
Delaware Register of Regulations

Issue Date: February 1, 2025

Volume 28 - Issue 8, Pages 558-616



IN THIS ISSUE:

Regulations:
Proposed
Final

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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 January 15, 2025.

Cover Photo
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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

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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

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DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1596

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1596 Charter School Leader****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1596 Charter School Leader. The regulation concerns the requirements for a Charter School Leader Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments in this regulation include revising Section 1.0 to add instructional administrators; adding a definition of the term "Instructional Administrator" in Section 2.0; revising the term "Regionally Accredited" based on the changes the U.S. Department of Education made to its recognition of accrediting bodies in Section 2.0; adding reciprocity language and striking a redundant phrase in Section 3.0; revising the requirements in Section 4.0; adding Section 5.0, which concerns reciprocity; and revising the application requirements in Section 6.0.

Notice of the proposed regulation was originally published in the *Register of Regulations* on October 1, 2024. The Board received written submittals from Jon Neubauer, Director of Education Policy of the Delaware State Education Association ("DSEA"); Britney Mumford, Executive Director of DelawareCAN; Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"); Kendall Massett, Executive Director of Delaware Charter Schools Network ("DCSN"), Edward Emmett, Board President of DSCN, and the leaders, leadership teams, and board of Delaware charter schools; and Susannah Eaton-Ryan, Chairperson of the

State Council for Persons with Disabilities ("SCPD"). DSEA commented that it remains neutral on the proposed regulation. DelawareCAN commented that the proposed regulation will provide necessary relief and flexibility to charter schools striving to meet the high expectations of their communities. GACEC commented that it supports the proposed regulation but it would like a requirement for special education legal/regulatory training added. SCPD commented that it supports the proposed regulation with the aforementioned addition. Both GACEC and SCPD commented that they encourage the Department to look to existing training for other certifications/licensures and how to augment training requirements for charter school leaders in order to address charter school disparities for students with disabilities and ensure they receive a free appropriate public education. DCSN commented that the charter community strongly supports the proposed regulation.

At the November 7, 2024 and December 5, 2024 Board meetings the Board deliberated on the public comments and votes to move the regulation forward failed. Subsequently, the Board voted to republish the regulation with the word "instructional" added to subsection 4.1.3.2. The Board therefore withdraws the proposed regulation published on October 1, 2024 and submits the proposed revisions set forth below.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before March 3, 2025. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** §1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for a Charter School Leader Standard Certificate but whose effectiveness is documented by the school. The amended regulation does not change a charter school's ability to submit such a request. Section 7.0 is consistent with the statute.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 6.0 apply to individual applicants. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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 amended 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:**

<https://regulations.delaware.gov/register/february2025/proposed/28 DE Reg 569RFA 02-01-25.pdf>

1596 Charter School Leader

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Charter School Leader Standard Certificate pursuant to 14 **Del.C.** §1220(a). The Charter School Leader Standard Certificate is required for ~~leaders of Charter Schools~~ instructional administrators of charter schools in Delaware ~~who were hired prior to June 30, 2023~~. The Charter School Leader Standard Certificate authorizes an individual to practice as ~~a leader in a Charter School~~ an instructional administrator in a charter school.
- 1.2 The Charter School Leader Standard Certificate shall not be used to practice as ~~a leader~~ an administrator in a traditional or vocational-technical public school in Delaware.
- 1.3 ~~The Charter School Leader Standard Certificate shall not be used for any Charter School Leader hired after June 30, 2023. In order to practice as a leader in a Charter School, the individual must~~ In lieu of the Charter School Leader Standard Certificate, an instructional administrator in a charter school may hold 1 of the following Standard Certificates:
 - 1.3.1 School Principal and Assistant School Principal Standard Certificate (14 **DE Admin. Code** 1591); or
 - 1.3.2 Certified Central Office Personnel (14 **DE Admin. Code** 1592); or
 - 1.3.3 Superintendent or Assistant Superintendent Standard Certificate (14 **DE Admin. Code** 1593); or
 - 1.3.4 Special Education Director (14 **DE Admin. Code** 1594).

2.0 Definitions

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

"Charter School school" means a public school that operates under a charter granted by a public school district or the Department pursuant to 14 **Del.C.** Ch. 5.

"Charter School Leader school leader" means an administrator at a charter school.

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

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

"Instructional administrator" means a charter school administrator who supervises and evaluates educators, instructs students by means of designing and implementing curriculum, or instructs, trains, mentors, or coaches teachers.

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

PROPOSED REGULATIONS

"Regionally Accredited ~~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~~ institutional accreditation from an agency that was designated as a regional accreditor before July 1, 2020, and is currently recognized by the U.S. Secretary of Education as a reliable indicator of the institution's educational quality.

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

3.0 Issuance of a Standard Certificate

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

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 The applicant shall have satisfied the requirements in subsections 4.1.1 ~~and 4.1.2~~ through 4.1.3:
- 4.1.1 The applicant earned a bachelor's degree from a Regionally Accredited college or university in any content area.
 - 4.1.2 The applicant ~~completed a charter leader portfolio by June 30, 2024 and earned a rating of accomplished based on the Delaware Performance Appraisal System II for administrators.~~ satisfactorily completed an alternative routes for licensure or certification program for Charter School Leaders as provided in 14 Del.C. §§1260 - 1266 and 14 DE Admin. Code 291.
 - 4.1.3 The applicant shall have completed a minimum of 4 years of 1 of the following experience requirements in subsections 4.1.3.1 through 4.1.3.6:
 - 4.1.3.1 Experience as an educator in a charter school.
 - 4.1.3.2 Leadership experience in an educational or other instructional setting.
 - 4.1.3.3 Related services in a charter school.
 - 4.1.3.4 Military leadership experience.

- 4.1.3.5 Teaching experience in a public school, independent or private school, or postsecondary institution.
- 4.1.3.6 Any combination of the experience options outlined in subsections 4.1.3.1 through 4.1.3.5 for a minimum of 4 years of experience altogether.

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a charter school leader in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.3 in order for the Department to issue a Charter School Leader Standard Certificate:
 - 5.1.1 The applicant shall hold a valid and current license or certificate as a charter school leader.
 - 5.1.2 The applicant shall have completed a preparation program for charter school leaders.
 - 5.1.3 The applicant shall have earned a bachelor's degree from a regionally accredited college or university.

~~5.0~~ 6.0 Application Requirements

- ~~5.4~~ 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License license.
- 5.2 6.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 Del.C. §1219 and it could delay the processing or result in the denial of the application for a Charter School Leader Standard Certificate.
- ~~5.3~~ 6.3 For an applicant who is applying under subsection 3.1.1 of this regulation, the following documentation is required with the application for a Charter School Leader Standard Certificate:
 - ~~5.3.1~~ 6.3.1 Official transcript from the applicant's Regionally Accredited regionally accredited college or university.
 - 5.3.1.1 Electronic transcripts may be submitted by the Employing Authority employing authority or by the applicant's Regionally Accredited regionally accredited college or university; or
 - 5.3.1.2 6.3.1.2 Sealed paper transcripts may be submitted.
 - 5.3.1.3 6.3.1.3 The Department will not accept copies of transcripts; and
 - 5.3.2 6.3.2 Documentation verifying completion a charter leader portfolio and a rating of accomplished based on the Delaware Performance Appraisal System II for administrators, if applicable of an alternative routes for licensure or certification program for charter leaders as required in subsection 4.1.2; and
 - ~~5.3.3~~ 6.3.3 Additional documentation as required by the Department.
- ~~5.4~~ 6.4 For an applicant who is applying under subsection 3.1.2 of this regulation, the following documentation is required with the application for a Charter School Leader Standard Certificate:
 - 5.4.1 6.4.1 An official copy of the Valid and Current License or Certificate valid and current license or certificate; and
 - 5.4.2 6.4.2 Additional documentation as required by the Department.
- 6.5 For an applicant who is applying under subsection 3.1.3 of this regulation, the following documentation is required with the application for a Charter School Leader Standard Certificate:
 - 6.5.1 An official copy of the valid and current license or certification; and
 - 6.5.2 Official transcript from the applicant's regionally accredited college or university.
 - 6.5.2.1 Electronic transcripts may be submitted by the employing authority or by the applicant's regionally accredited college or university; or
 - 6.5.2.2 Sealed paper transcripts may be submitted.

6.5.2.3 The Department will not accept copies of transcripts; and

6.5.3 Proof of completion of a preparation program for charter school leaders; and

6.5.4 Additional documentation as required by the Department.

~~6.0~~ **7.0 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 Charter School Leader Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Charter School Leader Standard Certificate but whose effectiveness is documented by the local school district or charter school. Requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

~~7.0~~ **8.0 Validity of a Standard Certificate**

~~7.1~~ 8.1 A Charter School Leader Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the ~~Educator's License~~ educator's license remains current and valid.

~~7.2~~ 8.2 A Charter School Leader Standard Certificate is not subject to renewal.

~~8.0~~ **9.0 Disciplinary Action**

~~8.1~~ 9.1 An ~~Educator's~~ educator's Charter School Leader Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

~~8.2~~ 9.2 An ~~Educator's~~ educator's Charter School Leader Standard Certificate shall be revoked if the ~~Educator's~~ educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the ~~Educator~~ educator made a materially false or misleading statement in the ~~Educator's~~ educator's application in accordance with 14 **Del.C.** §1222.

~~8.3~~ 9.3 An ~~Educator~~ educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

~~9.0~~ **10.0 Contact Information and Change of Name or Address**

~~9.1~~ 10.1 All applicants and ~~Educators~~ educators are required to update their contact information in DEEDS if their contact information changes.

~~9.2~~ 10.2 An ~~Educator~~ educator who legally changes the ~~Educator's~~ educator's name and wishes to change the name on the Charter School Leader Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.

~~9.3~~ 10.3 An applicant or ~~Educator~~ educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 131, 132 and 143; 26 Delaware Code, Chapters 9, 11 and 13 (17 **Del.C.** §§131, 132 & 143; 26 **Del.C.** Ch. 9, 11 & 13)
2 **DE Admin. Code** 2401

PUBLIC NOTICE

2401 Utilities Manual Regulations

Pursuant to the authority provided in Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted the 2401 Utilities Manual Regulations. The Department seeks to reorganize the content to address stakeholder requests for improved clarity on permitting and project related standards, via adoption of revisions to the regulation.

