUBLIC NOTICE

2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund

Pursuant to the authority provided by 29 Del.C. §8422, the Delaware Department of Transportation (DelDOT), is promulgating regulations for the administration of the Transportation Infrastructure Investment Fund. The Transportation Infrastructure Investment Fund is established to provide economic assistance for renovation, construction, or any other type of improvements to roads and related transportation infrastructure in order to attract new businesses to this state, or expand existing businesses in this State, when such an economic development opportunity would create a significant number of direct, permanent, quality full-time jobs.

Public Comment Period

DelDOT will take written comments on these proposed regulations, Section 2312 of Title 2, Delaware Administrative Code, from September 1, 2019 through October 1, 2019. The public may submit their comments to:

Marc Côté, P.E., Assistant Director of Development Coordination, Planning
(marc.cote@delaware.gov) or in writing to his attention,

Division of Planning
Development Coordination Section
Delaware Department of Transportation
800 Bay Road PO 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/september2019/proposed/23 DE Reg 204RFA 09-01-19.pdf>

2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund

1.0 Authorization

This regulation is adopted pursuant to 29 Del.C. §8422(d).

2.0 Purpose

The purpose of these Regulations is to establish the practice and procedure for the administration of the Transportation Infrastructure Investment Fund (the "Fund"). The Regulations contain procedures governing the process for applying to the Council for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the approval or disapproval of an application for economic assistance under the Fund.

3.0 Definitions

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

"Application" means an application made to the Council on such form or forms, together with all relevant attachments, as the Council may, in its sole discretion, require in connection with administration of the Fund.

"Applicant" means any person, including individuals, firms, partnerships, trusts, public or private corporations, or other legal entities, for which a Project is undertaken or proposed to be undertaken.

“Council” means the Transportation Infrastructure Investment Fund Council as set forth in 29 Del.C. §8422.

“DelDOT” means the Delaware Department of Transportation.

“Final Approval” means the final approval of an Application by the Secretary of the Department of Transportation and the Secretary of State.

“Grant” means a financial award in the form of funds to Applicants for the specific intended use of the proceeds from the Fund.

“Project” means economic development or redevelopment activity to attract or expand employment.

“Public Endorser” means the State of Delaware or any agency thereof, or any County, municipality, local political subdivision within the State of Delaware.

“Transportation Infrastructure” for purposes of these Regulations, shall include but not be limited to the following:

- Any project that would construct, maintain, extend or enhance any highway, and/or road, and/or bridge.
- Any project that would construct, maintain, extend or enhance access to any transit and/or intermodal system.
- Any project that would construct, maintain, extend or enhance any access to commercial ports and/or airports.

4.0 Infrastructure Grants

4.1 Grant Description. Proceeds of a Grant are to be used to reimburse work performed for renovation, construction or any other type of improvements to Transportation Infrastructure.

4.2 Eligibility Standards. To be eligible for a Grant, a Project must have at least one Public Endorser and expand employment in the State. Grants would only be authorized for Transportation Infrastructure located within the public right-of-way or on public land.

4.3 Project Approval Standards

4.3.1 Findings. As a precondition to approving a Grant, the Council shall find that the Project would create a significant number of direct, permanent, quality, full-time jobs, and the associated Transportation Infrastructure improvements would benefit the public by improving infrastructure within the State. The Council shall apply the following standards, where applicable, in making such findings and determinations:

4.3.1.1 Employment Standard. The Council will review information concerning the Applicant as submitted in an Application. As a condition precedent to making a Grant, the Council shall determine that the Applicant intends to provide gainful employment within the State. The standards to be considered by the Council will include, but not be limited to, the number of permanent, quality, full-time jobs created as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the effect of the Project on the tax base of the State and/or the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

4.3.1.2 In determining whether the Project will assist in creating "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Council that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Council may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Council, in its sole discretion, may decline to consider the Application. If requested by the Council, similar proof shall be obtained from any operator or principal user of the Project.

PROPOSED REGULATIONS

- 4.3.1.3 Financial Stability and Economic Sustainability. The Applicant shall demonstrate to the Council that it possesses financial stability and can also demonstrate that the Project is economically sustainable. The Applicant must meet all of the following:
- 4.3.1.3.1 Validly exist as a corporation, limited liability company, or other regulated entity.
 - 4.3.1.3.2 Be in good standing under the laws of this State, duly-qualified to do business.
 - 4.3.1.3.3 Be in good standing in each other jurisdiction in which its conduct of business requires such qualification.
 - 4.3.1.3.4 Possess business and professional licenses required under Titles 24 and 30.
- 4.3.1.4 Public Purpose Standard. When applying the "public purpose standard", the Council shall take into consideration whether the Transportation Infrastructure improvements associated with the Project will enhance the infrastructure of the state, such that it would have a positive impact on Delaware's future economic health and competitiveness. Factors to be considered by the Council shall include, but not be limited to, whether the Transportation Infrastructure improvements will benefit the greater public and not just the Applicant, whether the Transportation Infrastructure improvements will help attract additional economic development to the area where the Project is being built, whether the Transportation Infrastructure would have otherwise required the use of State funding to be completed.
- 4.3.2 Clawback Provision. The Council shall determine appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Grant.
- 4.3.3 Post-Grant Period - Annual Reporting. Unless waived or amended by the Council, the Applicant shall, for a period of five (5) years following the award of Grant, submit to the Division of Small Business, on an annual basis, financial statements in a form acceptable to the Council, a progress report on the status of the project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Council. Each applicant shall report to the Division of Small Business no later than June 30 of each of the years for which the report is required.

5.0 Application Procedure

- 5.1 Applicants may obtain Application forms through DelDOT.
- 5.2 To apply for the Grant, an Applicant must submit a completed Application concerning the Project to DelDOT. Each Application must include the written certification of at least one Public Endorser for the Project, a narrative of the Transportation Infrastructure needed to support the Project outlining both the direct need and the benefits to the general public, proof of employment standards, financial stability and economic sustainability.
- 5.3 Completed Applications will be reviewed by the DelDOT and the Division of Small Business. DelDOT and the Division of Small Business shall use its reasonable best efforts to complete its review of the Application within sixty (60) days from the Application deadline. No application will be reviewed by the Council until it is complete to the satisfaction of DelDOT and Division of Small Business.
- 5.4 Applications will be accepted on a quarterly basis, unless otherwise directed by the Council.
- 5.5 Any business applying to the Transportation Infrastructure Investment Fund shall validly exist as a corporation, limited liability company or other regulated entity and shall be in good standing under the laws of the State of Delaware, duly qualified to do business and shall be in good standing in each other jurisdiction in which its conduct of business requires such qualification. Such applying business shall possess required business and professional licenses in accordance with Titles 24 and 30 of the Delaware Code.

6.0 Approval Process

- 6.1 The Council shall use its reasonable best efforts to complete its review of the Application for preliminary approval or disapproval within thirty (30) days from the date DelDOT and Division of Small

Business deems an Application is complete, provided, however, that if no meeting of quorum of Council is scheduled or held within 30 days of the Application being deemed complete, the Application will be considered at the next meeting of the Council at which quorum is present.

- 6.2 If a majority of the Council present determines that a Project meets the approval standards outlined above, and that the Grant award would represent a prudent use of the Fund, then the Council shall adopt a resolution recommending the issuance of the Grant to the Secretary of Transportation and the Secretary of State for consideration for Final Approval.
- 6.3 Final Approval will be binding however, the Secretary of Transportation and Secretary of State may withdraw Final Approval at any time prior to the disbursement of the Grant, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Council's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.
- 6.4 The Council will establish the term of the Grant and the reimbursement schedule. The Council may make recommendation on limitations or grant extensions and may only be withdrawn as set forth in subsection 6.3.
- 6.5 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. The Grant is encumbered from the Fund for the Transportation Infrastructure associated with the Project upon the execution of an agreement detailing the terms and conditions of the commitment letter.
-

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))
14 **DE Admin. Code** 815

REGULATORY IMPLEMENTING ORDER**815 Health Examinations and Screening****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §122(b)(2), the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 815 Health Examinations and Screening. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be readopted without any changes.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on July 1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 815 Health Examinations and Screening in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be reauthorized without any changes.

III. DECISION TO REAUTHORIZE THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 815 Health Examinations and Screening in the form attached hereto as *Exhibit "B"*. Pursuant to the provision of 14

Del.C. §122(e), 14 DE Admin. Code 815 Health Examinations and Screening hereby reauthorized 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 815 Health Examinations and Screening** reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as **14 DE Admin. Code 815 Health Examinations and Screening** in the Delaware Administrative Code.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to **14 Del.C. §122** on August 15, 2019. 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 15th day of August 2019.

Department of Education

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

Approved this 15th day of August 2019

815 Health Examinations and Screening

1.0 Definitions

"Delaware Interscholastic Athletic Association (DIAA) Pre-Participation Physical Evaluation" means the form approved by the DIAA.

"Delaware School Health Examination Form" means the age appropriate form developed by the Delaware Department of Education for documenting information from the parent, guardian or Relative Caregiver and healthcare provider on the student's health status.

"Healthcare Provider" means a currently licensed physician, advanced practice nurse, nurse practitioner, or physician's assistant.

"Health Examination or Health Evaluation" means the medical or nursing examination or evaluation and assessment of the body by a healthcare provider to determine health status and conditions.

2.0 Health Examinations

2.1 All public school students shall have two health examinations, as provided in this section, that have been administered by a healthcare provider. The first health examination shall have been done within the two years prior to entry into school. Beginning in school year 2012-2013, the second health examination shall be strongly recommended and not required for entering grade 9 students. Beginning in school year 2013-2014, the second health examination shall be required for entering grade 9 students. The required health examination shall be done within the two years prior to entry into grade 9. Within thirty calendar days after entry, new enterers and grade 9 students who have not complied with the second health examination requirement shall have received the health examination or shall have a documented appointment with a licensed health care provider for the health examination. For purposes of this regulation only, students entering grades 10, 11 or 12 in the 2013-2014 school year shall not be required to have the second health examination or evaluation.

2.1.1 The requirement for the health examination may be waived for students whose parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of health examinations.

- 2.1.2 Notwithstanding the above, a second health examination shall not be required if the first health examination is within two years of entering Grade 9.
- 2.1.3 The Delaware School Health Examination Form or the DIAA Pre-Participation Physical Evaluation form may be used as documentation of the health examination. In addition, a district or charter school may accept a health examination or evaluation documentation on a form which includes, at a minimum, health history, immunizations, results on medical testings and screenings, medical diagnoses, prescribed medications and treatments, and healthcare plans.
- 2.1.4 The school nurse shall record all findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and maintain the original copy in the child's medical file.

Non regulatory note: See 14 **DE Admin. Code** 1008.3 and 14 **DE Admin. Code** 1009.3 for physical or health examination requirements associated with participation in sports.

3.0 Screening

3.1 Vision and Hearing Screening

- 3.1.1 Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.
 - 3.1.1.1 In addition to the screening requirements in 3.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.
 - 3.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in car driving hours.
- 3.1.2 The school nurse shall record the results within the student's electronic medical record and shall notify the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if the student has a suspected problem.

3.2 Postural and Gait Screening

- 3.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.
- 3.2.2 The school nurse shall record the findings within the student's electronic medical record (see 14 **DE Admin. Code** 811) and shall notify the parents, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a) if a suspected deviation has been detected.
 - 3.2.2.1 If a suspected deviation is detected, the school nurse shall refer the student for further evaluation through an on site follow up evaluation or a referral to the student's health care provider.

3.3 Lead Screening

- 3.3.1 Children who enter school at kindergarten or at age 5 or prior, shall be required to provide documentation of lead screening as per 16 **Del.C.** Ch. 26.
 - 3.3.1.1 For children enrolling in kindergarten, documentation of lead screening shall be provided within sixty (60) calendar days of the date of enrollment. Failure to provide the required documentation shall result in the child's exclusion from school until the documentation is provided.
 - 3.3.1.2 Exemption from this requirement may be granted for religious exemptions, per 16 **Del.C.** §2603.
 - 3.3.1.3 The Childhood Lead Poisoning Prevention Act, 16 **Del.C.** Ch. 26, requires all health care providers to order lead screening for children at or around the age of 12 months of age.
- 3.3.2 The school nurse shall document the lead screening within the student's electronic medical record. See 14 **DE Admin. Code** 811.

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

Statutory Authority: 31 Delaware Code, Section 512 and 18 Delaware Code, Section 3342A(b)(2) (31 **Del.C.** §512 & 18 **Del.C.** §3342A(b)(2))

ORDER

Over-the-Counter Drugs Without a Prescription

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 Over-the-Counter Drugs, specifically, to ensure members may request coverage of over-the-counter FDA-approved medications without a prescription. 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 July 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Background

Delaware Senate Bill 151 became effective on July 11, 2019 and required that FDA-approved emergency contraception be available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

Statutory Authority

- DE Senate Bill 151 (2018)
- 18 **Del.C.** §3342A(b)(2)
- Social Security Act §1927(k)(4)
- 31 **Del.C.** §512

SUMMARY OF PROPOSAL

Effective for services provided on and after July 11, 2019 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1 Page 5 of Title XIX Medicaid State Plan regarding Over-the-Counter Drugs, specifically, to ensure members may request coverage of over-the-counter FDA approved medications without a prescription when required by law.

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 July 31, 2019.

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

There is no anticipated fiscal impact to the agency as a result of this proposed change in program policy.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: Two commenters questioned how information related to the benefit and access to it would be communicated to members.

Agency Response: DMMA will require its Managed Care Organizations to inform members as well as sending a message to all participating pharmacies.

Comment: There were two endorsements of the regulation.

Agency Response: DMMA appreciates the support.

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

- Governor's Advisory Council for Exceptional Citizens
- Planned Parenthood of Delaware
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Over-the-Counter Drugs, specifically, to ensure members may request coverage of over-the-counter FDA-approved medications without a prescription, is adopted and shall be final effective September 11, 2019.

8/8/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS, Secretary,
DHSS

Revision: HCFA-PM-92-1 (MB)
February 1992

Attachment 3.1
Page 5

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: DELAWARE

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

12.a. Prescribed Drugs: Drug Coverage

- 1) Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. When required by state or federal law DMMA members may request coverage of FDA approved medications, distributed by a CMS rebate participating labeler, without a prescription. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted

indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.

- 2) Drugs excluded from coverage by Delaware Medicaid as provided by Section 1927(d)(2) of the Act, include:
 - a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
 - b. Drugs when used to promote fertility;
 - c. Drugs that have an investigational or experimental or unproven efficacy or safety status; and
 - d. Drugs when used for anorexia, weight loss or weight gain.
- 3) The State will cover agents when used for cosmetic purposes or hair growth only when the state has determined that use to be medically necessary.
- 4) Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

Quantity and Duration

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

TN No. SPA #	Approval Date
Supersedes	
TN No. SPA #17-005	Effective Date

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 2906(b) (16 **Del.C.** §2906(b))
16 **DE Admin. Code** 4452

ORDER

4452 Clean Indoor Air Act

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Clean Indoor Air Act. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 2906(b).

On July 1, 2019 (Volume 23, Issue 1), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the

public concerning the proposed regulations be delivered to DHSS by August 1, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Clean Indoor Air Act is adopted and shall become effective September 11, 2019 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

8/8/19

Date

Dr. Kara Odom Walker
Secretary

4452 Clean Indoor Air Act

1.0 Preamble

These ~~Regulations~~ regulations are adopted in accordance with authority vested in the Secretary, Department of Health and Social Services, by 16 **Del.C.** §2906(b). These ~~Regulations~~ regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

2.0 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke and emissions produced by electronic smoking devices in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke and emissions produced by electronic smoking devices.

3.0 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

4.0 ~~Date of Effect~~

~~These regulations shall be effective December 1, 2015.~~

5.04.0 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 **Del.C.** Ch. 29.

6.05.0 Waiver

The Department of Health and Social Services may upon written request waive the provisions of these ~~Regulations~~ regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

7.06.0 Definitions

7-16.1 The following words, terms, and phrases, when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

7-26.2 For the purposes of these Regulations regulations:

“Department” means the Delaware Department of Health and Social Services (DHSS) as defined in Title 29 **Del.C.** §7901.

“Electronic Smoking Device” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

“Environmental Tobacco Smoke” (ETS), or “Secondhand Smoke” means the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as “passive smoking” or “involuntary smoking.”

“Enclosed Indoor Area” means an indoor area that is neither open nor partially enclosed except for normal means of access and egress through doors or passageways.

“Fraternal Benefit Society” means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 **Del.C.** §6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter.

“Private Club” means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

- a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
- b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;
- c. Is controlled by its membership and operates solely for the benefit and pleasure of its members;
- d. Advertises exclusively and only to its members, excluding membership drives.

“Private Social Function” means a function to which the public is neither invited ~~or~~ nor generally permitted access and which is held in separate indoor enclosed indoor area.

“Public Transportation of Children” means transportation ~~which~~ that involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

“Secretary” means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

“Smoking” means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or, the use of an electronic smoking device which creates an aerosol or vapor, or in any manner or in any form.

“Vapor Establishment” means a business that: 1) generates at least 80% of its revenue from the sale of electronic smoking devices and substances for use within electronic smoking devices; and 2) does not share indoor common space with other businesses unless there are doors from the vapor establishment to the indoor common space that remain closed other than for ingress and egress.

“Volunteer Fire Company” means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

8-07.0 Smoking Prohibitions

~~8.47.1~~ Except as is provided in ~~section 3.4 subsection 8.1~~ of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke and emissions produced by electronic smoking devices, smoking shall not be permitted and no person shall smoke in any of the following areas:

~~8.4.47.1.1~~ Any enclosed indoor area, including, but not limited to, those listed in 16 **Del.C.** §2903, to which the general public is invited or in which the general public is permitted. This shall apply to any organization, business or establishment ~~which that~~ caters to or offers goods or services or facilities to, or solicits patronage from the general public.

~~8.4.27.1.2~~ Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

~~8.4.37.1.3~~ Functions or activities of private clubs or organizations, as defined by Section ~~7.06.0~~ of these regulations, when access by the general public is allowed or solicited.

~~8.4.47.1.4~~ Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

~~8.4.57.1.5~~ In private homes or private residences when such homes or residences are being used for child care or day care.

~~8.27.2~~ No owner of any indoor enclosed area subject to 16 **Del.C.** Ch. 29 and/or person(s) responsible for the management of such area or employee ~~thereof, thereof~~ shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by ~~section 3.4 subsection 8.1~~.

~~8.37.3~~ Vapor Establishments

~~8.3.47.3.1~~ Vapor establishments are permitted to have emissions produced by electronic smoking devices within their places of businesses.

~~8.3.27.3.2~~ Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall prohibit anyone under the age of ~~48~~ 21 from entering.

~~9.08.0~~ Smoking Prohibitions Inapplicable

~~9.48.1~~ Smoking prohibitions shall not apply in the following:

~~9.4.48.1.1~~ Private homes, private residences and private ~~automobiles, automobiles~~;

~~9.4.28.1.2~~ Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

~~9.4.38.1.3~~ Limousines under private ~~hire hire~~;

~~9.4.48.1.4~~ A hotel or motel room rented to 1 or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (~~25%~~) (25%);

~~9.4.58.1.5~~ Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance ~~company-company~~;

~~9.4.68.1.6~~ Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 **Del.C.** §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said ~~organization, organization; and~~

~~9.4.78.1.7~~ Any enclosed indoor area operated or in use exclusively by a private club as defined in these regulations.

~~10.09.0~~ Posting of Signs

~~10.49.1~~ Failure to Properly Post and Maintain Signs

~~10.4.49.1.1~~ Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 **Del.C.** Ch. 29 shall post signs which indicate "Warning: Smoking Permitted" prominently to indicate those locations where smoking is permitted pursuant to ~~section~~

~~9-4~~ subsection 8.1. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in ~~section 44-4~~ subsection 10.1 of the Clean Indoor Air Act Regulations.

~~40-4-29.1.2~~ Any vapor establishment permitted to have emissions produced by electronic smoking devices in such establishment pursuant to these regulations, and which permits such emissions, shall display a sign at all entrances stating that no one under the age of ~~48~~ 21 is allowed in such a vapor shop. Failure to prominently post at all entrances properly maintained signs with letters at least one (1) inch in height shall be a violation subject to administrative penalties as set forth in ~~section 44-4~~ subsection 10.1 of the Clean Indoor Air Act Regulations.

~~44-010.0~~ Compliance and Enforcement Procedures

~~44-410.1~~ Administrative Penalties. Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less ~~then~~ than \$250.00 for each subsequent violation.

~~44-210.2~~ Right to Administrative Hearing. Upon due notice that the Department intends to assess an administrative penalty, as indicated in ~~44-4~~ subsection 10.1, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

~~44-310.3~~ Orders of the Department. Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a), 1501, 1503, 2505 and 2507
(7 Del.C. §§1902(a), 1501, 1503, 2505 & 2507)
7 DE Admin. Code 3700

Secretary's Order No.: 2019-F-0033

RE: Approving Final Regulations to Amend 7 DE Admin. Code 3700:

Shellfish: Adoption of (New) Section 3723 (Jonah Crab); and Amendments to existing Sections 3755 (Lobsters [*Homarus americanus*]), 3756 (Lobsters – Pot Design), 3757 (Lobsters – Pot, Season and Limits for Commercial Lobster Pot License), and 3758 (Possession of V-Notched Lobsters Prohibited)

Date of Issuance: August 14, 2019

Effective Date of the Amendment: September 11, 2019

**3700 Shellfish
3723 Jonah Crab (*Cancer borealis*)
3755 Lobsters**

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments (“Amendments”) to 7 **DE Admin. Code** 3700: *Shellfish*. Specifically, the Department proposes to adopt new regulations for Jonah Crab within its existing *Shellfish* regulations (new Section 3723), and to amend existing Sections 3755 (Lobsters [*Homarus americanus*]), 3756 (Lobsters – Pot Design), 3757 (Lobsters – Pot, Season and Limits for Commercial Lobster Pot License), and 3758 (Possession of V-Notched Lobsters Prohibited).