DelDOT will take written comments on the proposed revisions to Section 2401 of Title 2, Delaware Administrative Code, from February 1, 2025 through March 3, 2025. The public may submit their comments to:

Eric Cimo, P.E., Utilities Engineer, Division of Transportation Solutions
(eric.cimo@delaware.gov) or in writing to their attention,
Delaware Department of Transportation
Division of Transportation Solutions
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:

<https://regulations.delaware.gov/register/february2025/proposed/28 DE Reg 575RFA 02-01-25.pdf>

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

<https://regulations.delaware.gov/register/february2025/proposed/28 DE Reg 575 02-01-25.htm>

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE**OFFICE OF THE SECRETARY**

Statutory Authority: 3 Delaware Code, Chapter 12 (3 Del.C. Ch. 12)
3 DE Admin. Code 601

ORDER

601 Delaware Pesticide Rules and Regulations**I. NATURE OF THE PROCEEDINGS**

Pursuant to its authority under 3 Del. C. Ch. 12, the Delaware Department of Agriculture sought to amend its regulation regarding pesticides to bring the regulation into compliance with the updated Federal Certification and Training Rule. The change to subsection 7.7.7 deletes the Miscellaneous Pest Control (7G) category. The change to subsection 8.5.2.4 deletes Miscellaneous Pest Control (7G) and adds Aerial Pest Control (11). Other regulations issued by the Delaware Department of Agriculture relating to pesticides are not affected.

Notice of a public comment period of at least thirty (30) days on the proposed amended regulation was published in the Delaware *Register of Regulations* for October 1, 2024 in accordance with 29 Del. C. §10118(a). This is the Delaware Department of Agriculture's Decision and Order adopting the proposed amended regulation.

II. FINDINGS AND CONCLUSIONS

1. The public was given the required notice of the Delaware Department of Agriculture's intention to adopt the proposed amended regulation and was given ample opportunity to provide comments opposing the plan.
2. There were no public comments provided during the written public comment period.

3. Pursuant to 3 Del.C. Ch. 12, the Delaware Department of Agriculture has statutory authority to promulgate rules and regulations for the enforcement of the State pesticides laws.

4. Thus, the Delaware Department of Agriculture concludes that its consideration of the proposed amended regulation was entirely within its statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

5. The Delaware Department of Agriculture has reviewed the regulation and has determined that, if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

III. DECISION AND ORDER CONCERNING THE REGULATIONS

AND NOW on this 21st day of January 2025, it is hereby ordered that:

1. The proposed amendments to the Delaware Department of Agriculture's regulations are adopted;
2. The text of the final regulation shall be in the form attached hereto as Exhibit A, which remain unchanged as initially published in the October 1, 2024 *Delaware Register of Regulations*;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 *Del. C.* §10118(e); and
4. The Delaware Department of Agriculture reserved to itself the authority to issue such other and further orders concerning its regulations as it deems appropriate.

Nikko Brady
Delaware Department of Agriculture

***Please note that no changes were made to the regulation as originally proposed and published in the October 2024 issue of the *Register* at page 252 (28 DE Reg. 252). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 576 02-01-25.htm>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 1716E, 1716F, and 1716H (14 **Del.C.** §§1716E, 1716F, & 1716H)
14 **DE Admin. Code** 545

ORDER

545 K to 12 Counseling Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1716E, 1716F and 1716H, the Delaware Department of Education ("Department") developed amendments to 14 **DE Admin. Code** 545 K to 12 Counseling Programs. This regulation is being amended to add 14 **Del.C.** §1716H to Section 1.0 of the regulation.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2024. The Department did not receive any written submittals concerning the proposed regulation.

II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

In accordance with 29 **Del.C.** §10118(c), the Secretary determined that no additional changes are needed other than the addition of §1716H to Section 1.0.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 545 K to 12 Counseling Programs. Therefore, pursuant to 14 **Del.C.** §§1716E, 1716F and 1716H, 14 **DE Admin. Code** 545 K to 12 Counseling Programs, attached hereto as Exhibit A, is hereby amended.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 545 K to 12 Counseling Programs amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 545 K to 12 Counseling Programs in the *Administrative Code of Regulations* for the Department.

VI. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*. The requirements of the regulation apply to charter schools, effective August 15, 2026.

IT IS SO ORDERED the 13th day of January, 2025

Department of Education

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

545 K to 12 Counseling Programs

1.0 Content

Pursuant to 14 **Del.C.** ~~§§1716E and 1716F~~ §§1716E, 1716F, and 1716H, this regulation sets forth the requirement that Delaware public schools implement a school counseling program and submit a plan to the Department in order to ensure the mental health services unit and funding is used in accordance with the law.

2.0 Definitions

"**American School Counselor Association**" or "**ASCA**" means the national organization that supports school counselors' efforts to help students focus on academic, career and social and emotional development so they achieve success in school and are prepared to lead fulfilling lives as responsible members of society.

"**ASCA National Model**" means a framework for implementing a comprehensive, data driven school counseling program. The model identifies K-12 College-, Career-, and Life-Readiness Standards for every student in the domains of academic, career and social and emotional development. The model is made up of 4 components: Define, Manage, Deliver and Assess.

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

3.0 School Counseling Programs and Written Plans

- 3.1 Every school shall implement a comprehensive school counseling program aligned with the American School Counselor Association's (ASCA) National Model.
- 3.2 Every school shall have a written plan, using the model templates provided by the Department, for the school counseling program that:

- 3.2.1 Is implemented by a school counselor who is licensed and certified in accordance with 14 **Del.C.** Ch. 12.
- 3.2.2 Utilizes nationally recognized student standards as defined by the ASCA National Model.
- 3.2.3 Aligns vertically K-12 within the district or charter school.
- 3.2.4 Contains all 4 components of the ASCA National Model as follows:
 - 3.2.4.1 The Define component, which consists of the ASCA Mindsets and Behavior Standards for Student Success, ASCA Ethical Standards for School Counselors and the ASCA School Counselor Professional Standards and Competencies.
 - 3.2.4.2 The Manage component, which provides organizational tools and assessments designed to guide, target, structure and construct a school counseling program to get results.
 - 3.2.4.3 The Deliver component, which defines the methods school counselors use to provide activities and services to students and for students through the 2 broad categories of direct and indirect services.
 - 3.2.4.4 The Assess component, which ensures regular analysis of data to determine program effectiveness in measurable terms and inform program decisions.
- 3.2.5 Is on file in the school.
- 3.2.6 Is reviewed annually and updated by the school counselor in collaboration with the school counselor's building administrator and district or charter school supervisor.

4.0 Reporting Requirements and Timelines

- 4.1 Annually, by August 15, every school shall electronically submit their plan to the Department, except as provided in subsections 4.1.1 and 4.1.2. The plans shall reflect any updates pursuant to subsection 3.2.6.
 - 4.1.1 For any school where there is only 1 school counselor and that school counselor's start date is after August 1st, that school's plan will be due by August 15th of the following year.
 - 4.1.2 For any newly opened school, their school counseling plan submissions will start the August following their first year of operation.
- 4.2 The Department may periodically monitor for alignment to the requirements in Section 3.0.

5.0 Effective Date for Charter Schools

The requirements of this regulation shall apply to charter schools effective August 15, 2026. Beginning with the August 15, 2026 submission, every charter school shall be subject to the requirements of this regulation.

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

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

ORDER

School Based Services

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 School Based Services, specifically, to expand services provided in the school setting. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the

December 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2024, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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 School Based Services.

Background

The school setting provides a unique opportunity to deliver health care services to children and adolescents, especially those enrolled in Medicaid and the Children's Health Insurance Program (CHIP). School-based services (SBS), including but not limited to preventive care, mental health and substance use disorder (SUD) services, physical and occupational therapy, and disease management have been shown to improve both health and academic outcomes. Schools can play an important role in bridging equity gaps among students in low-income and rural communities where access to health care services may be more limited. To deliver SBS, it is essential that State Medicaid and CHIP agencies (hereafter, "State Medicaid/CHIP agencies"), State Educational Agencies (SEAs), and schools all work together to support students.

Statutory Authority

- Section 1905(a) of the Social Security Act (SSA)
- 42 CFR §447

Purpose

The purpose of this regulation to expand Medicaid and CHIP covered school-based services to cover those services also listed in a treatment plan or 504 plan.

Summary of Proposed Changes

Effective January 1, 2025, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to expand services provided in the school setting.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on December 31, 2024.

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

	Federal Fiscal Year 2025	Federal Fiscal Year 2026
General (State) funds	\$593,447	\$604, 467
Federal funds	\$895,755	\$884,735

Summary of Comments Received with Agency Response and Explanation of Changes

There were no public comments received.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DMMA Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding School Based Services, specifically, to expand services provided in the school setting and shall be final effective February 11, 2025.

1/16/2025 | 4:54 PM EST

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

*Please note that no changes were made to the regulation as originally proposed and published in the December 2024 issue of the *Register* at page 427 (28 DE Reg. 427). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 579 02-01-25.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6001(c) and 6010 (7 Del.C. §§6001(c) & 6010)
7 DE Admin. Code 1104

Secretary's Order No.: 2025-A-0004

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1104 -
Particulate Emissions from Fuel Burning Equipment**
Date of Issuance: January 7, 2025
Effective Date of the Amendment: February 11, 2025

1104 Particulate Emissions from Fuel Burning Equipment

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control

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

Background, Procedural History and Findings of Fact

This Order relates to the proposed amendments ("Amendments") to 7 DE Admin. Code 1104 - *Particulate Emissions from Fuel Burning Equipment* ("Regulation"). The Department is proposing amendments to address the regulation of particulate emissions during startup, shutdown, and malfunction ("SSM") of fuel burning equipment. These Amendments are necessary to ensure compliance with the U.S. Environmental Protection Agency's (EPA) *2015 Startup, Shutdown, and Malfunction State Implementation Plan Call* ("2015 SSM SIP").