This action is being taken by the Department to adopt provisions which will enable Delaware to (1) maintain consistency with the Interstate Fishery Management Plan (“FMP”) as approved by the Atlantic States Marine Fisheries Commission (“ASMFC”) with regard to the adoption of new Jonah Crab regulations; (2) provide additional clarity to the regulated community with regard to the existing American Lobster regulations; and (3) reformat the existing American Lobster regulations by consolidating 7 **DE Admin. Code** §§3756-3758 under 7 **DE Admin. Code** 3755, as referenced above.

The ASMFC approved an Interstate FMP for Jonah Crab in August 2015, under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (1993). The goal of the FMP is to support and promote the development and implementation, on a continual basis, of a unified coastal management program for Jonah Crab, which in turn is designed to promote conservation, reduce the possibility of recruitment failure, and allow full utilization of the resource by the United States’ Jonah Crab industry.

Consistent with the mandatory elements of the aforementioned FMP and its addenda, the Department proposes to implement the following regulatory measures for Jonah Crab: (1) the establishment of incidental and directed landing permits based upon certain criteria; (2) the establishment of incidental bycatch limits; (3) the establishment of a minimum carapace width of 4 $\frac{3}{4}$ inches with no tolerance; (4) the establishment of conditions and limits on the retention of claws; (5) the establishment of a recreational possession limit of 50 Jonah Crabs per person per day; and (6) the prohibition of the retention of egg-bearing female Jonah Crab.

With regard to the management of American Lobster, the Department proposes to adopt provisions requiring the mandatory removal of lobster pots from February 1 through March 31, in accordance with Addendum XVII to Amendment 3 of the ASMFC’s FMP for American Lobster. Additionally, the Department proposes to clarify that two escape vents are necessary on lobster pots where circular style vents are used, and require that egg-bearing female lobsters be V-notched and immediately released.

Finally, consistent with the *Delaware Administrative Code Drafting and Style Manual*, the Department proposes to reformat the existing regulations pertaining to American Lobster by consolidating the following Sections under existing 7 **DE Admin. Code** 3755, Lobsters (*Homarus americanus*): 3756 Lobsters – Pot Design; 3757 Lobsters – Pot, Season and Limits for Commercial Lobster Pot License, and 3758 Possession Of V-notched Lobsters Prohibited. The proposed reformatting will also provide addition clarity to the existing regulations, and is not intended to change meaning.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 **Del.C.** §§1902(a), 1501, 1503, 2505 and 2507.

The Department published its initial proposed regulation Amendments in the May 1, 2019 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on May 23, 2019. There were no members of the public in attendance at the public hearing. Pursuant to 29 **Del.C.** §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on June 7, 2019, with no comment having been received by the Department during any phase of this formal promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Theresa Newman prepared her Report dated August 1, 2019 (“Report”), which expressly incorporated the Department’s proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A.”

Reasons and Conclusions

Based on the record developed by the Department’s experts in the Division of Fish and Wildlife, and established by the Hearing Officer’s Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code**

3700: *Shellfish*, are well-supported. I further find that the Department's Fish and Wildlife experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §§1902(a), 1501, 1503, 2505, and 2507.
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on May 23, 2019, and during the 15 days subsequent to the hearing (through June 7, 2019), before making any final decision;
4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 3700: Shellfish, will enable the Department to: (1) maintain consistency with the aforementioned Interstate FMP, as approved by the ASMFC, with regard to the adoption of new Jonah Crab regulations; (2) provide additional clarity to the regulated community with regard to the existing American Lobster regulations; and (3) reformat the existing American Lobster regulations by consolidating 7 **DE Admin. Code** §§3756-3758 under 7 **DE Admin. Code** 3755, as referenced above;
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 "B5," as this regulation is required by federal law, pursuant to Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 USC §§ 5101 – 5106, and has already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601, et seq.;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed 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 May 1, 2019 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 the proposed Amendments as final regulatory 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

3700 Shellfish
3723 Jonah Crab (*Cancer borealis*)

1.0 Jonah Crab Landing Permits

- 1.1 The Department may only issue a Directed Jonah Crab Landing Permit to those vessels and lobster permit holders that held a valid Delaware Commercial Lobster Pot License or federal lobster permit on June 2, 2015 or that can demonstrate to the Department, through valid reported landing reports or sales receipts, that they landed Jonah Crab or Jonah Crab claws in Delaware before June 2, 2015.
- 1.2 Unless otherwise provided, it is unlawful to possess or land Jonah Crab or parts thereof without a valid commercial foodfish license or a license to harvest shellfish for commercial purposes and a valid Directed Jonah Crab Landing Permit or an Incidental Jonah Crab Landing Permit issued by the Department.
- 1.3 Jonah Crab Landing permits are not transferable and automatically expire on December 31 of each calendar year.

2.0 Commercial Possession Limit

- 2.1 It is unlawful for a person issued a commercial foodfish license or a license to harvest shellfish for commercial purposes to possess more than 1,000 Jonah Crab per trip or more than 2,000 Jonah Crab claws per trip without a valid Directed Jonah Crab Landing Permit issued by the Department.
- 2.2 It is unlawful for a person issued an Incidental Jonah Crab Landing Permit and fishing non-lobster pot gear to possess a greater weight of Jonah Crab or Jonah Crab parts that exceed the weight of the target species for which the gear is set.
- 2.3 Persons issued a Directed Jonah Crab Landing Permit in accordance with subsection 1.1 may possess and land any quantity of Jonah Crabs or parts thereof.

3.0 Recreational Possession Limit

It is unlawful to possess more than 50 Jonah Crab per person per day, unless otherwise provided.

4.0 Minimum Size

- 4.1 It is unlawful to possess Jonah Crab measuring less than 4 ¾ inches at the widest part of its carapace.
- 4.2 It is unlawful to possess detached Jonah Crab claws measuring less than 2 ¾ inches along the longest axis of the propodus (the immovable component of the pinching claw) in a volume greater than five gallons.

5.0 Dismemberment

- 5.1 Except as provided in subsections 5.1.1 and 5.1.2, it is unlawful to possess Jonah Crab claws that are not naturally attached to the body (cephalothorax).
- 5.1.1 A person with a valid Directed Jonah Crab Landing Permit or Incidental Jonah Crab Landing Permit issued by the Department may possess detached Jonah Crab claws in accordance with Section 2.0 and subsection 4.2 of this regulation.
- 5.1.2 A person with a valid and corresponding receipt or bill of lading may possess detached Jonah Crab claws, provided said claws were lawfully harvested.

6.0 Egg-bearing Jonah Crab

It is unlawful to possess a Jonah Crab bearing eggs visible thereon or any Jonah Crab from which the eggs have been removed.

3755 Lobsters (*Homarus americanus*)

~~37561.0~~ Lobsters— Lobster Pot Design

(Penalty Section 7 Del.C. §1912)

- 4-01.1 It ~~shall be~~ is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than two (2) inches by 5 ¾ inches located in the parlor section of each pot or trap, or if a circular escape vent is used in the parlor section of any lobster pot or trap, it ~~shall be~~ is unlawful to use any less than two (2) circular vent vents that is are less than 2 5/8 inches inside diameter.
- 2-01.2 It ~~shall be~~ is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 ¾ inches by 3 ¾ inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.

~~3-01.3~~ It shall be is unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

~~37572.0 Lobsters – Pot, Lobster Pot Season And Limits For Commercial Lobster Pot License~~

Penalty Section 7 Del.C. §1912)

~~2.1~~ Except as provided in subsections 2.1.1 and 2.1.2, it is unlawful to set or tend lobster pots or to take and reduce to possession or attempt to take and reduce to possession lobsters during the period February 1 through March 31.

~~2.1.1~~ A person with a valid Commercial Lobster Pot License may remove lobster gear from the water during the period February 1 through February 14; however, no lobsters may be reduced to possession.

~~2.1.2~~ A person with a valid Commercial Lobster Pot License may set lobster gear during the period March 25 through March 31; however, the gear cannot be tended and no lobsters may be reduced to possession.

~~4-02.2~~ It shall be is unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State ~~at any time as permitted by law~~ on any date ~~except~~ Sunday.

~~2-02.3~~ It shall be is unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.

~~3-02.4~~ It shall be is unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or ~~longer~~ longer.

~~37583.0 Possession Of V-notched Lobsters Prohibited~~

(Penalty Section 7 Del.C. §1912)

~~4-03.1~~ It shall be is unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least 1/8 inch in depth and tapering to a sharp point, in the flipper (uropod) next to the right of center flipper (telson) as viewed from the rear of the female lobster with the underside (ventral side) facing down. ~~V-notched female lobster also means any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.~~

~~3.2~~ Any person that catches an egg-bearing female lobster shall notch it as outlined in subsections 3.2.1 through 3.2.5.

~~3.2.1~~ The notch shall be made on the flipper (uropod) immediately to the right of the central flipper (telson) as viewed from the rear of the lobster with the underside (ventral side) facing down.

~~3.2.2~~ The notch shall be made by means of a sharp bladed instrument.

~~3.2.3~~ The notch shall be made at least ¼ inch in width along the outer margin of the flipper.

~~3.2.4~~ The notch shall taper to a sharp point at least ½ inch deep.

~~3.2.5~~ The lobster shall be immediately returned to the water upon completion of the notch.

~~3.3~~ It is unlawful to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a V-notch.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****OFFICE OF THE SECRETARY**

Statutory Authority: 7 Delaware Code, Chapter 70 (7 **Del.C.** Ch. 70)
7 **DE Admin. Code** 101

Secretary's Order No.: 2019-CCE-0035

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 101:
*Regulations Governing Delaware's Coastal Zone***

Date of Issuance: August 14, 2019

Effective Date of the Amendment: September 11, 2019

101 Regulations Governing Delaware's Coastal Zone

Pursuant to 7 **Del.C.** §7005(b) and (c), the Secretary of the Department of Natural Resources and Environmental Control ("Department," "DNREC") seeks the approval of the Coastal Zone Industrial Control Board ("CZICB") to amend 7 **DE Admin. Code** 101: *Regulations Governing Delaware's Coastal Zone* ("Coastal Zone Regulations"). The Department, working in consultation and cooperation with the CZICB, developed the proposed amendments to 7 **DE Admin. Code** 101 ("Amendments").

This action is necessitated due to the signing of the *Coastal Zone Conversion Permit Act* ("CZCPA") by Governor John Carney on August 2, 2017. The CZCPA amended the *Delaware Coastal Zone Act* (codified at 7 *Del.C.* Chapter 70). The CZCPA authorizes DNREC to issue Conversion Permits for the construction and operation of new heavy industry uses within the 14 existing sites of heavy industry use within Delaware's Coastal Zone areas, as defined within the Act, 7 **Del.C.** §7002(i). It also authorizes DNREC to issue Conversion Permits for the bulk transfer of products under certain circumstances. Accordingly, DNREC is now required to amend its existing Coastal Zone Regulations, to include additional regulatory language concerning the issuance of such Conversion Permits no later than October 1, 2019.

Under the authority vested in the DNREC Secretary, pursuant to 7 **Del.C.** §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the hearing record ("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

On June 28, 1971, the *Delaware Coastal Zone Act* ("Act") was signed by then-Governor Russell Peterson, recognizing that the coastal areas of Delaware are the most critical areas for the future of the State in terms of quality of life. The Act is designed to protect Delaware's coastal areas from the destructive impacts of heavy industrialization and offshore bulk product transfer facilities. Furthermore, the Act is intended to protect the natural environment of the State's coastal areas, and safeguard their use primarily for recreation and tourism.

To accomplish these objectives, the Act has strictly prohibited the construction of new heavy industry use in Delaware's Coastal Zone, as that industry was determined to be incompatible with the protection of the natural environment in those areas. The Act has also historically prohibited new offshore bulk product transfer facilities in the Coastal Zone, outside of the Port of Wilmington, or at established light manufacturing facilities that have, or may yet receive, a Coastal Zone Permit from the Department. The Act regulates existing heavy industrial activities, as well as new and existing manufacturing activities in Delaware's Coastal Zone. Certain new activities, such as the bulk transfer of raw materials, and some heavy industry facilities (oil refineries, incinerators, paper mills, lightning gas terminals, and steel manufacturing plants) are not allowed in the Coastal Zone.

The Department is charged with the administration of the Act, pursuant to 7 **Del.C.** §7005(a). The Act provides the DNREC Secretary with the authority to promulgate regulations to carry out the requirements contained within the Act, provided that such regulations are approved by the CZICB. 7 **Del.C.** §7005(b). To that end, the Department promulgated the *Regulations Governing Delaware's Coastal Zone* (7 **DE Admin. Code** 101, effective May 11, 1999).

Over the past twenty years, the Coastal Zone Regulations have provided guidance to the business community, State officials, and the general public as to what is expected and required of them with regard to the implementation of this Act, including, but certainly not limited to, a description of what must be included in any Application for a

Coastal Zone Status Decision, key definitions of the Department's Coastal Zone Act Program, and the requirements to submit an Application for a Coastal Zone Act ("CZA") Permit (including the offset requirement). An applicant must have the CZA Permit prior to beginning construction activities for any proposed project.

Under the provisions of the Act, heavy industry or bulk product transfer facilities were allowed to continue to operate on fourteen (14) sites located within the Coastal Zone, as they were already in operation as of June 28, 1971, and were therefore "grandfathered" into the Department's Coastal Zone Permitting Program. Those 14 sites are referred to as "nonconforming uses" under both the Act and the Department's Coastal Zone Regulations. As the years passed since the Act's inception, however, some of those sites became dormant, or underutilized, and the prior use of the same was abandoned. The Department's Coastal Zone Regulations specifically prohibited conversion of any of those 14 grandfathered sites to a new heavy industry use, even if one of those sites were to become abandoned.

On August 2, 2017, the *Coastal Zone Conversion Permit Act* ("CZCPA") formally amended the original Act by the establishment of a process to allow for the productive reuse of the 14 existing sites of heavy industry use within Delaware's Coastal Zone. Specifically, the CZCPA authorizes DNREC to issue Conversion Permits, which allow for the construction and operation of an alternative or additional heavy industry use at any of the 14 existing heavy industry use sites within Delaware's Coastal Zone. It also authorizes DNREC to issue Conversion Permits for bulk transfer of products produced within, or desired for, a facility within the Coastal Zone, and for the bulk transfer of agricultural products without regard to origin or destination.

The CZCPA necessitates the Department to promulgate amendments to its existing Coastal Zone Regulations, specifically, to add supplemental regulatory language therein concerning the permitting and issuance of Conversion Permits. The Department was further directed by the 149th General Assembly to finalize its promulgation of the Amendments on or before October 1, 2019. As previously noted, the Amendments must also be approved by the CZICB, prior to finalization, pursuant to 7 **Del.C.** §7005(b) and (c).

In order to be in compliance with all relevant statutory requirements, and in recognition of the diversity of interests surrounding Delaware's Coastal Zone, the Department began its promulgation process in this matter with the convening of a Regulatory Advisory Committee ("RAC"). The RAC was charged by the Department with the development, by consensus, to the greatest degree possible, the conceptual framework and approach to these Amendments. To ensure an effective and efficient process, the Department appointed a RAC Chair, and retained the services of Patrick Field, Facilitator, from the Consensus Building Institute. The RAC Chair was Justice Randy J. Holland, who served on the Delaware Supreme Court for over 30 years, and retired in March 2017.

Given the strong public interest in the passage of the CZCPA (and the necessary development of additional regulatory language to administer the same), the Department and the RAC engaged the public in the following ways:

- **Public Workshops:** DNREC held two public workshops in November 2017, involving some 80 attendees, to obtain feedback on the statutory changes to the CZA and the convening process for the RAC;
- **Fenceline Community Meetings:** DNREC staff engaged with various neighborhood groups and associations during the early work of the RAC. The goal of such engagement was to help fenceline communities, which are communities near or adjacent to a heavy industry use site, to understand the regulatory development process and inform them of ways to provide input;
- **Open Houses:** DNREC and the RAC held three Open Houses in late February 2019 to obtain feedback from the public on the RAC's preliminary recommendations. The Open Houses were held in Claymont, Delaware City, and Wilmington on different nights. The Open Houses included an overview presentation of the legislative changes and the RAC process in video form, as well as information stations, staffed by DNREC employees, on the RAC's preliminary recommendations. During and after the Open Houses, the public was offered the opportunity to provide focused, written feedback on the RAC's preliminary recommendations, with the purpose of informing future RAC discussions and final recommendations;
- **RAC Meetings:** All RAC meetings were publicly noticed, open to the public, and included a time for public comment;
- **Work Group Meetings:** All Work Group meetings were publicly noticed and open to the public;
- **Website:** The RAC's publicly available website served as a repository of information relating to the RAC and the CZA, including background information, meeting materials, public comment information, and information about the stakeholder engagement process in general; and
- **Public Comment Process:** Public comments were welcomed throughout the RAC process, including during the RAC meetings, at the three public Open Houses, and via a written form available online.

The RAC was the official body charged with providing recommendations to the Department as to the regulatory

approach and content of the aforementioned Amendments, which will govern the Department's issuance of the aforementioned Conversion Permits. The RAC developed recommendations on several key topics, as follows: (1) Bulk Product Transfer Facilities; (2) Plans for Potential Impacts of Sea Level Rise and Coastal Storms; (3) Economic Effect; (4) Environmental Impact; (5) Offsets; (6) Financial Assurance; and (7) Cross-Cutting Issues. These recommendations were fully addressed in the *Final Report and Recommendations of the CZCPA Regulatory Advisory Committee* (04/17/19) ("RAC Report"), which was included as part of the Department's Exhibit package and incorporated into the Record at the time of the joint public hearing held in this matter on June 24, 2019.

Both DNREC and the CZICB are subject to the provisions of the Administrative Procedures Act ("APA"), which governs the adoption of regulations, pursuant to 29 **Del.C.** §10161(a)(10) and (b). The regulatory adoption process is set forth in Subchapter II of Chapter 101 of Title 29. The public hearing of June 24, 2019, held jointly by DNREC and the CZICB (and formally noticed as such), provided the public yet another opportunity to participate in this regulatory development process by offering comment for inclusion into the Record.

Both the Department and the CZICB have the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §7005(b) and (c). Following the receipt of the recommendations contained within the RAC Report as described above, the Department published the initial proposed Amendments in the June 1, 2019 *Delaware Register of Regulations*. Thereafter, the joint public hearing concerning this matter was held on June 24, 2019, at which time the aforementioned Amendments were presented and thoroughly vetted to members of the public. Pursuant to 29 **Del.C.** §10118(a), the Record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The Record closed for comment in this matter on July 9, 2019, with public comment having been received by the Department during all phases of this formal promulgation.

After the comment period formally closed on July 9, 2019, the Department's Coastal Zone Program staff, located within the Division of Climate, Coastal and Energy ("DCCE"), performed a thorough review of the Record, including all of the comments received on the proposed Amendments. The full range of comments contained in the Record includes not only those from members of the public, but from other contributors as well, such as the Delaware Audubon Society, the Delaware Ornithological Society, the Delaware City Refining Company, Sunoco Partners Marketing & Terminals, L.P., and the Environmental & Natural Resources Law Clinic of Widener University. All proper notification and noticing requirements concerning this matter were met by both DNREC and CZICB. Proper notice of the hearing was provided as required by law.

As a result of the review performed during the post-hearing phase of this promulgation, and, in consideration of all the public comments received on the proposed Amendments, the DCCE staff determined that some changes to the Department's initial proposed Amendments were necessary. These changes, which were non-substantive in nature, were made for the purposes of (1) clarification of the proposed regulatory language; (2) removal of some language deemed redundant in nature; (3) improved reflection of historical data (as contained in the appendix section); and (4) correction of various clerical and grammatical error contained therein.

In those instances where revisions were made to the Amendments for clarification purposes, no changes were made to any substantive content contained therein, or to any previously vetted requirements of the Department's Coastal Zone Program. Rather, changes were made only to further define and clarify the Department's proposed Conversion Permit approval process.

At the request of the presiding Hearing Officer, a Technical Response Memorandum ("TRM") was prepared by the Department's DCCE staff to serve as a comprehensive summary of the comment received in this matter. The TRM, dated August 5, 2019, not only provides a thorough discussion of the comment received in this matter, but also provides the DCCE's responses and recommendations concerning the same.

The Department's TRM reflects each instance where the Department determined that certain changes to the initial proposed Amendments were necessary, and provides the reasoning for such revisions. Furthermore, the TRM notes that none of the comments received in this matter warranted a substantive change to the proposed Amendments, and that the changes which have been made are non-substantive in nature, as described above. As such, no further re-noticing or re-publication of the Department's proposed *revised* Amendments is necessary in this matter.

It should be noted that comments offered for the Record in this matter voiced specific legal concerns regarding the Department's regulatory adoption process in this matter, as well as the CZICB's approval process concerning the same. To serve as an accompanying document to the TRM noted above, a Legal Issues Memorandum ("LIM"), dated July 29, 2019, was prepared by Ralph K. Durstein, III, Esquire, Deputy Attorney General. The LIM addresses

those concerns which pertain to the regulatory adoption processes noted above, and thoroughly responds to the same.

Hearing Officer Lisa A. Vest prepared her Report dated August 6, 2019 ("Report"), which expressly incorporated the Department's proposed *revised* Amendments, the RAC Report, the TRM, and the LIM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's DCCE experts and established by the Hearing Officer's Report, I find that the proposed *revised* amendments to 7 **DE Admin. Code** 101: *Regulations Governing Delaware's Coastal Zone*, are well-supported. I further find that the Department's DCCE experts fully developed the record to support adoption of these *revised* Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed revised regulatory Amendments be promulgated as final.