In accordance with the *Clean Air Act* ("CAA") the Department established 7 DE Admin. Code 1104 to establish particulate matter emission limits consistent with the National Ambient Air Quality Standards ("NAAQS") for fuel burning equipment with a heat input capacity that is equal to or greater than 1 million British Thermal Units (MMBTU) per hour. This regulation is applicable to larger sources, such as commercial and industrial generators, engines, boilers, and turbines. It also addresses emissions during startup, shutdown, and malfunction ("SSM") periods. "Startup" refers to the initiation of a source's operation, "shutdown" is the cessation of operation, and a "malfunction" is a sudden and unavoidable breakdown of process or control equipment.

During SSM periods, equipment does not operate at peak efficiency, resulting in excess emissions that can negatively affect public health, contribute to smog, and impact downwind communities. A part of the Regulation sets emission limits for SSM of the fuel burning equipment mentioned above.

The Department established emission limits for SSM of the fuel burning equipment and included provisions that require facilities that operate continuously, or in an extended steady state when SSM occurs, to obtain an operation permit pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102, to limit emissions during these events. These permits are subject to environmental review and public scrutiny and must demonstrate that they will not violate NAAQS.

The Department's regulations are also part of Delaware's State Implementation Plan ("SIP") because they implement, maintain, and enforce the NAAQS. A SIP is a state-created, federally enforceable plan that outlines how the state will fulfill CAA requirements to enhance air quality. It includes regulations and supporting documentation that demonstrate the state's efforts to safeguard public health and the environment.

On June 30, 2011, the Sierra Club petitioned the EPA to address how excess emissions during SSM events were being handled in SIPs that had been approved by the EPA. In response, on June 12, 2015, the EPA issued a final rule known as the 2015 SSM SIP Call [80 FR 33840]. Under Section 110(k)(5) of the CAA, the EPA is authorized to issue a "SIP Call" to states requiring them to correct state plans that fail to meet federal standards. The 2015 SSM SIP Call included 36 state SIPs, including Delaware's SIP for 7 DE Admin. Code 1104. The EPA found Subsection 1.5 of Delaware's regulation to be deficient because it potentially allowed exemptions from the emission limits set forth in Section 2.0 during SSM events. The 2015 SSM SIP Call mandated that state's establish plans that require industrial facilities to follow air pollution rules during periods of SSM; specifically, how these emissions are treated in SIPs, with corrections due by November 22, 2016.

On November 22, 2016, the Department revised its regulations governing particulate emissions from fuel-burning equipment (7 DE Admin. Code 1104) and submitted a SIP revision to the EPA, in response to the 2015 SSM SIP Call. The SIP revisions included the removal of the problematic exemption in subsection 1.5, and removed subsection 2.0, eliminating the 0.3 lb/ MMBTU heat input, maximum two-hour average, and added a new subsection 2.2, implementing a 30-day rolling average emission limit, that would now apply at all times.

As part of the response to the 2015 SSM SIP CALL, the Department also adopted a separate "state-only" version of 7 DE Admin. Code 1104. The "state only" version, as cited in the *Delaware Registrar of Regulations*, maintained the language removed in the SIP revisions (subsection 1.5 and 2.1) and added the same new subsection 2.2 that was included in the SIP revision, implementing a 0.3 lb./MMBTU 30-day rolling average for SSM events. Delaware believed the conditions set forth in the "state only" version was necessary to administer good air quality management.

On October 23, 2023, the EPA issued a final rule (88 FR 72688), disapproving Delaware's SIP revision submission and determined that the revisions failed to fully resolve the deficiencies identified in the 2015 SSM SIP Call.

In response to the EPA's disapproval, the Department is proposing the amendments, herein, to rectify the

deficiencies cited in the 2015 SSM SIP Call. The proposed amendments address Section 1.0 ("General Provisions") and Section 2.0 ("Emission Limits") of 7 DE Admin. Code 1104. To ensure compliance with EPA standards, the Department proposes to strike the regulatory language in subsection 1.5 and 2.2. The Amendments aims to remove language that could potentially allow exemptions to SSM events and eliminate the "0.3 lb/MMBTU, maximum 30-day rolling average" emission limit for SSM events, while ensuring that the "0.3 lb/MMBTU, maximum two-hour average" emission limit applies at all times.

The Department has conducted a review of the impact of the proposed Regulation and found that more stringent federal and state regulations, as well as state permit limits, are already applicable to the large majority of sources covered by this regulation. Furthermore, the Department finds that no new controls will be needed, or will additional resources be expended for the sources covered under the Regulation, as these sources already meet or exceed the standards outlined in the Regulation.

The Department published its proposed amendments in the August 1, 2024, *Delaware Register of Regulations*. The virtual public hearing regarding this matter was held on August 27, 2024. There were seven (7) members of the public in attendance at the Department's virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the Hearing Record ("Record") remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter on September 11, 2024, with no comments received by the Department.

Thereafter, Hearing Officer Theresa Smith prepared her report dated September 12, 2024 ("Report"), which expressly incorporated into the Record the proposed amendment, attached thereto as Appendix "A." Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the proposed amendments pending before the Department.

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.* §§ 6001(c) & 6010. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1104 - *Particulate Emissions from Fuel Burning Equipment*. Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory amendments are well-supported and will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call. I also find that under Section 110(k)(5) of the CAA, the EPA will review the proposed amendments and if approved, these amendments will become part of Delaware's SIP for 7 DE Admin. Code 1104 and will be enforceable under Federal law (40 CFR Part 52, Subpart I - Delaware). Lastly, I find that the proposed amendments comply with all applicable federal and state laws and regulations. Further, the proposed amendments as published in the August 1, 2024, *Delaware Register of Regulations*, are reflective of the Department's authority under 7 *Del.C.* §§ 6001(c) & 6010, to ensure continued protection of public health and the environment by regulating emissions and reducing air pollution and air contaminants.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 *Del.C.* §§ 6001(c) & 6010;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed amendments as final;
3. The Department provided adequate public notice of the proposed amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed amendments, including at the time of the virtual public hearing held on August 27, 2024, and during the 15 days subsequent to the hearing (through September 11, 2024), before making any final decision;
4. Promulgation of the proposed amendments to 7 DE Admin. Code 1104 - *Particulate Emissions from Fuel Burning Equipment*, will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call;
5. The Department has reviewed the proposed amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, that it will not

establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department has reviewed this proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that any impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets will be de minimis;
7. 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;
8. The Department's proposed regulatory amendments, as published in the August 1, 2024, *Delaware Register of Regulations*, 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*;
9. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary;
10. The Department shall submit this Order approving the proposed amendments as final regulations 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; and
11. The Department shall serve and publish its Order on its internet site.

Shawn M. Garvin
Secretary

1104 Particulate Emissions from Fuel Burning Equipment

01/11/2017

1.0 General Provisions

- 1.1 The emission of particulate matter from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply where the heat input capacity of the equipment is less than 1,000,000 BTU per hour.
- 1.3 The provisions of this regulation shall not apply to equipment or operations whose emissions are controlled by 7 **DE Admin. Code** 1105 or 7 **DE Admin. Code** 1107 or 7 **DE Admin. Code** 1129.
- 1.4 For purposes of this Regulation, the heat input value shall be based upon the manufacturer's guaranteed maximum input or the Department's calculated input capacity.
- 4.5 ~~The provisions of subsection 2.1 of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of Section 2.0 of 7 DE Admin. Code 1102.~~

01/11/2017

2.0 Emission Limits

- 2.4 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two-hour average, from any fuel burning equipment.
- 2.2 ~~No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum 30-day rolling average, from any fuel burning equipment.~~

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6001(c) and 6010 (7 Del.C. §§6001(c) & 6010)
7 DE Admin. Code 1105

Secretary's Order No.: 2025-A-0002

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1105 -
*Particulate Emissions from Industrial Process Operations***

**Date of Issuance: January 7, 2025
Effective Date of the Amendment: February 11, 2025**

1105 Particulate Emissions from Industrial Process Operations

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

Background, Procedural History and Findings of Fact

This Order relates to the proposed amendments ("Amendments") to 7 DE Admin. Code 1105 - *Particulate Emissions from Industrial Process Operations* ("Regulation"). The Department is proposing amendments to address the regulation of particulate emissions during startup, shutdown, and malfunction ("SSM") of industrial process equipment. These Amendments are necessary to ensure compliance with the U.S. Environmental Protection Agency's (EPA) *2015 Startup, Shutdown, and Malfunction State Implementation Plan Call* ("2015 SSM SIP CALL").

Pursuant to the *Clean Air Act* ("CAA") the Department established 7 DE Admin. Code 1105 to establish particulate matter emission limits in alignment with the National Ambient Air Quality Standards ("NAAQS"). This regulation ensures that emissions from industrial process equipment do not exceed 0.2 grains per standard cubic foot (gr/scf). The regulation applies to industrial process equipment that emits air pollutants into the atmosphere as a result of specific processes or combinations thereof.

Further, the regulation addresses emission limits during startup, shutdown, and malfunction ("SSM") periods. For the purposes of this regulation, "startup" is defined as the initiation of a source's operation, "shutdown" as the cessation of operation, and a "malfunction" as a sudden and unavoidable breakdown of process or control equipment. During SSM periods, equipment does not operate at optimal efficiency, resulting in excess emissions. These emissions can negatively impact public health, contribute to smog formation, and adversely affect downwind communities.

The Department established emission limits for SSM events that require facilities that operate continuously or in an extended steady state when SSM occurs, to obtain an operating permit pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102, to limit emissions during these events. These permits are subject to environmental review and public scrutiny and must demonstrate that they will not violate NAAQS.

Additionally, the Department's regulations are also part of Delaware's State Implementation Plan ("SIP") because they implement, maintain, and enforce the NAAQS. A SIP is a state-created, federally enforceable plan that outlines how the state will fulfill CAA requirements to enhance air quality. It includes regulations and supporting documentation that demonstrate the state's efforts to safeguard public health and the environment.

On June 30, 2011, the Sierra Club petitioned the EPA to address how excess emissions during SSM events were being handled in SIPs that had been approved by the EPA. In response, on June 12, 2015, the EPA issued a final rule known as the 2015 SSM SIP Call [80 FR 33840]. Under Section 110(k)(5) of the CAA, the EPA has the authority to issue a 'SIP Call' to states, requiring them to correct state plans that fail to meet federal standards. The 2015 SSM SIP Call included 36 state SIPs, including Delaware's SIP for 7 DE Admin. Code 1105. The EPA found Subsection 1.7 of Delaware's regulation to be deficient because it potentially allowed exemptions from the emission limits set forth in Section 2.0 during SSM events. The 2015 SSM SIP Call mandated that state's establish

plans that require industrial facilities to follow air pollution rules during periods of SSM; specifically, how these emissions are treated in SIPs, with corrections due by November 22, 2016.