In conclusion, the following reasons and conclusions are entered:

1. The Department and the CZICB have the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 **DE Admin. Code** 101: *Regulations Governing Delaware's Coastal Zone*, pursuant to 7 **Del.C.** §7005(b) and (c);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting the proposed *revised* Amendments as final, pending approval of the CZICB, pursuant to 7 **Del.C.** §7005(b) and (c);

3. The Department and the CZICB provided adequate public notice of the initial proposed Amendments, and all proceedings associated with the same, in a manner required by the law and regulations. The Department and the CZICB also provided the public with an adequate opportunity to comment on the Amendments, including at the time of the public hearing held on June 24, 2019. The Department held the Record open through close of business on July 9, 2019, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed *revised* Amendments will enable both DNREC and CZICB to comply with the recent changes to *Delaware's Coastal Zone Act*, specifically, the CZCPA, and enable the Department's *Regulations Governing Delaware's Coastal Zone* to be amended to remain consistent with the same;

5. The Department has reviewed these proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible, and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The proposed regulatory Amendments, as published in the June 1, 2019 *Delaware Register of Regulations*, and then as *revised*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed *revised* Amendments, pending approval by the CZICB, as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

IT IS SO ORDERED, this 14th day of August, 2019.

Shawn M. Garvin
DNREC Secretary

**APPROVED this 26th day of August, 2019, by
The Coastal Zone Industrial Control Board:**

Richard Lagatski, Chair (absent)

John S. Burton, Sr.

Pamela Meitner

Karen Peterson (voted no)

William Jester (abstain)

Robert L. Baker

Jeffrey Draper

Damian DeStefano (absent)

Bob Wheatley

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

101 Regulations Governing Delaware's Coastal Zone

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

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

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. The proposed changes were published in the Delaware *Register of Regulations* on February 01, 2019 (Vol. 22, Issue 8). Following notice and a public hearing on the proposed adoption of amendments to rules 1.0 *Licensing* and 5.0 *Firearms*, 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 these amendments to *clarify the ramifications of failed test occurrences* and *simplify the process of approving new firearms for constables*.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of these rules will *clarify the ramifications of failed test occurrences* and *simplify the process of approving new firearms for constables*.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendments are well written and describes its intent to adopt the rules to *clarify the ramifications of failed test occurrences* and *simplify the process of approving new firearms for constables*.

Conclusion

7. The proposed rules were published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 et. seq.
9. The Board concludes that the adoption of these rules will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts these amendments pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. These adopted rules replace in their entirety any former rules or regulations heretofore promulgated by the Board.
12. The effective date of this Order shall be *September 11, 2019*.

13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A and executed simultaneously by the Board on the 18th day of July, 2019.

Lt. Colonel Monroe B. Hudson, Jr.
Ralph K. Durstein, III, Esquire

Captain Diane Smith
Mr. John F. Tharan

July 18, 2019

2400 Board of Examiners of Constables

1.0 Licensing

- 1.1 All applicants must submit written testimony from five reputable citizens attesting to good character, integrity, and competency.
- 1.2 All applicants shall be required to submit an application and their fingerprints to the Professional Licensing Section on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 1.3 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the Council on Police Training or a member or employee of a law enforcement organization of any other state or federal jurisdiction.
- 1.4 All applicants who were not prior law enforcement, in any jurisdiction, must meet the minimum training standards as established by the Board. They must also submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position that the applicant is psychologically fit to function as a competent Constable. Proof that the evaluation has been completed shall be provided, with the initial application for constable commission, to the Professional Licensing Section unless there is a documented issue, in which case the complete evaluation will be provided for review by the Board.
 - 1.4.1 Applicants, who were previously commissioned as a constable approved by the Board, and have not been active within the last five years, will be considered for commissions on a case-by-case basis. Applicants, who were a prior constable approved by the Board, and have not been active for over five years, will be required to take an MMPI or the PAI, under the conditions noted in subsection 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.5 Applicants, who were prior law enforcement officers in any jurisdiction in the State of Delaware, and have been away from active law enforcement under five years, will be considered for commissions on a case-by-case basis. Applicants who were prior law enforcement outside the State of Delaware will be required to take, and pass, a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.6 Applicants, who have been law enforcement officers in the past, within or outside the State of Delaware, but have been away from active law enforcement for more than five years, will be required to take an MMPI or the PAI, under the conditions noted in subsection 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.7 All prior law enforcement applicants must take an approved Constable Orientation Overview session and test, approved and administered by a Board approved facility. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy and test.

- 1.8 Applicants who are retired military law enforcement, corrections officers, or probation & parole shall take the Academy and submit to the MMPI or PAI.
- 1.8.1 At the discretion of the Board, for good cause shown, the Academy may be waived.
- 1.9 If an applicant wishes to work for more than one agency, they must submit an application. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section. Any commissioned constable currently employed with an approved entity may, with the approval of the Director, be commissioned to work with any other approved entity for the purpose of new or secondary employment as a constable. The constable will be allowed to work for the new entity upon such approval and receiving their new commission and identification card. Any approval must be affirmed and voted on by the Board at the next scheduled meeting.
- 1.10 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.11 All applicants seeking a commission renewal as a constable shall be required to submit a \$100.00 renewal licensing fee and shall accompany each re-application thereafter.
- 1.12 All commissions will expire on December 31st, two years from the year the commission was first issued. Any commissions needing to be adjusted will be charged a pro-rated fee.

2.0 Suspensions, Revocations and Appeals

- 2.1 The Director of the Professional Licensing Section shall have the power to suspend or revoke the commission of any individual issued a commission under 10 **Del.C.** Ch. 27 who violates the Chapter or the promulgated Rules and Regulations.
- 2.2 The Director of the Professional Licensing Section may issue an emergency suspension of any individual issued a commission, under 10 **Del.C.** Ch. 27, who has been arrested where that arrest could result in the conviction of any misdemeanor or felony that violates the Chapter or the promulgated Rules and Regulations.
- 2.3 Any individual whose commission has been placed on emergency suspension, suspended, revoked, or denied may, within 30 days of such notice, submit a written request of the appeal to the Director of the Professional Licensing Section.
- 2.4 A hearing before the Board will be convened on a date determined by the Board to resolve the appeal.
- 2.5 The Board decision, in writing, will be mailed to the applicant within 10 working days after the hearing.

3.0 Criminal Offenses

- 3.1 For the purposes of 10 **Del.C.** Ch. 27, the Director of the Professional Licensing Section may deny an application, suspend or revoke a commission if the applicant or commissioned individual has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):
- 3.1.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:
- 3.1.1.1 §763 Sexual Harassment;
- 3.1.1.2 §764 Indecent Exposure 2nd Degree;
- 3.1.1.3 §765 Indecent Exposure 1st Degree;
- 3.1.1.4 §766 Incest;
- 3.1.1.5 §767 Unlawful Sexual Contact 3rd Degree;
- 3.1.1.6 §781 Unlawful Imprisonment 2nd;
- 3.1.1.7 §840 Shoplifting;
- 3.1.1.8 §861 Forgery;
- 3.1.1.9 §871 Falsifying Business Records;
- 3.1.1.10 §881 Bribery;

- 3.1.1.11§907 Criminal Impersonation;
- 3.1.1.12§1101 Abandonment of a Child;
- 3.1.1.13§1102 Endangering the Welfare of a Child;
- 3.1.1.14§1105 Crime Against a Vulnerable Adult;
- 3.1.1.15§1106 Unlawfully Dealing with a Child;
- 3.1.1.16§1107 Endangering Children;
- 3.1.1.17§1245 Falsely Reporting an Incident;
- 3.1.1.18§1341 Lewdness;
- 3.1.1.19§1342 Prostitution;
- 3.1.1.20§1343 Patronizing a Prostitute; and
- 3.1.1.21§1355 Permitting Prostitution.

3.1.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities:

- 3.1.2.1 §1136 Violations.

3.1.3 Title 31 Welfare Ch. 39 Adult Protective Services:

- 3.1.3.1 §3913 Violations.

- 3.2 Anyone applying for commission under 10 **Del.C.** Ch. 27 shall not be issued a commission if they have any pending criminal charge(s) for any crimes listed in this Chapter.
- 3.3 The Director of the Professional Licensing Section may suspend anyone commissioned under 10 **Del.C.** Ch. 27 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

4.0 Badges and Vehicle Markings

- 4.1 No person licensed under 10 **Del.C.** Ch. 27 shall wear or display any uniform, patch, badge, seal, vehicle and the markings, letterhead, business card, advertisement, or other form of publication unless first approved by the Board of Examiners.
- 4.2 Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests without proper authorization.
- 4.3 No such items will be approved by the Board if the item will mislead the public by confusing the entity and/or the constables with official law enforcement agencies and/or personnel.
- 4.4 All persons licensed under 10 **Del.C.** Ch. 27 shall wear or display their assigned badge visibly on the outermost garment.
- 4.5 Vehicle Identification
 - 4.5.1 No vehicle utilized for purposes covered by 10 **Del.C.** Ch. 27 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Section.
 - 4.5.2 In the event that a vehicle is not approved by the Board of Examiners pursuant to Section 4.0, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standards and criteria set forth above.
 - 4.5.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or white only. Other color lights must be approved by the Secretary of Safety and Homeland Security. Use of sirens is prohibited.

5.0 Firearms Policy

- 5.1 Section 5.0 shall apply only to individuals licensed under 10 **Del.C.** Ch. 27, while such individuals are acting in the performance of their duties as a constable.
- 5.2 No individual licensed under 10 **Del.C.** Ch. 27 shall carry a firearm unless that individual has first passed an approved firearms course of instruction and an initial qualification administered by an

approved firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course shall be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year. Should the initial qualification course occur after September 30th and before December 31st, a waiver of the 2nd day qualifier may be obtained through a petition to the Director.

- 5.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 10 **Del.C.** Ch. 27 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory "low light" shoot which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.
- 5.3.1 An individual not meeting the minimum qualifications set forth in subsection 5.3 may have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 5.4 Only the handguns with the following calibers are permitted:
- 5.4.1 9mm;
 - 5.4.2 .357;
 - 5.4.3 .38;
 - 5.4.4 .40;
 - 5.4.5 .45; or
 - 5.4.6 .357 SIG.
- 5.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.6 Under no circumstances will anyone under this Section be allowed to carry any type of weapon that is not described herein.
- 5.7 All individuals must meet the minimum qualifications set forth in subsection 5.3 with the same make/model/caliber of weapon that he/she will carry.
- 5.8 All ammunition must be factory fresh (no re-loads).
- 5.9 The minimum passing score is 80%.
- 5.10 All firearms licenses are valid for a period of one year, subject to proof of compliance of Section 5.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15th of each year for the previous calendar year within 30 days of the date of the qualification shoot.
- 5.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as a constable, other than the one on file with the Professional Licensing Section, prior to making any change, he/she must have first seek approval from the Director of Professional Licensing after by submitting a request in writing of the make, model, and caliber of the firearm that the individual or organization is seeking to change to. If approved, the individual must submit certification of a day and low light qualification with the new weapon. Upon approval, Once completed, the individual can begin to carry the new weapon and the prior qualification of a different the previous weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Should the day and low light qualification with the new weapon occur after September 30th, a waiver of the 2nd day qualifier may be obtained through a petition to the Board. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional License Section. Proof of compliance with Section 5.0 by submission of shoot certification

forms to the Professional Licensing Section, must be received within 30 days of the date of the qualification shoot.

~~5.11.1 An individual may not change weapons after September 30th, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and submit certification of a day and lowlight qualification to the Professional Licensing Section prior to carrying the weapon.~~

5.12 Firearms Instructors providing instruction under Section 5.0:

5.12.1 Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.

5.12.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)

5.12.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify commissioned individuals.

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

6.1 Anyone commissioned under 10 **Del.C.** Ch. 27 wishing to carry law enforcement style batons, inflammatory agent sprays, chemical sprays and handcuffs must have completed a training program consistent with the manufacturer's standards, on each and every weapon/item. All certifications/re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.

6.1.1 Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director.

6.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the weapon/item. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

7.0 **Conducted Electrical Weapon (CEW)**

7.1 In order for a constable to carry/use a conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.

7.2 CEW Instructors

7.2.1 All CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

8.0 **Canine**

8.1 Anyone commissioned under 10 **Del.C.** Ch. 27 wishing to use a canine, both the constable and the canine must have completed a training program consistent with canine law enforcement standards. All certifications/re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.

8.1.1 Under no circumstances would a person be permitted to substitute one canine for another, unless first approved by the Director.

- 8.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the canine standards. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

9.0 Minimum Training Standards and In-Service Training

- 9.1 The Constable Academy, administered through a Board approved facility, shall instruct applicants in the minimum training standards established by the Board. The Academy shall be a minimum of 180.5 hours and include, but is not limited to the following courses:
- Introduction to law enforcement and constables; constitution and bill of rights; other police agencies/fire departments/ambulance jurisdictions; basic defensive driving; traffic investigations; criminal investigations; sex crimes; criminal code; handling person with disabilities; interventions with people suffering with mental health and substance abuse; civil disobedience; labor disputes (crowd control); active shooter; courtroom procedure and demeanor; cultural diversity and community relations; domestic violence; basic first aid; CPR; AED; NIMS 700; ICS 100; information systems – communications, report writing, DELJIS; interview/interrogation techniques; manual traffic control; juvenile procedures; laws of evidence and search and seizure; laws of arrest; police communication and crisis intervention; police discipline and ethics; baton/nightstick/pr24/chemical spray/handcuffing; officer survival/defensive techniques; patrol procedures; drug identification and controlled substances; canine; and 4th amendment.
- 9.2 Applicants attending the Academy must take and pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the Academy again.
- 9.2.1 Applicants wishing to attend the Academy must be employed and sponsored by an approved constable entity for acceptance into the Academy, with the exception of the provision in subsection 9.2.2.
- 9.2.2 Other attendees, not affiliated with a constable entity, must be approved by the Director, by showing the cause and need to attend such training/Academy. The Director can only consider attendees who are currently employed by a local, state or federal government entity.
- 9.3 In-service training shall be completed every year through a Board approved facility. Odd years will be eight hours of classroom instruction. Even years will be done by completing an on-line modular and test.
- 9.3.1 All in-service training courses must be approved by the Board.
- 9.3.2 Failure to complete the in-service training every year shall be grounds for suspension or revocation of a current commission. Any commissioned individual not obtaining the in-service training for a given year by the last class offered shall be placed on emergency suspension immediately. Any training missed, or not completed, by a commissioned individual must be completed before the emergency suspension may be administratively lifted. On-line training must be made up on-line and classroom instruction must be made up in person in the classroom. Notwithstanding the foregoing, the Board may consider extenuating circumstances for reinstatement at its discretion.
- 9.3.3 Any in-service training test must be passed with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the individual to take the training again.
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DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)
9 **DE Admin. Code** 201

ORDER

201 Child Placing Agencies

NATURE OF PROCEEDINGS

The Department of Children, Youth and Their Families (“DSCYF”) initiated proceedings to adopt State of Delaware Regulations for Child Placing Agencies. The proceedings were initiated pursuant to 31 **Delaware Code**, Sections 341-345, 29 **Delaware Code**, Section 9003(7), and 9 **DE Admin. Code** 201. This regulation shall take effect on September 15, 2019.

On May 1, 2019, DSCYF published its notice of proposed regulations pursuant to 29 **Delaware Code**, Section 10115 in the Delaware *Register of Regulations*. Written comments were accepted until May 31, 2019. Comments were received and DSCYF and child placing agency representatives evaluated these comments and factual evidence to revise some regulations. The results of the evaluation of the comments received regarding the May 1, 2019 posting are summarized in the accompanying “Summary of Evidence.”

SUMMARY OF EVIDENCE

In accordance with Delaware law, OCCL published DELACARE: Regulations for Child Placing Agencies in the May 2019 Delaware *Register of Regulations*. The comments were reviewed. Comments were provided by the following:

- Ann C. Fisher, Chairperson, Governor’s Advisory Council for Exceptional Citizens
- J. Todd Webb – Chairperson, State Council for Persons with Disabilities
- Anne Pedrick, MS, Executive Director, Child Death Review Commission
- R. T. Leicht, SFPE, Chief Fire Protection Specialist, Delaware State Fire Marshals Office

Ann C. Fisher, Chairperson, Governor’s Advisory Council for Exceptional Citizens and J. Todd Webb – Chairperson, State Council for Persons with Disabilities

Comment: The proposed amendments to the Delacare regulations mostly replicate language used in the model standards, however there are a few specific additions to the eligibility requirements for foster families appearing in both sets of rules that are potentially of concern for individuals with disabilities who may wish to become foster parents.

First, the summary of the proposed regulations indicates the intention to require that at least one applicant in a prospective foster family must have “functional literacy,” although that term is not defined in the subsequent regulations. The proposed regulations state at 39.19 that in evaluating an application from a potential foster parent, “a licensee shall ensure an applicant is able to read and write.” The model standards in the CB memo do not define functional literacy either; however the memo further explains that the functional literacy requirement is to “ensure at least one applicant reads and writes at the level necessary to participate effectively in the community in which they live.” CB Memo at 4. “[H]aving the ability to read medication labels” is provided as a specific example.

Agency Response: The agency appreciates and acknowledges these comments. The agency has added the following definition, “Functional literacy” means the ability to read and understand information to perform daily parenting activities, including the ability to read medication labels. In addition, the agency revised 39.19 to read, “A licensee shall ensure an applicant has functional literacy.”

The proposed amendments require that licensed agencies have policies to ensure “that the foster parent is able to communicate with the child.” See proposed regulations at 26.1.4. This is not explained further. The CB

Memo simply states that “[t]he communication standards are flexible in that applicants must be able to communicate with the Title IV-E agency, service providers, and a child in foster care.” CB Memo at 4. Additionally in an end note the CB Memo clarifies that the requirement had initially been worded to require communication “in the child’s own language,” however this language was stricken due to “comments about the availability of communication aids, non-verbal communication and other efforts to address language barriers.” CB Memo at 13. While this caveat indicates that American Sign Language and augmentative communication devices could therefore be considered suitable, there is no specific reference to children or foster parents with disabilities in the discussion of communication requirements. Also, the proposed amendments to the Delacare regulations do not provide this guidance. Council suggests adding language to the requirements regarding literacy and communication to make clear that communication does not have to be “in the child’s own language,” and that a prospective foster parent could satisfy the requirement with or without the assistance of communication aids, non-verbal communication or other accommodations.

Agency Response: The agency appreciates and acknowledges these comments. The agency has revised 26.1.4 to read, “Addresses the child’s need to preserve his or her cultural, racial, and religious identities and that the foster parent is able to communicate with the child with or without the assistance of communication aids, non-verbal communication, or other accommodations.”

Comment: Second, another potential concern is that the proposed amendments require in numerous provisions (see, e.g., 39.7) that any history of drug or alcohol abuse or treatment of any family household member must be disclosed (the model standards have the same requirement). This requirement supplements existing language in Delaware’s regulations stating an applicant must have “demonstrate[d] emotional stability” as well as “freedom from abuse of alcohol or medications and freedom from use of any illegal drug. See existing text of 39.7. Additionally, the existing regulations require that “a staff member diagnosed with a mental illness that might create a significant risk of harm to children does not work with children until a health care provider states children are not at risk.” See existing text of 19.5. Per the definitions provided in the existing regulations a “staff member” includes “an agency employee, contractor or volunteer working more than five days or 40 hours a year.” See existing text of 4.0. While it is unclear, this could be read to include foster parents.

There are no additional definitions of terms such as “emotional stability” or “significant risk of harm to children” in the regulations, as they exist now or with the proposed amendments, to provide guidance as to how a licensee should make determinations. This could adversely affect foster families who have a member with a diagnosed mental illness, even if they are receiving appropriate treatment, or is in recovery from substance use disorder, as the regulations could be read to imply that an individual is unsuitable solely on the basis of a history of treatment for mental illness or substance use disorder. Council would suggest modifying the proposed language regarding substance abuse and mental health histories to make it clear that having such a history is not disqualifying on its own. It would also be helpful to identify factors that should be taken into consideration when determining suitability of a potential foster parent who discloses a history of mental health disorders or substance abuse, or treatment for such conditions.

Agency Response: The agency appreciates and acknowledges these comments. The agency revised 39.7 to read, “A licensee shall ensure an applicant demonstrates emotional stability, good character, a responsible adult lifestyle, and freedom from abuse of alcohol or medications and freedom from use of any illegal drug. A licensee shall ensure an applicant and household members disclose substance abuse issues including any history of drug or alcohol abuse or treatment. A disclosure of previous drug or alcohol abuse does not disqualify an applicant on its own.” In regard to a staff member being considered a foster parent, the agency added the following text to the staff member definition, “A foster parent is not considered a staff member.”

Comment: Third, section 40.1.28 of the proposed regulations require that an applicant has “reliable and safe transportation,” which is defined to include “a properly maintained vehicle or access to reliable public transportation.” This mirrors language in the CB memo regarding transportation. Some advocates see this as a step in the right direction to being more inclusive of potential foster parents, as some states specifically require foster parents to have a motor vehicle. See e.g., *States Are Struggling to Meet Foster Care Needs. New Federal Rules Could Help.* (Dec. 6, 2018), available at <https://www.governing.com/topics/health-human-services/sl-foster-care-demands-states-federal-rule.html>. The CB memo also notes that all “references to ‘only adults in the home’ providing transportation” had been removed. See CB Memo at 14, endnote x. This makes it clear that in the case of a foster family where the adults in the household cannot drive for whatever reason, transport by third parties could satisfy the requirements. The CB Memo also clarifies that the “license, insurance and safety restraint requirements apply only to vehicles of applicants, family or friends that are used to transport a child in foster care.” *Id.* Council

suggests the adding language similar to that used in the CB memo to make it clear that “safe transport arrangements with family friends, case workers and teen household members” would comply with the transportation requirements.