On November 22, 2016, the Department revised its regulations governing particulate emissions from industrial process equipment (7 DE Admin. Code 1105) and submitted a SIP revision to the EPA, in response to the 2015 SSM SIP Call. The SIP revisions included the removal of the problematic exemption stated in subsection 1.7 and removed subsection 2.1, and added a new subsection 2.2, implementing a 30-day rolling average to the 0.2 gr/scf emission limit.

A part of the response to the 2015 SIP CALL, the Department also adopted a separate "state-only" version of 7 DE Admin. Code 1105. The "state only" version, as cited in the *Delaware Registrar of Regulations*, maintained the language that was removed in the SIP revisions (subsection 1.7 and 2.1) and added the same new subsection 2.2 that was included in the SIP revision, implementing a 30-day rolling average for the 0.2 gr/scf emission limit during SSM events. Delaware believed the conditions set forth in the "state only" version was necessary to administer good air quality management.

On October 23, 2023, the EPA issued a final rule (88 FR 72688), disapproving Delaware's SIP revision submission and determined that the revisions failed to fully resolve the deficiencies identified in the 2015 SSM SIP Call.

In response to the EPA's disapproval, the Department is proposing the amendments, herein, to rectify the deficiencies cited in the 2015 SSM SIP Call. The proposed amendments address Section 1.0 ("General Provisions") and Section 2.0 ("General Restrictions") of 7 DE Admin. Code 1105. To ensure compliance with EPA standards, the Department proposes to strike the regulatory language in subsection 1.7 and 2.2. The Amendments aims to remove language that could potentially allow exemptions to SSM events and make "0.2 grains per standard cubic foot" now apply at all times.

The Department conducted a review of the impact of the proposed Regulation and found that the large majority of sources covered under the Regulation are required to meet more stringent federal particulate matter emissions limits. These include Federal regulations:

- **40 CFR Part 60 Subpart I** - *Standards of Performance for Hot Mix Asphalt Facilities* with a limit of 0.04 gr/scf;
- **40 CFR Part 60 Subpart OOO** - *Standards of Performance for Nonmetallic Mineral Processing Plants* with a limit of 0.022 gr/scf; and
- **40 CFR Part 60 Subpart DD** - *Standards of Performance for Grain Elevators* with a limit of 0.01 grains per dry standard cubic foot (gr/dscf). For a comparison purposes, an example of the measurements of Subpart DD and the Regulation, when corrected to account for the removal of 50% water content, the wet-basis limit of 0.2 gr/scf approximately doubles to 0.4 gr/dscf, emphasizing the significantly lower particulate matter limit set by Subpart DD.

In addition, certain facilities not covered under federal regulations may still fall under the scope of the Regulation. These facilities include, but are not limited to, facilities involved in pharmaceutical processing, mulching, book binding, and food processing. Depending on their emission rates and the thresholds set by the Regulation, these facilities may be required to obtain a Delaware permit under 7 DE Admin. Code 1102 - *Permits*.

Permits issued to these facilities include standard conditions that limit process emissions to 0.2 gr/scf at all times, with no exemptions. Additionally, permit conditions require owners or operators to minimize emissions during SSM periods and to operate and maintain the facility, including air pollution control equipment, in accordance with good air pollution control practices. They must maintain and operate the facility, including air pollution control equipment, according to good air pollution control practices. The Department will determine whether the facility is following acceptable procedures based on available information, such as monitoring results, opacity observations, operating and maintenance procedures, and inspections.

The Department concludes that no new controls will be needed, or will additional resources be expended for the sources covered under the proposed Regulation, as these sources already meet or exceed the standards outlined in the Regulation.

The Department published its proposed amendments in the August 1, 2024, *Delaware Register of Regulations*. The virtual public hearing regarding this matter was held on August 27, 2024. There were seven (7) members of the public in attendance at the Department's virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the Hearing Record ("Record") remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter on September 11, 2024, with no comments received by the Department.

Thereafter, Hearing Officer Theresa Smith prepared her report dated September 12, 2024 ("Report"), which expressly incorporated into the Record the proposed Amendment, attached thereto as Appendix "A." Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the proposed amendments pending before the Department.

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.* §§ 6001(c) & 6010. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1105 - *Particulate Emissions from Industrial Process Operations*. Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory amendments are well-supported and will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call. I also find that under Section 110(k)(5) of the CAA, the EPA will review the proposed amendments and if approved, these amendments will become part of Delaware's SIP for 7 DE Admin. Code 1105 and will be enforceable under federal law (40 CFR Part 52, Subpart I - Delaware). Lastly, I find that the proposed amendments comply with all applicable federal and state laws and regulations. Further, the proposed amendments as published in the August 1, 2024, *Delaware Register of Regulations*, are reflective of the Department's authority under 7 *Del.C.* §§ 6001(c) & 6010, to ensure continued protection of public health and the environment by regulating emissions and reducing air pollution and air contaminants.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 *Del.C.* §§ 6001(c) & 6010;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed amendments as final;
3. The Department provided adequate public notice of the proposed amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed amendments, including at the time of the virtual public hearing held on August 27, 2024, and during the 15 days subsequent to the hearing (through September 11, 2024), before making any final decision;
4. Promulgation of the proposed amendments to 7 DE Admin. Code 1105 - *Particulate Emissions from Industrial Process Operations*, will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call;
5. The Department has reviewed the proposed amendments in light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. The Department has reviewed this proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that any impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets will be de minimis;
7. 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;
8. The Department's proposed regulatory amendments, as published in the August 1, 2024, *Delaware Register of Regulations*, 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*;
9. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary;

10. The Department shall submit this Order approving the proposed amendments as final regulations 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; and
11. The Department shall serve and publish its Order on its internet site.

Shawn M. Garvin
Secretary

1105 Particulate Emissions from Industrial Process Operations

01/11/2017

1.0 General Provisions

- 1.1 The emission of particulate matter from industrial process equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply to indirect heat exchangers which shall be controlled by 7 **DE Admin. Code** 1104.
- 1.3 For all tables in this Regulation, unless otherwise indicated, the emission limitation for a process weight rate between any two consecutive process weight rates shall be determined by linear interpolation.
- 1.4 For all tables in this Regulation, unless otherwise indicated, the emission limitation for process weight rate above the maximum process weight rate or below the minimum process weight rate shall be determined by linear extrapolation.
- 1.5 For purposes of this Regulation, the allowable mass emission rate of particulate matter shall be determined for individual units of equipment.
- 1.6 For operations involving similar units which are manifolded to a common stack, control techniques shall be such that no unit is emitting particulate matter at a rate which is in excess of the mass emission rate allowed by this Regulation.
- 1.7 ~~The provisions of subsection 2.1 of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of Section 2.0 of 7 **DE Admin. Code** 1102.~~

01/11/2017

2.0 General Restrictions

- 2.1 No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot.
- 2.2 ~~No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot on a 30-day rolling average basis.~~

02/01/84

3.0 Restrictions on Hot Mix Asphalt Batching Operations

- 3.1 No person shall cause or allow particulate emissions from a hot mix asphalt batching plant into the atmosphere in excess of the quantity as listed in Table 3-1 of this regulation.

Table 3-1

Allowable Mass Emission Rate From Hot Mix Asphalt Batching Operation

Process Weight Rate (Pounds Per Hour)	Stack Emission Rate (Pounds Per Hour)
--	---------------------------------------

10,000	10
20,000	16
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000	50

01/11/2017

4.0 Restrictions on Secondary Metal Operations

- 4.1 No person shall cause or allow particulate emissions from secondary metal operations into the atmosphere in excess of the quantity as listed in Table 4-1 of this regulation.

Table 4-1
Allowable Mass Emission Rate From Secondary Metal Operations

Process Weight Rate (Pounds per Hour)	Stack Emission Rate (Pounds per Hour)
1,000	0.75
2,000	1.50
3,000	2.25
4,000	3.00
5,000	3.75
6,000	4.50
7,000	5.25
8,000	6.00
9,000	6.75
10,000	7.50
12,000	9.00
16,000	12.00
18,000	13.50
20,000	15.00
30,000	22.50
40,000	30.00
50,000	37.50

- 4.2 The provisions of subsection 4.1 of this regulation shall not apply to electric arc furnaces, and their associated dust-handling equipment, with a capacity of more than 100 tons.

01/11/2017

5.0 Restrictions on Petroleum Refining Operations

5.1 No person shall cause or allow particulate emissions from catalytic cracking operations into the atmosphere in excess of the quantities as indicated in Table 5-1 of this regulation. For the purpose of interpolation and extrapolation calculations, "Coke Burn-Off Rate" shall be construed to be equivalent to "Process Weight Rate."

Table 5-1
Allowable Mass Emission Rate From Catalytic Cracking Operations

Coke Burn-Off Rate (Pounds per Hour)	Mass Emission Rate (Pounds per Hour)
7,000	50
14,000	100
21,000	150
28,000	200
42,000	300
56,000	400
70,000	500

~~For the purpose of interpolation and extrapolation calculations, "Coke Burn-Off Rate" shall be construed to be equivalent to "Process Weight Rate."~~

5.2 No person shall cause or allow particulate emissions from fluid coking operations into the atmosphere in excess of the quantities as indicated in Table 5-2 of this regulation.

Table 5-2
Allowable Mass Emission Rate From Fluid Coking Operations

Process Weight Rate (Barrels per Day of Fresh Feed)	Mass Emission Rate (Pounds per Hour)
5,000	15
10,000	30
15,000	50
20,000	80
30,000	100
40,000	125
50,000	150

02/01/1984

6.0 Restrictions on Prill Tower Operation

6.1 No person shall cause or allow particulate emissions from prilling operations into the atmosphere in excess of the quantities as indicated in Table 6-1 of this regulation.