Agency Response: The agency appreciates and acknowledges these comments. The agency revised 40.1.28 to read, “A licensee shall ensure an applicant has reliable and safe transportation with safety restraints, as appropriate for the child. Reliable transportation includes a properly maintained vehicle, access to reliable public transportation, or safe transportation arrangements with family friends, case workers, or teen household members.”

Comment: Fourth, the proposed amendment mentions that there shall be no more than six children in foster care placed in one home. See proposed regulations at 26.23. The rule provides for a number of exceptions, including “[t]o allow a family with special training or skills to provide care to a child who has a severe disability.” Council notes that there is not any specific guidance as to what constitutes a “severe disability.” The Children’s Bureau also declined to define the term “child with a severe disability.” See CB Memo at 2. The proposed regulations do not make clear what alternatives could be available in the case that there are already at least six foster children placed with the only eligible foster parents who have the necessary training to address a child’s specific needs. While certainly the proposed regulations don’t *require* that a child with a severe disability be placed with a foster parent even if they already have six or more foster children in their home, there may be many cases where placement in a foster family home with fewer children would be better suited to the child’s needs and the additional demands a “severe disability” may place upon a foster parent. Council suggests that the regulations should provide a definition of the term “child with a severe disability”. It would also be helpful to add language to indicate that such placement would be an individualized determination, and that all available options should be considered in addition to placing a child with severe disabilities in a foster home already at capacity.

Agency Response: The agency appreciates and acknowledges these comments. In addition to federal limits, contracts for child placing agencies require that no more than six children are placed in a foster home. In addition, creating a definition for severe disability creates problems because it may disqualify someone who has significant needs but may not meet the standards of the definition. The regulation will remain as written.

Anne Pedrick, MS, Executive Director, Child Death Review Commission

Comment: SUMMARY To require age-appropriate sleeping equipment for a child who is zero to 36 months in age; and

- **35.0 Sleeping Arrangements**

35.2 A licensee shall ensure a foster parent uses safe sleep practices as stated by the American Academy of Pediatrics and places an infant on his or her back when putting the infant down to nap or sleep. Written documentation from the child’s health care provider is needed to use a different sleep position.

Agency Response: The agency appreciates and acknowledges these comments. The agency revised 35.2 as follows, “A licensee shall ensure a foster parent uses safe sleep practices as stated by the American Academy of Pediatrics and places an infant on his or her back when putting the infant down to nap or sleep.”

Comment: 35.3 A licensee shall ensure each child has and sleeps in his or her own age-appropriate crib or bed that has a mattress covered with a clean fitted sheet. A licensee shall ensure pillows, top sheets, and blankets are provided for children sleeping in beds over the age of 12 months.

Agency Response: The agency appreciates and acknowledges these comments. The agency revised 35.3 as follows, “A licensee shall ensure each child has and sleeps in his or her own age-appropriate crib or bed that has a mattress covered with a clean fitted sheet. A licensee shall ensure pillows, top sheets, and blankets are provided for children over the age of 12 months sleeping in beds.”

R. T. Leicht, SFPE, Chief Fire Protection Specialist, Delaware State Fire Marshals Office

Comment: In both points, you may want to change the words “*at least one smoke detector*” and the words “*at least one carbon monoxide detector*” to “at least one smoke detector or smoke alarm” and “at least one carbon monoxide detector or carbon monoxide alarm”. Although commonly used interchangeably, there is a distinct difference between a detector and an alarm. Detectors are devices that are wired back to a panel that forwards a signal to other horn/strobe devices to go off. Alarms are stand-alone in that they detect the condition and then sounds themselves without having to initiate separate and independent devices. I believe you intended to use the word “alarms” in both cases but either detectors or alarms would be an acceptable installation.

FINAL REGULATIONS

Comment: This only applies to the 2nd point (carbon monoxide). The way it reads, it seems like the detectors/alarms are always required. However, if there is no CO producer in the home, than requiring the detector/alarm is not necessary. Producers would be gas fired appliances, fireplace, or attached garage. So a home that is all electric and has no fireplace and the garage is detached from the home (or non-existent) would not seem to need CO detectors/alarms.

A brochure for the recently enacted Carbon Monoxide Law reads as follows:

16 Del. C. Part VI, Chapter 66C, §6602C requires the owner of any new and existing lodging establishment to install carbon monoxide detection devices if a dwelling unit or sleeping unit has either of the following:

- A fossil-fuel burning heater or appliance, a fireplace, or other feature, fixture, or element that emits carbon monoxide as a byproduct of combustion.
- An attached garage.

Agency Response: The agency appreciates and acknowledges these comments. The agency revised 40.1.8 as follows, "A licensee shall ensure a foster home has at least one working hard-wired smoke detector or battery operated smoke alarm on each level of occupancy of the home and at least one near all sleeping areas. The smoke detector or smoke alarm must be listed by a nationally recognized testing laboratory and properly installed per the product's instructions. A licensee shall ensure a foster home has a working carbon monoxide detector or carbon monoxide alarm on each level of occupancy of the home and at least one near all sleeping areas if the home has a fossil-fuel burning heater or appliance, a fireplace, or an attached garage."

NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for child placing agencies as authorized in the Delaware Code, Title 31, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act". All previous requirements and regulations pertaining to such facilities are void. These regulations shall take effect on September 15, 2019.

Josette Manning, Secretary	8/2/19
Department of Services for Children, Youth and Their Families	Date

Treneer Parker, Director	8/5/19
Division of Family Services	Date

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

201 Child Placing Agencies

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 1103

ORDER

1103 Instructions for Preparation of Franchise Tax

IT IS HEREBY ORDERED, this 5th day of August, 2019, that amended Regulations 1103 and 1110 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is September 12, 2019. These Regulations are adopted by the State Bank Commissioner in accordance with Title

5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the July 1, 2019 issue of the Delaware *Register of Regulations*. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before August 2, 2019. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Delaware 19901, and that copies were available upon request.

2. No written comments concerning the proposed amended Regulations were received on or before August 2, 2019.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 1103 and 1110 as proposed. These amended Regulations were published as proposed amended Regulations in the July 1, 2019 issue of the Delaware *Register of Regulations* and are incorporated herein by reference.

Robert A. Glen
State Bank Commissioner

1103 Instructions for Preparation of Franchise Tax 5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ ~~XXXX/XXXX~~ **September 12, 2019**

1.0 This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1104 and 1105, respectively. Regulations 1106, 1107 and 1108 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 1110, 1111 and 1112 are applicable to resulting branches in this State of out-of-state banks.

2.0 Definitions

“Bank” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“Banking organization” means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“International Banking Facility” means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

“**International Banking Transaction**” shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 **Del.C.** §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to and Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

“**National Bank**” means a banking association organized under the authority of the United States and having a principal place of business in this State.

“**Net Operating Income Before Taxes**” means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

“**Out-of-State Bank**” has the same meaning as in §795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

“**Resulting Branch In This State Of An Out-of-State Bank**” has the same meaning as in §1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

“**Securities Business**” means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities. For purposes of this regulation and Title 5, Section 1101(a)(1)b, a subsidiary that is a bank or insured institution, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, is not considered to be “engaged in the sale, distribution or underwriting of, or dealing in, securities”.

“**Trust Company**” means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Estimated Franchise Tax

- 3.1 A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.
- 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required

above in subsection 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.

- 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1104.
- 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
- 3.5.1 The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101;
 - 3.5.2 Adjusted for any estimated income from an insurance division or subsidiary;
 - 3.5.3 Less any deductions set forth in 5 **Del.C.** §1101;
 - 3.5.4 Multiplied by .56 to arrive at estimated taxable income;
 - 3.5.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
 - 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 3.5.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
 - 3.5.9 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].
- 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
- 3.6.1 40% due on or before June 1 of the current taxable year;
 - 3.6.2 20% due on or before September 1 of the current taxable year;
 - 3.6.3 20% due on or before December 1 of the current taxable year.

4.0 Final Franchise Tax

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization may file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income, except as otherwise required by 5 **Del.C.** §904.
- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1105.
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 4.4.1 The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101;
 - 4.4.2 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary);
 - 4.4.3 Less any deduction set forth in 5 **Del.C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction);
 - 4.4.4 Multiplied by .56 to arrive at "taxable income";

- 4.4.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
- 4.4.6 The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
- 4.4.7 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
- 4.4.8 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
- 4.4.9 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

5.0 Payment of Final Franchise Tax

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable to the State of Delaware and directed to the Office of the State Bank Commissioner.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
 - 6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
 - 6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- 6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year.
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

7.0 Penalty - Late Payment of Final Franchise Tax

- 7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

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- 8.1 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 1101 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or any later date allowed as provided in subsection 4.1 above.
- 8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.
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OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 1110

ORDER

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks

IT IS HEREBY ORDERED, this 5th day of August, 2019, that amended Regulations 1103 and 1110 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is September 12, 2019. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the July 1, 2019 issue of the Delaware *Register of Regulations*. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before August 2, 2019. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 43 South DuPont Highway, Edgehill Shopping Center, Delaware 19901, and that copies were available upon request.

2. No written comments concerning the proposed amended Regulations were received on or before August 2, 2019.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 1103 and 1110 as proposed. These amended Regulations were published as proposed amended Regulations in the July 1, 2019 issue of the Delaware *Register of Regulations* and are incorporated herein by reference.

Robert A. Glen
State Bank Commissioner

1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks

5 Del.C. Ch. 11

Effective Date: ~~February 11, 2017~~ ~~XXXX/XXXX~~ **September 12, 2019**

1.0 This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1111 and 1112, respectively.

2.0 Definitions

“**Bank**” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“**Banking organization**” means:

A bank or bank and trust company organized and existing under the laws of this State;

A national bank, including a federal savings bank, with its principal office in this State;

An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;

A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“**International Banking Facility**” means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

“**International Banking Transaction**” shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 **Del.C.** §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

“**National Bank**” means a banking association organized under the authority of the United States and having a principal place of business in this State.

“**Net Operating Income Before Taxes**” means the total net income calculated in accordance with Section 9.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

“**Out-of-State Bank**” has the same meaning as in §795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. §1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. §21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

“**Resulting Branch In This State Of An Out-of-State Bank**” has the same meaning as in §1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

“**Securities Business**” means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities. For purposes of this regulation and Title 5, Section 1101(a)(1)b, a subsidiary that is a bank or insured institution, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, is not considered to be “engaged in the sale, distribution or underwriting of, or dealing in, securities”.