Table 6-1

Allowable Mass Emissions Rate From Prilling Operations

Process Weight Rate (Pounds per Hour)	Mass Emission Rate (Pounds per Hour)
5,000	25
10,000	50
15,000	75
20,000	100
25,000	125
50,000	250
75,000	375
100,000	500

02/01/1984

7.0 Control of Potentially Hazardous Particulate Matter

Persons responsible for a source operation from which potentially hazardous particulate matter may be emitted such as, but not limited to, lead, arsenic, beryllium, silica, asbestos, and other such materials shall list such contaminants and their exit concentrations in a written report to the Department. The Department shall assign emission limits on an individual basis.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6001(c) and 6010 (7 **Del.C.** §§6001(c) & 6010)
7 **DE Admin. Code** 1109

Secretary's Order No.: 2025-A-0003**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1109 -
*Emissions of Sulfur Compounds from Industrial Operations*****Date of Issuance: January 7, 2025****Effective Date of the Amendment: February 11, 2025****1109 Emissions of Sulfur Compounds From Industrial Operations**

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

Background, Procedural History and Findings of Fact

This Order relates to the proposed amendments ("Amendments") to 7 DE Admin. Code 1109 - *Emissions of Sulfur Compounds from Industrial Operations* ("Regulation"). The Department is proposing amendments to address the regulation of particulate emissions during startup, shutdown, and malfunction ("SSM") of industrial process equipment. These Amendments are necessary to ensure compliance with the U.S. Environmental Protection Agency's (EPA) *2015 Startup, Shutdown, and Malfunction State Implementation Plan Call* ("2015 SSM

SIP CALL").

Pursuant to the *Clean Air Act* ("CAA") the Department established 7 DE Admin. Code 1109 to establish air emission limits for sulfur dioxide (SO₂) in alignment with the National Ambient Air Quality Standards ("NAAQS") for industrial process operations. This regulation sets specific SO₂ emission limits for sulfuric acid manufacturing and sulfur recovery operations.

Delaware currently has only one sulfuric acid manufacturing facility, the Veolia Red Lion Plant, and one sulfur recovery operations, the Delaware City Refinery. In alignment with NAAQS, the Regulation limits SO₂ emissions from sulfuric acid manufacturing operations to 0.5 lb/ ton for acid mist and sets a maximum SO₂ emission rate of 2,000 parts per million (ppm) for sulfur recovery operations.

Further, the regulation addresses emission limits during startup, shutdown, and malfunction ("SSM") periods. For the purposes of this regulation, "startup" is defined as the initiation of a source's operation, "shutdown" as the cessation of operation, and a "malfunction" as a sudden and unavoidable breakdown of process or control equipment. During SSM periods, equipment does not operate at optimal efficiency, resulting in excess emissions. These emissions can negatively impact public health, contribute to smog formation, and adversely affect downwind communities.

The Department established emission limits for SSM events that require facilities that operate continuously or in an extended steady state when SSM occurs, to obtain an operating permit pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102, to limit emissions during these events. These permits are subject to environmental review and public scrutiny and must demonstrate that they will not violate NAAQS.

Additionally, the Department's regulations are also part of Delaware's State Implementation Plan ("SIP") because they implement, maintain, and enforce the NAAQS. A SIP is a state-created, federally enforceable plan that outlines how the state will fulfill CAA requirements to enhance air quality. It includes regulations and supporting documentation that demonstrate the state's efforts to safeguard public health and the environment.

On June 30, 2011, the Sierra Club petitioned the EPA to address how excess emissions during SSM events were being handled in SIPs that had been approved by the EPA. In response, on June 12, 2015, the EPA issued a final rule known as the 2015 SSM SIP Call [80 FR 33840]. Under Section 110(k)(5) of the CAA, the EPA has the authority to issue a 'SIP Call' to states, requiring them to correct state plans that fail to meet federal standards. The 2015 SSM SIP Call included 36 state SIPs, including Delaware's SIP for 7 DE Admin. Code 1109. The EPA found Subsection 1.4 of Delaware's regulation to be deficient because it potentially allowed exemptions from the emission limits established in Section 2.0 and 3.0, during SSM events. The 2015 SSM SIP Call mandated that state's establish plans that require industrial facilities to follow air pollution rules during periods of SSM; specifically, how these emissions are treated in SIPs, with corrections due by November 22, 2016.

On November 22, 2016, the Department revised its regulations governing particulate emissions from industrial process equipment (7 DE Admin. Code 1109) and submitted a SIP revision to the EPA, in response to the 2015 SSM SIP Call. The SIP revisions included the removal of the problematic exemption stated in subsection 1.4.

As part of the response to the 2015 SIP CALL, the Department also adopted a separate "state-only" version of 7 DE Admin. Code 1109. The "state only" version as cited in the *Delaware Registrar of Regulations*, maintained the language that was removed in the SIP revisions (subsection 1.4). Delaware believed the conditions set forth in the "state only" version was necessary to administer good air quality management.

On October 23, 2023, the EPA issued a final rule (88 FR 72688), disapproving Delaware's SIP revision submission and determined that the revisions failed to fully resolve the deficiencies identified in the 2015 SSM SIP Call.

In response to the EPA's disapproval, the Department is proposing the amendments, herein, to rectify the deficiencies cited in the 2015 SSM SIP Call. The proposed amendments address Section 1.0 ("General Provisions") of 7 DE Admin. Code 1109. To ensure compliance with EPA standards, the Department proposes to strike the regulatory language in subsection 1.4, in its entirety. The Amendment aims to remove language that could potentially allow exemptions in SSM events and hold industrial operations to the emission limits in Regulation 1109, apply at all times.

The Department has conducted a review of the impact of the proposed Regulation and found that more stringent federal regulations, are applicable to the sources covered by this Regulation. The EPA regulation at 40 CFR Part 60, Subpart H (Section 60.83(a)(1)), *Standards of Performance for Sulfuric Acid Plants*, establishes an acid mist limit of 0.15 lb/ton. Furthermore, EPA's regulation at 40 CFR Part 60, Subpart J (Section 60.104), *Standards of Performance for Petroleum Refineries*, sets the least stringent SO₂ emission limit at 300 ppm.

In conclusion, the applicable federal regulations impose more stringent emission limits than those proposed under Delaware's Regulation for the two affected facilities. Additionally, both facilities currently comply with the SSM emission limits, ensuring that no new controls or additional resources will be required for compliance with the proposed amendments.

The Department published its proposed amendments in the August 1, 2024, *Delaware Register of Regulations*. The virtual public hearing regarding this matter was held on August 27, 2024. There were seven (7) members of the public in attendance at the Department's virtual public hearing. Pursuant to 29 Del.C. §10118(a), the Hearing Record ("Record") remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter on September 11, 2024, with no comment received by the Department.

Thereafter, Hearing Officer Theresa Smith prepared her report dated September 12, 2024 ("Report"), which expressly incorporated into the Record the proposed Amendment, attached thereto as Appendix "A." Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the proposed amendments pending before the Department.

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. §§ 6001(c) & 6010. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1109 - *Emissions of Sulfur Compounds from Industrial Operations*. Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory amendments are well-supported and will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call by removing Section 1.4, in its entirety. I also find that under Section 110(k)(5) of the CAA, the EPA will review the proposed amendments and if approved, these Amendments will become part of Delaware's SIP for 7 DE Admin. Code 1109 and will be enforceable under federal law (40 CFR Part 52, Subpart I - Delaware). Lastly, I find that the proposed amendments comply with all applicable federal and state laws and regulations. Further, the proposed amendments as published in the August 1, 2024, *Delaware Register of Regulations*, are reflective of the Department's authority under 7 Del.C. §§ 6001(c) & 6010, to ensure continued protection of public health and the environment by regulating emissions and reducing air pollution and air contaminants.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 Del.C. §§ 6001(c) & 6010;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Chapter 60, to issue an Order adopting these proposed amendments as final;
3. The Department provided adequate public notice of the proposed amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed amendments, including at the time of the virtual public hearing held on August 27, 2024, and during the 15 days subsequent to the hearing (through September 11, 2024), before making any final decision;
4. Promulgation of the proposed amendments to 7 DE Admin. Code 1109 - *Emissions of Sulfur Compounds from Industrial Operations*, will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call by removing Section 1.4, in its entirety;
5. The Department has reviewed the proposed amendments in light of the *Regulatory Flexibility Act*, consistent with 29 Del.C. §104, and believes the same to be lawful, feasible and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. The Department has reviewed this proposed regulatory promulgation in the light of 7 Del.C. §10003 and 29 Del.C. §10118(b)(3), and has determined that any impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets will be de minimis;

7. 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;
8. The Department's proposed regulatory amendments, as published in the August 1, 2024, *Delaware Register of Regulations*, 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*;
9. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary;
10. The Department shall submit this Order approving the proposed amendments as final regulations 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; and
11. The Department shall serve and publish its Order on its internet site.

Shawn M. Garvin
Secretary

1109 Emissions of Sulfur Compounds From Industrial Operations

05/09/1985

1.0 General Provisions

- 1.1 The emission of sulfur dioxide from process operations shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 For all tables in this regulation, unless otherwise indicated, the emission limitation for a production rate between any two consecutive production rates shall be determined by linear interpolation.
- 1.3 For all tables in this regulation, unless otherwise indicated, the emission limitation for a production rate above the maximum production rate or below the minimum production rate shall be determined by linear extrapolation.
- 1.4 ~~The provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~

02/01/1984

2.0 Restrictions on Sulfuric Acid Manufacturing Operations

- 2.1 No person shall cause or allow the emission of sulfur dioxide in the tail gases from any existing sulfuric acid manufacturing operation to exceed either a concentration of 1,000 parts per million by volume or a mass emission rate as specified in Table 2-1 of this regulation.

**TABLE 2-1
ALLOWABLE MASS EMISSION RATE OF SULFUR DIOXIDE FROM
EXISTING SULFURIC ACID MANUFACTURING OPERATIONS**

Production Rate (Tons per Day)	Mass Emission Rate (Pounds per Hour)
100	75
300	210
500	345
700	480

900	615
1,100	750
1,300	885
1,500	1020

- 2.2 No person shall cause to be discharged into the atmosphere from any existing sulfuric acid plant any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.25 g per kg of acid produced (0.5 lb per ton) the product being expressed as 100% H₂SO₄.
- 2.3 The provisions of 2.2 of this regulation shall not apply to acid plants used as sulfur dioxide control systems, to chamber process plants, to acid concentrators or to petroleum storage and transfer facilities.
- 2.4 The reference methods used to determine compliance with standards prescribed in 2.2 of this Regulation shall be those set forth in 1.5 of 7 **DE Admin. Code** 1120.

02/01/1984

3.0 Restriction on Sulfur Recovery Operations

- 3.1 No person shall cause or allow the emission of sulfur dioxide in the tail gases from existing sulfur recovery operations to exceed either a concentration of 2,000 parts per million by volume or a mass emission rate as specified in Table 3-1 of this regulation.

**TABLE 3-1
ALLOWABLE MASS EMISSION RATE OF SULFUR DIOXIDE
FROM SULFUR RECOVERY OPERATIONS**

Production Rate (Tons per Day)	Mass Emission Rate (Pounds per Hour)
50	425
100	550
200	800
300	1,050
400	1,300
500	1,550
600	1,800
700	2,050
800	2,300
900	2,550
1,000	2,300

- 3.2 Except as provided in 11.0 of 7 **DE Admin. Code** 1120, NEW SOURCE PERFORMANCE STANDARDS, no person shall cause or allow the emission of sulfur dioxide in the tail gases from new sulfur recovery operations to exceed either a concentration of 2,000 parts per million by volume or a mass emission rate as specified in Table 3-1 of this regulation.

02/01/1984

4.0 Stack Height Requirements

Minimum stack heights for new sources of sulfur dioxide will be determined by the Department on an individual basis. Such stack height requirements will be based on considerations such as, but not limited to, existing ambient levels of sulfur dioxide, local sources, atmospheric dispersion calculations, land use, and population density. The provisions of 7 DE Admin. Code 1127 shall apply to these calculations.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6001(c) and 6010 (7 Del.C. §§6001(c) & 6010)
7 DE Admin. Code 1114

Secretary's Order No.: 2025-A-0001

RE: **Approving Final Regulations to Amend 7 DE Admin. Code 1114 -
*Visible Emissions***

Date of Issuance: January 7, 2025
Effective Date of the Amendment: February 11, 2025

1114 Visible Emissions

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

Background, Procedural History and Findings of Fact

This Order relates to the proposed amendments ("Amendments") to 7 DE Admin. Code 1114 - *Visible Emissions* ("Regulation"). The Department is proposing amendments to address the regulation of particulate emissions during startup, shutdown, and malfunction ("SSM") of stationary sources that emit visible air contaminants. These Amendments are necessary to ensure compliance with the U.S. Environmental Protection Agency's (EPA) 2015 Startup, Shutdown, and Malfunction State Implementation Plan Call ("2015 SSM SIP CALL").

Pursuant to the *Clean Air Act* ("CAA") the Department established 7 DE Admin. Code 1114 to establish air emission limits for visible air contaminants (or smoke) from a stationary source in alignment with the National Ambient Air Quality Standards ("NAAQS"). This regulation limits stationary sources to not exceed 20% opacity for a total of more than three minutes in any one hour or more than 15 minutes in any 24-hour period.

The sources covered under the Regulation, with equipment that operates continuously or in an extended steady state during startup, shutdown, and malfunction ("SSM") events, are required to obtain a permit in accordance with Section 2.0 of 7 DE Admin. Code 1102 to limit emissions during these events. For the purposes of this regulation, "startup" is defined as the initiation of a source's operation, "shutdown" as the cessation of operation, and a "malfunction" as a sudden and unavoidable breakdown of process or control equipment. During SSM periods, equipment does not operate at optimal efficiency, resulting in excess emissions. These emissions can negatively impact public health, contribute to smog formation, and adversely affect downwind communities.

The Department's regulations are also part of Delaware's State Implementation Plan ("SIP") because they implement, maintain, and enforce the NAAQS. A SIP is a state-created, federally enforceable plan that outlines how the state will fulfill CAA requirements to enhance air quality. It includes regulations and supporting documentation that demonstrate the state's efforts to safeguard public health and the environment.

On June 30, 2011, the Sierra Club petitioned the EPA to address how excess emissions during SSM events were being handled in SIPs that had been approved by the EPA. In response, on June 12, 2015, the EPA issued a final rule known as the 2015 SSM SIP Call [80 FR 33840]. Under Section 110(k)(5) of the CAA, the EPA has the authority to issue a 'SIP Call' to states, requiring them to correct state plans that fail to meet federal standards. The 2015 SSM SIP Call included 36 state SIPs, including Delaware's SIP for 7 DE Admin. Code 1114. The EPA found

Subsection 1.3 of Delaware's Regulation to be deficient because it potentially allowed exemptions from the emission limits established in Section 2.0 of the Regulation, during SSM events. The 2015 SSM SIP Call mandated that states establish plans that require industrial facilities to follow air pollution rules during periods of SSM; specifically, how these emissions are treated in SIPs, with corrections due by November 22, 2016.

On November 22, 2016, the Department revised regulations governing *Visible Emissions* (7 DE Admin. Code 1114) and submitted a SIP revision to the EPA, in response to the 2015 SSM SIP Call. The revisions proposed the removal of 7 DE Admin. Code 1114 from the SIP, in its entirety, while maintaining the Regulation as a state-only regulation in the *Delaware Registrar of Regulations*. Delaware's approach has been to require a permit for facilities that limit emissions during SSM. These permits are subject to an environmental review, public scrutiny, and they must prove that they won't violate NAAQS. As such, the Department considered the SSM provisions in the SIP to be protective of the NAAQS and sufficient. Delaware also believed that the conditions set forth in the "state only" version was necessary to administer good air quality management.

On October 23, 2023, the EPA issued a final rule (88 FR 72688), disapproving Delaware's SIP revision submission. The EPA concluded that Delaware had not conducted a sufficiently quantifiable assessment of the relationship between visible emissions and fine particulate matter emissions. Additionally, the EPA found Delaware's explanation addressing the anti-backsliding provisions of CAA Section 110(l), related to removing Regulation 1114 from the SIP, to be inadequate.

In response to the EPA's disapproval, the Department is proposing the Amendments, herein, to rectify the deficiencies cited in the 2015 SSM SIP Call. The Amendments address Section 1.3 ("General Provisions") and Section 2.0 ("Requirement") of 7 DE Admin. Code 1114. To ensure compliance with EPA standards, the Department proposes to strike the regulatory language in subsection 1.3, in its entirety, and add a new subsection 2.2, to include a new SSM emission limit of "40% opacity for more than 6 consecutive minutes in any 1 hour period." The Amendment aims to remove language that could potentially allow exemptions in SSM events and implement new emission limits during SSM events.

The Department conducted a review of the impacts to the facilities covered under 7 DE Admin. Code 1114. The Department determined the following facilities were also covered under more stringent federal regulation opacity limits:

- **40 CFR Part 60, Subpart D - Standards of Performance for Fossil-Fuel-Fired Steam Generators:** Fossil-fuel-fired steam generating units with a heat input rate exceeding 73 MW (250 MMBtu/hr), including units co-fired with wood residue have a limit of no more than 20% opacity, except for one six-minute per hour of not more than 27% opacity.
- **40 CFR Part 60, Subpart H - Standards of Performance for Sulfuric Acid Plants:** Sulfuric acid production units have a 10% opacity limit for acid mist.
- **40 CFR Part 60, Subpart I - Standards of Performance for Hot Mix Asphalt Facilities:** Facilities producing hot mix asphalt by heating and drying aggregate and mixing it with asphalt cement have an opacity limit of 20%.
- **40 CFR Part 60, Subpart J - Standards of Performance for Petroleum Refineries:** Specific units in petroleum refineries, such as fluid catalytic cracking unit regenerators, fuel gas combustion devices, and most Claus sulfur recovery plants have an opacity limit of 30%, with an allowance for one six-minute period per hour.
- **40 CFR Part 60, Subpart DD - Standards of Performance for Grain Elevators:** Grain terminal and storage elevators have an opacity limit is 0%.
- **40 CFR Part 60, Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants:** Fixed or portable nonmetallic mineral processing equipment, such as crushers and conveyors have opacity limits, with the highest allowable opacity limit set at 15%.

The Department also determined that some sources regulated under Regulation 1114 may not fall within the scope of the referenced federal regulations. However, these sources may be required to obtain Delaware permits if their emission rates meet the thresholds outlined in 7 DE Admin. Code 1102. These permits often impose opacity standards that are more stringent than the proposed SSM opacity limits in Regulation 1114. Additionally, the permits include provisions requiring facilities to minimize emissions during startup, shutdown, and malfunction (SSM) events, mandating adherence to good air pollution control practices. To ensure compliance, the Department conducts assessments that include reviewing monitoring data, performing opacity observations, evaluating operating and maintenance practices, and conducting source inspections.

As more stringent federal regulations already apply to many sources covered by this Regulation, it is not

expected that those sources will need to expend any additional resources to comply with the proposed amendments. Additionally, the proposed amendments are not substantially likely to impose additional cost or burdens upon sources covered by the Regulation. With proper maintenance of equipment and the use of good air pollution control practices, sources should be able to meet the proposed opacity limits during start-up, shutdown of equipment.

The Department published its proposed amendments in the August 1, 2024, *Delaware Register of Regulations*. The virtual public hearing regarding this matter was held on August 27, 2024. There were seven (7) members of the public in attendance at the Department's virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the Hearing Record ("Record") remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter on September 11, 2024, with one comment received by the Department.

Subsequent to the close of the public comment period, Hearing Officer Theresa Smith requested a Technical Response Memorandum ("TRM") from the Department's subject matter experts in the Division of Air Quality. That TRM, dated November 15, 2024, and received by Mrs. Smith on December 4, 2024, is discussed herein in greater detail below.

Thereafter, Hearing Officer Theresa Smith prepared her report dated December 19, 2024 ("Report"), which expressly incorporated into the Record the proposed Amendment, attached thereto as Appendix "A" and the above-referenced TRM regarding the comment received from the public in this matter, attached thereto as Appendix "B." Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the proposed amendments pending before the Department.

The Report, along with its Appendices, is incorporated herein by reference. 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."

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.* §§ 6001(c) & 6010. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1114 - *Visible Emissions*. In reviewing the applicable statutes and regulations, as well as weighing the public benefits of the proposed amendments against potential detriments, the Department's experts in the Division of Air Quality ("DAQ") have concluded that the proposed amendments comply with all applicable federal and state laws and regulations. Further, the proposed amendments as published in the August 1, 2024, *Delaware Register of Regulations*, are reflective of the Department's authority under 7 *Del.C.* §§ 6001(c) & 6010, to ensure continued protection of public health and the environment by regulating emissions and reduce air pollution and air contaminants.