“**Trust Company**” means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Estimated Franchise Tax

- 3.1 A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.
- 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in subsection 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1111.
- 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
 - 3.5.1 The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 1101;
 - 3.5.2 Adjusted for any estimated income from an insurance division or subsidiary;
 - 3.5.3 Less any deductions set forth in 5 **Del.C.** §1101;
 - 3.5.4 Multiplied by .56 to arrive at estimated taxable income;
 - 3.5.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
 - 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 3.5.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
 - 3.5.9 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the credit(s)].
- 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
 - 3.6.1 40% due on or before June 1 of the current taxable year;
 - 3.6.2 20% due on or before September 1 of the current taxable year;
 - 3.6.3 20% due on or before December 1 of the current taxable year.

4.0 Final Franchise Tax

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank may file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.
- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1112.
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 4.4.1 The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No.1101;
 - 4.4.2 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary);
 - 4.4.3 Less any deduction set forth in 5 **Del.C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction);
 - 4.4.4 Multiplied by .56 to arrive at "taxable income";
 - 4.4.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
 - 4.4.6 The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 4.4.7 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 4.4.8 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c).
 - 4.4.9 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the credit(s)].

5.0 Payment of Final Franchise Tax

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

- 6.1.1 The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year, over;
- 6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- 6.2 The period of the underpayment shall run from the date the estimated franchise tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year.
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.

7.0 Penalty - Late Payment of Final Franchise Tax

- 7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

- 8.1 Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No.1101 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or any later date allowed as provided in subsection 4.1 above.
- 8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation 1101 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

9.0 Separate Accounting by Resulting Branches

- 9.1 Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:
 - 9.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 325;
 - 9.1.2 Liabilities;
 - 9.1.3 Income and gain;
 - 9.1.4 Expense and loss.
- 9.2 Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.
- 9.3 Determining Assets Attributable to a Resulting Branch
 - 9.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

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- 9.3.2 Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.
- 9.3.3 Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
- 9.3.4 Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- 9.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.
- 9.3.6 Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.
- 9.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.
- 9.3.8 Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
- 9.3.9 Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- 9.4 Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.
- 9.5 Income of a Resulting Branch.
- 9.5.1 Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section 9.3 above will be attributed to the resulting branch.
- 9.5.2 Income from Fees. Fee income not attributed to a resulting branch in accordance with paragraph 9.5.1. above will be attributed to the resulting branch depending on the type of fee income.
- 9.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that paragraph 9.5.1 above requires.
- 9.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.
- 9.6 Determining the Expenses of a Resulting Branch.
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- 9.6.1 Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.
- 9.6.2 Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.
- 9.6.3 Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.
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GENERAL NOTICES

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 701

PUBLIC NOTICE OF EXTENDED COMMENT PERIOD

701 Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code

Summary

The State Bank Commissioner is extending until November 1, 2019, the comment period for the proposed amendment to Regulation 701 (Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code) published in the July 1, 2019 *Register of Regulations*. The proposed amendment provides that no application to form a new limited purpose trust company will be approved, unless the new limited purpose trust company will be an affiliate, as defined in Section 773 of Title 5, of a bank, insured institution or bank holding company, as those terms are defined in the federal Bank Holding Company Act, 12 USC 1841, or of any other insured depository institution, as that term is defined in the Federal Deposit Insurance Act, 12 USC 1813, or of any national banking association, chartered in accordance with the National Bank Act and regulated by the Comptroller of the Currency, that is engaged primarily in trust and fiduciary activities. This proposed amendment is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Other Regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this proposed amended Regulation in accordance with Title 5 of the Delaware Code. This Notice is issued pursuant to the requirements of Title 29 of the Delaware Code, Chapter 11, Subchapter III, Chapter 101, Subchapter II, and Chapter 104, Sections 10404A(b)(1) and 10404B(b)(1).

Comments

A copy of the proposed amended Regulation was published in the July 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 1110 Forrest Avenue, Dover, DE 19904, and is available for inspection during regular office hours. Copies are available upon request.

Interested parties may offer comments on the proposed amended Regulation or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner at the above address as to whether the proposed amended Regulation should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before November 1, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Amended Regulation

On or after November 1, 2019, following review of the public comment, the State Bank Commissioner will determine whether to adopt the proposed amended Regulation, or make additional changes because of the public comments received.

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**PUBLIC NOTICE****1301 Delaware Criminal Justice Information System Rules and Regulations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 86, Section 8605, the Delaware Criminal Justice Information System (DELJIS) Board of Managers proposes to revise its regulations. These proposed regulations are applicable to all users of the Delaware Criminal Justice Information System (CJIS) and to any agency requesting access to CJIS from the Board. The proposed regulations will ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code.

DELJIS will take written comments on these proposed revisions to Regulation 1301 of Title 1 of the Delaware Administration Code from September 1, 2019 to October 4, 2019. Any person who wishes to make written comments must submit same to DELJIS Board of Managers, c/o Lt. Frederick Calhoun, Chair, 800 Silver Lake Boulevard, Suites 101 & 102, Dover, Delaware 19904.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, September 19, 2019 at 5:00pm in the Community Education Building, 1200 N. French Street, Wilmington, DE.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DELAWARE HEALTH CARE COMMISSION****PUBLIC NOTICE****Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund**

Pursuant to 16 **Del.C.** §9903, the Delaware Health Care Commission, Department of Health and Social Services, is proposing regulations governing Reinsurance. On September 1, 2019, the Delaware Health Care Commission plans to publish as "proposed" regulations for reinsurance. The regulations include establishing administrative procedures for the reinsurance program.

Copies of the proposed regulations are available for review in the September 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of the Secretary at (302) 255-4783.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Gabriela Kejner by Tuesday, October 1, 2019, at:

Gabriela Kejner
Office of the Secretary
1901 North DuPont Highway
New Castle, DE 19720
Email: Gabriela.Kejner@delaware.gov
Phone: (302) 255-4783

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**PUBLIC NOTICE****2103 Reportable Incident Management and Corrective Measures**

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 Developmental Disabilities Service (DDDS) is proposing to implement oversight and monitoring of reportable incidents pursuant to DHSS Policy Memorandum 46.

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 James Dickinson, Division of Developmental Disabilities, Service Integrity and Enhancement, 1056 South Governor's Avenue, Suite 101, Dover DE 19947, E-Mail: james.dickinson@delaware.gov by October 1, 2019.

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 MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Drug Utilization Review (DUR)**

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 the DUR, specifically, to update provisions included in section 1004 of the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for patients and Communities Act* (P.L. 115-271).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Drug Utilization Review (DUR)

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 MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Acute Inpatient Hospital Readmission Claims**

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 the Inpatient Hospital Provider Policy Manual regarding Acute Inpatient Hospital Readmission Claims, specifically, to update policy regarding the time interval.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Acute Inpatient Hospital Readmission Claims.

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 MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Telehealth Services Originating Site Fees

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 telehealth services specifically, to add facilities to which originating site fees can be paid.

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 1, 2019. Please identify in the subject line: Telehealth Services Originating Site Fees.

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 MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Obesity Drugs

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 Prescribed Drugs, specifically, to clarify policy related to drugs indicated for the treatment of obesity.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Obesity Drugs.

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 MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Excluded Earnings of Temporary Census Workers

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 Excluded Earnings of Temporary Census Workers, specifically, *to add additional eligibility groups to that exclusion.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2019. Please identify in the subject line: Excluded Earnings of Temporary Census Workers.

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 PUBLIC HEALTH
PUBLIC NOTICE

4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders

Pursuant to 16 **Del.C.** §122(1), §122(3)h, and Ch. 8C, Family Health Services, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders. On September 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders regulations. The revisions include eliminating the mandatory second screening requirement, including midwives in the regulated community, and updating the timeline that a specimen should be collected and sent to the lab.

Copies of the proposed regulations are available for review in the September 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Wednesday, October 2, 2019, at:

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4455 Delaware Regulations Governing a Detailed Plumbing Code

Pursuant to 16 **Del.C.** §122(3)(e) and §7903, Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing the Plumbing Code. On September 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Plumbing Code regulations. The revisions include the adoption of the 2018 International Plumbing Code with amendments.

Copies of the proposed regulations are available for review in the September 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Wednesday, October 2, 2019, at:

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

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR QUALITY****PUBLIC NOTICE****1125 Requirements for Preconstruction Review**

The Division of Air Quality (DAQ) is proposing to amend 7 **DE Admin. Code** 1125 to incorporate by reference the most recent revisions to the Environmental Protection Agency's (EPA) Guideline on Air Quality Models, as set forth in Appendix W to 40 CFR Part 51 – Requirements for Preparation, Adoption, and Submittal of Implementation Plans (Guideline). In 1978, EPA published the Guideline and has subsequently made several revisions, therefore DAQ is proposing to amend 7 **DE Admin. Code** 1125 for consistency with the EPA.

A public hearing will be held on the proposed amendments to 7 **DE Admin. Code** 1125 at 6:00 pm on Wednesday, September 25, 2019 in the DNREC R&R Auditorium, located at 89 Kings Highway, Dover, DE 19901. Persons wishing to submit comment on the proposed amendments may do so either orally or in written form at the public hearing. In lieu of attending the public hearing, written comments may be submitted electronically by clicking the "Comment" button on the following link: <https://dnrec.alpha.delaware.gov/events/460/public-hearing-requirements-for-preconstruction-review/lic> or via USPS to the following address: Theresa Newman, Hearing Officer, DNREC – Office of the Secretary, 89 Kings Highway, Dover, DE 19901. The hearing record will open on September 1, 2019 and will remain open for receipt of comment through the close of business on Thursday, October 10, 2019.

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

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

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

DelDOT will take written comments on these proposed general revisions to Section 2309 of Title 2, Delaware Administrative Code, from September 1, 2019 through October 1, 2019. The public may submit their comments to:

Wendy Polasko, P.E., Process and Quality Control Engineer, Planning Development Coordination via email (Wendy.Polasko@delaware.gov) or in writing to her attention,

Division of Planning

Delaware Department of Transportation

P.O. Box 778

Dover, DE 19903

DIVISION OF PLANNING**PUBLIC NOTICE****2312 Regulations Governing the Practice and Procedure for Administering the Transportation
Infrastructure Investment Fund**

Pursuant to the authority provided by 29 **Del.C.** §8421, the Delaware Department of Transportation (DelDOT), is promulgating regulations for the administration of the Transportation Infrastructure Investment Fund. The Transportation Infrastructure Investment Fund is established to provide economic assistance for renovation, construction, or any other type of improvements to roads and related transportation infrastructure in order to attract new businesses to this state, or expand existing businesses in this State, when such an economic development

opportunity would create a significant number of direct, permanent, quality full-time jobs.

DelDOT will take written comments on these proposed regulations, Section 2312 of Title 2, Delaware Administrative Code, from September 1, 2019 through October 1, 2019. The public may submit their comments to:

Marc Coté, P.E., Assistant Director of Development Coordination, Planning

(marc.cote@delaware.gov) or in writing to his attention,

Division of Planning

Development Coordination Section

Delaware Department of Transportation

800 Bay Road PO Box 778

Dover, DE 19903