The Department's TRM, attached and incorporated into Mrs. Smith's Report as Appendix "B," acknowledges the comment received from the public concerning the proposed amendments, and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter.

The commenter also expressed concerns regarding grid reliability. Facilities affected by this issue would be electric Generating Units (EGUS). Most EGUs have Title V permits which require the facilities to self-report deviations if they cannot comply with the opacity standard. These permits may allow for alternate opacity during SSM events. The Department reviewed permit conditions for all facilities that allowed alternate opacity during SSM events and determined that existing facilities are currently complying with the proposed amendments.

The commenter raised concerns that the proposed amendment is unnecessarily stringent. However, the Department's proposed amendments are consistent with, and not more stringent than federal Regulations and state permits issued to a majority of facilities covered under the Regulation. Further, it is expected that facilities subject to the Regulation should not require new controls or expend additional resources to achieve compliance with the proposed amendments. With proper maintenance of equipment and the use of good air pollution control practices, sources should currently be able to meet the proposed opacity limits during start-up and shutdown of equipment.

The commenter also expressed concerns regarding grid reliability. Facilities affected by this issue would be electric Generating Units (EGUS). Most EGUs have Title V permits which require the facilities to self-report deviations if they cannot comply with the opacity standard. These permits may allow for alternate opacity during SSM events. The Department reviewed permit conditions for all facilities that allowed alternate opacity during SSM events and determined that existing facilities are currently complying with the proposed amendments.

The Department also addressed the concern regarding the technical feasibility of the proposed amendment. The proposed amendment implements language that is currently in place for Delaware's neighboring state, Maryland, which limits SSM events to 40% opacity. The Department has reviewed federal regulations that impact sources covered under the Regulation and found them to be more stringent. The Department also takes the perspective that quantifying visible emissions using visible observations provides a more practical and cost-effective method for ensuring compliance with particulate matter emissions during SSM events compared to stack testing.

Additionally, the Department addressed the concern of facilities needing to preserve the ability to use fuel oil for extreme weather conditions. During the December 2022 winter storm, no permit deviations were reported by the facility related to extreme weather conditions. Thus, the Department concludes that the proposed amendment will not hinder the ability to use fuel oil during extreme cold. While the Department does not regulate weather emergency situations, facilities are reminded that compliance exceptions do not exist for emergencies. Any noncompliance must still be self-reported. Facilities are encouraged to prioritize: (1) protecting worker and public safety, and (2) minimizing excess emissions.

Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed regulatory amendments are well-supported and will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call. These Amendments address EPA's backsliding concerns by removing Section 1.3, and adding subsection 2.2, establishing visible emissions limit for SSM periods, where no such opacity limit previously existed in the Regulation. I also find that under Section 110(k)(5) of the CAA, the EPA will review the proposed amendments and if approved, these Amendments will become part of Delaware's SIP for 7 DE Admin. Code 1114 and will be enforceable under federal law (40 CFR Part 52, Subpart I - Delaware). Lastly, I find that the proposed amendments comply with all applicable federal and state laws and regulations. Further, the proposed amendments as published in the August 1, 2024, *Delaware Register of Regulations*, are reflective of the Department's authority under 7 *Del.C.* §§ 6001(c) & 6010, to ensure continued protection of public health and the environment by regulating emissions and reducing air pollution and air contaminants.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 *Del.C.* §§ 6001(c) & 6010;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed amendments as final;
3. The Department provided adequate public notice of the proposed amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed amendments, including at the time of the virtual public hearing held on August 27, 2024, and during the 15 days subsequent to the hearing (through September 11, 2024), before making any final decision;
4. Promulgation of the proposed amendments to 7 DE Admin. Code 1114 - *Visible Emissions*, will enable the Department to ensure compliance with the EPA 2015 SSM SIP Call by removing Section 1.3, and adding subsection 2.2, establishing visible emissions limit for SSM periods;
5. The Department has reviewed the proposed Amendments in light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* §104, and believes the same to be lawful, feasible and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. The Department has reviewed this proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that any impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets will be de minimis;
7. 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;
8. The Department's proposed regulatory amendments, as published in the August 1, 2024, *Delaware Register of Regulations*, 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*;
 9. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary;
 10. The Department shall submit this Order approving the proposed amendments as final regulations 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; and
 11. The Department shall serve and publish its Order on its internet site.

Shawn M. Garvin
Secretary

1114 Visible Emissions

41/11/2013

1.0 General Provisions

- 1.1 The purpose of this regulation is to control the emissions of visible air contaminants from all stationary sources.
- 1.2 Measurements of air contaminant visibility shall be in accordance with accepted practices of Ringelmann values or opacity percentages.
- 1.3 ~~The provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7-DE Admin. Code 1102.~~

2.0 Requirements

- 2.1 ~~No~~ Except as outlined in 2.2, no person shall cause or allow the emission of visible air contaminants or smoke from a stationary or mobile source, the shade or appearance of which is greater than 20% opacity for an aggregate of more than three minutes in any one hour or more than 15 minutes in any 24 hour period. For guideline purposes only, Shade Number 1 of the Ringelmann Smoke Chart coincides with the regulatory limit of 20% opacity, when observing black smoke.
- 2.2 ~~During the start-up and shutdown of equipment, no person shall cause or allow the emission of visible air contaminants or smoke from a stationary or mobile source, the shade or appearance of which is greater than 40% opacity for more than 6 consecutive minutes in any 1 hour period.~~

07/17/1984

3.0 Alternate Opacity Requirements

- 3.1 Whenever the Secretary determines that a source complies with an applicable mass emission standard and demonstrates that the opacity of the complying emissions is more restrictive than the requirements of 2.0 of this regulation, the Secretary will make an appropriate adjustment to the opacity standard for the affected source.
- 3.2 Whenever an owner or operator can establish compliance with an applicable mass emission standard and fails to comply with 2.0 of this regulation, the owner or operator may petition the Secretary setting forth the results of the emission testing or evaluation and request the Secretary to make an appropriate adjustment to the opacity standard for the affected source.
- 3.3 The Secretary may grant such a petition as outlined in 3.2 of this regulation upon a demonstration by the owner or operator that the affected source and associated air pollution control equipment was

operated and maintained during the mass emission test in a manner to minimize the opacity of emissions during emission testing or evaluation that the mass emissions testing was performed in accordance with procedures approved by the Department; and that the affected source and associated air pollution control equipment is incapable of continuously meeting applicable opacity standards as set forth in 2.0 of this regulation.

- 3.4 The Secretary may establish an opacity standard for the affected source at a level at which the source will be able to meet the adjusted opacity standard at all times during which the source is meeting the applicable mass emission rate standard. The Secretary will make the adjusted opacity standard a part of the operating permit in the form of an operating condition.
- 3.5 Any action by the Secretary pursuant to the provisions of 3.0 of this regulation shall be incorporated in the State Implementation Plan.

07/17/1984

4.0 Compliance with Opacity Standards

For purposes of this regulation, compliance with opacity standards shall be in accordance with 1.5.3 of 7 DE Admin. Code 1120.

DEPARTMENT OF LABOR DIVISION OF PAID LEAVE

Statutory Authority: 19 Delaware Code, Sections 105 and 3720 (19 Del.C. §§105 and 3720)
19 DE Admin. Code 1401

ORDER

1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave

SUMMARY OF THE EVIDENCE

1. Title 19, Sections 105 and 3720 of the Delaware Code authorize the Department of Labor ("Department") to establish, amend and repeal regulations necessary for the internal administration of the Department, and for the proper conduct of any necessary hearings before the Department or its authorized agents and in relation to the administration and enforcement of the Healthy Delaware Families Act (the "Act") and the Division of Paid Leave (the "Division").
2. The Department's purpose in proposing the regulations was to set forth additional definitions, guidance, procedures, and standards for the implementation of the Act and the Paid Family Medical Leave Insurance Program ("PFML Program"). The Division will administer the Act and this Program in accordance with these regulations.
3. Notice of the proposed regulation was published in the November 1, 2024 edition of the *Delaware Register of Regulations*.
4. The Department invited a period of 30 days, until December 2, 2024, for written comment from the public, and received 4 written submissions with comments from organizations representing businesses and community members.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Division with comments in writing and by testimony at the public hearing on the proposed amendments to the Division's regulations.
2. Some comments the Division received addressed sections of the regulation irrelevant to the proposed changes to the regulation. Other comments addressed the proposed changes but requested clarification for specific examples, which the Division will keep in mind for future amendments to the Regulation. Some comments

requested revisions to the proposed amendments that would contradict the Act. The Division will continue to work with the public, especially organizations representing community members, to best administer the PFML Program. Below are written submissions with comments addressing the proposed amendments to the regulation that the Department is specifically addressing:

- a. Comment 1: The Division should clarify the appeal process, particularly whether decisions from the Family and Medical Leave Insurance Board (the "Board") regarding claims for benefits may be appealed to the Superior Court, referencing 19 *Del.C.* §3718
Agency Response: Although the Division updated Section 12.0 and 13.0 of the regulations, which address the appeal process under the Act, the Department does not believe that this area of the Act requires further regulatory explanation. Section 3711 of the Act addresses the process for appeal under the Act. The Act outlines "[t]he process for review of a denial of family and medical leave benefits" and requires the Board to "conduct hearings under the Administrative Procedures Act, Chapter 101 of Title 29, except that the Board's hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect confidential health and privacy information." 19 *Del.C.* §3711(a) and (e), respectively. Pursuant to the Delaware Administrative Procedures Act, 29 *Del.C.* Ch. 101, Section 10142, "[a]ny party against whom a case decision has been decided may appeal such decision to the Court" and may file such appeal "within 30 days of the day the notice of the decision was mailed." 29 *Del.C.* §§10142(a), 10142(b). As the process is defined within the Act and further in the Delaware Administrative Procedures Act, the Department is not revising the regulations as proposed, but will consider this comment when contemplating any future legislative efforts to revise the Act.
 - b. Comment 2: The Division should reconsider referencing the State plan as the "PFML insurance program" in Section 1.0 because it may lead to confusion among employers and employees covered by an insured private plan.
Agency Response: The Division respectfully disagrees that referring to the State plan as the "PFML insurance program" would lead to confusion, as the Act refers to the State plan as the "Family and Medical Leave Insurance Program" and private plans. See 19 *Del.C.* §§3713, 3716, and 19 DE Admin. Code 1401, Sections 1.0, 17.0, respectively. The Department will not be amending the regulation as suggested.
 - c. Comment 3: The Division should remove insurance carriers from the list of entities in Section 6.9.3 from whom the Division can request waiver forms.
Agency Response: The Division will not remove "insurance carries" from the list of entities in Section 6.9.3. The proposed amendment to Section 6.9.3 provides employers the option with which entity retains the waiver, requiring that "the waiver must be retained by the employer, its third party administrator, **or** insurance provider" (emphasis added). The proposed amendment does not require the insurance carrier to be the sole entity that holds the waiver forms. Therefore, the Department will not be amending the regulation as suggested.
 - d. Comment 4: The Division should clarify whether Section 12.7.5 applies only to insured private plans or whether self-insured plans are included in the first level appeal option.
Agency Response: Section 12.7 details the process for an employee covered by a self-insured plan to request a claims review by the Division. Nonetheless, the Department agrees that Section 12.7.5 should be clarified to make clear that first level appeals of private plans does not include self-insured plans. The Department does not consider this a substantive change to the proposed amendments.
3. The Division has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute pursuant to 19 *Del.C.* §§105 and 3720.
 4. The proposed amendments outline procedures, processes, and eligibility standards for employees who apply to their employer for claims and benefits payments under the program and seek review from the Department, including an appeal of a denial to the Board. A copy of the published regulation formatted to show the above non-substantive changes is attached hereto as Exhibit A.
 5. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 *Del.C.* Ch. 101, et. seq., and determining that no substantive changes are required to the proposed regulations, this is the Department's Decision and Order adopting the proposed regulations with the proposed non-substantive edits set forth herein and with the rest of the proposed rules as published remaining unchanged.

6. The Department reviewed the proposed regulation as required by 29 Del.C. §10118(b)(3) and determined that if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.
7. For the reasons stated above, the Department finds no reason to substantively amend the regulations.

ORDER

AND NOW this 13th day of January, 2025, it is hereby ordered that:

1. The proposed regulations, with the non-substantiative changes, are hereby adopted;
2. The effective date of this order is 10 days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 Del.C. §10118(g); and
3. The Department reserves to itself the authority to issue such order and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.
Department of Labor
Karryl Hubbard, Secretary of Labor

1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave
(Break in Continuity of Sections)

12.0 Employee Claims, Employer Adjudication, and Divisional Review
(Break in Continuity Within Section)

- 12.7 Employee's right to request a claims review by the Division. After an employer who is covered by the public plan or a self-insured plan issues its decision on a claim for paid family and medical leave benefits, the employee or the employee's designated assistant may request, within 60 days of issuance of employer's decision, that the Division review the claim.
 - 12.7.1 This request for the Division to review the claim must be made via a claims review request ~~form that shall be created by the Division and made available~~ on the Division's online portal administrative system.
 - 12.7.2 Neither the employer nor the Division shall be required to respond to either a handwritten (or manually typed) ~~form claim~~ submitted by any means other than the online portal administrative system or to a handwritten (or manually typed) form that has been scanned and then submitted through the Division's online portal administrative system, as neither of those methods are acceptable and will not update the Division's electronic claims database/records system.
 - 12.7.3 Both the Division and the employer are required to provide, without any prejudice or fear of retaliation, reasonable assistance so that the employee or the employee's designated assistant can complete, *inter alia*, the claims review request ~~form~~ through the Division's online administrative system.
 - 12.7.4 After the claims review request ~~form~~ has been completed and properly transmitted to the Division, the Division shall undertake a review of the employer's claims adjudication decision-making process.
 - 12.7.5 For first level appeals under private plans, **[not including self-insured plans,]** employees have the right to request reconsideration of a denial or other decision ~~by an insurance carrier or third-party administrator ("TPA")~~ directly with that entity. The employee must file the request for reconsideration with the private plan within 10 days of the employee's receipt of the notice of adverse determination. Beginning January 1, 2026, if the ~~insurance carrier or TPA~~ private plan upholds the decision, the employee may pursue an appeal with the Division. ~~From January 1,~~

~~2025 to December 31, 2025, however, all insurance carrier or TPA denials must be appealed directly to the Board as set forth in Section 13.0, without Division review.~~

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2024 issue of the *Register* at page 373 (28 DE Reg. 373). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 601 02-01-25.htm>

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Board of Medical Licensure and Discipline

Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1770A (24 Del.C. §§1713(a)(12) & 1770A)
24 DE Admin. Code 1700

ORDER

1700 Board of Medical Licensure and Discipline

Pursuant 24 Del.C. §§1713(a)(12) and 1770A, the Regulatory Council for Physician Assistants ("Council") of the Delaware Board of Medical Licensure and Discipline ("Board") proposed to revise its regulation to clarify and implement 24 Del.C. §1790(a)(2), which authorizes a physician assistant, with a collaborative agreement with an appropriately-trained physician, to terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability.

Summary of the Evidence and Information Submitted

Following publication of the Public Notice in the *Delaware Register of Regulations* on August 1, 2024, Volume 28, Issue 2, a public hearing was held before the Council on September 10, 2024. The written comment period was held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Council accepted as evidence and marked the following as the Council's Exhibits:

Council Exhibit 1: Affidavit of publication of the public hearing notice in the *News Journal*.

Council Exhibit 2: Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on September 10, 2024. No written comments were received by the Council during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen-day second public comment period. 29 Del.C. § 10118(a). Written comment was submitted by Ms. Hilton-Phillips of Highmark Blue Cross Blue Shield on September 27, 2024. The statutory deadline for submission of written comment was September 25, 2024. 29 Del.C. §10118(a). Therefore, the Council was prohibited from and did not consider Ms. Hilton-Phillips' comment.

FINDINGS OF FACT AND CONCLUSIONS

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

2. There were no public comments provided to the Council during the two written public comment periods, or the public hearing.

3. Pursuant to 24 **Del.C.** §§1713(a)(12) and 1770A, the Council has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The Council proposed to amend its regulations to clarify and implement 24 **Del.C.** §1790(a)(2), which authorizes a physician assistant, with a collaborative agreement with an appropriately-trained physician, to terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability.
5. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed changes to the Council's regulation.
6. Having received no public comments, the Council finds no reason to amend the regulation as proposed.
7. The Council has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the State's resiliency to climate change is not practical.

RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

8. By the unanimous affirmative vote of the undersigned members, the Regulatory Council for Physician Assistants hereby adopts the regulation as published in the *Register of Regulations* on August 1, 2024, Volume 28, Issue 2, and recommends approval of such regulation to the Board of Medical Licensure and Discipline.
9. If approved by the Board of Medical Licensure and Discipline, the regulation will be effective ten days after publication of the Final Order in the Register of Regulations.

Respectfully submitted this 3rd day of December 2024.

/s/ Bethany Melo, PA-C

/s/ Kaila Glenn, PA-C

/s/ Joseph M. Parise, D.O.

/s/ Lauren Davey, PA-C

/s/ Tiwana Miller, PA-C

ABSENT, Gregory Wanner, D.O.

WHEREAS, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Regulatory Council for Physician Assistants for approval of the amended regulation to clarify and implement 24 **Del.C.** §1790(a)(2), which authorizes a physician assistant, with a collaborative agreement with an appropriately-trained physician, to terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability; and

WHEREAS, the Board of Medical Licensure and Discipline has determined to approve the aforesaid regulation as proposed by the Regulatory Council for Physician Assistants and attached hereto as Exhibit A.

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

1. The regulation recommended by the Regulatory Council for Physician Assistants clarifying and implementing 24 **Del.C.** §1790(a)(2), which authorizes a physician assistant, with a collaborative agreement with an appropriately-trained physician, to terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability, is approved; and

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

SO ORDERED this 7th day of January 2025.

Board of Medical Licensure and Discipline

/s/ Joseph Rubacky, D.O.

/s/ Joseph Parise, D.O.

/s/ Sara Moghaddam, M.D.
 /s/ Ray Blackwell, M.D.
 /s/ Anna D'Amico, M.D.
 /s/ Bethany Melo, PA-C
 /s/ Melissa Warren
 ABSENT Janice Truitt
 /s/ Manish Purohit, M.D.

/s/ Randeep Kahlon, M.D.
 /s/ Garrett Colmorgen, M.D.
 /s/ Lauren Davey, PA-C
 /s/ Sharon Williams-Mayo
 ABSENT Mary Lomax, Ed.D.
 ABSENT Awele Maduka-Ezeh, M.D.

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

***Please note that no changes were made to the regulation as originally proposed and published in the August 2024 issue of the *Register* at page 106 (28 DE Reg. 106). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 604 02-01-25.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 Del.C. §1906(a)(1))
 24 DE Admin. Code 1900

ORDER

1900 Board of Nursing

FINAL ORDER ADOPTING REGULATION CHANGES

The Delaware Board of Nursing pursuant to 24 *Del. C.* § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to confirm that certified nurse midwives may perform out of hospital births, including home births, clarify the return to practice requirements for APRNs who have been out of active clinical practice more than 5 years, and increase the minimum number of supervised clinical hours APRN programs must include in their curricula.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on October 1, 2024, a public hearing was held on November 13, 2024. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked the following as the Board's Exhibits:

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

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

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the initial written public comment period, public hearing or fifteen-day period following the public hearing.
3. Pursuant to 24 **Del. C.** § 1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments seek to confirm that certified nurse midwives may perform out of hospital births, including home births, clarify the return to practice requirements for APRNs who have been out of active clinical

practice more than 5 years, and increase the minimum number of supervised clinical hours APRN programs must include in their curricula.

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

6. The Board has reviewed the proposed regulation as required by 29 **Del. C.** §10118(b)(3) and has determined that if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

7. For the reasons stated above, the Board finds no reason to substantively amend the regulations.

DECISION AND ORDER CONCERNING THE REGULATIONS

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

SO ORDERED this 8th day of January 2025 by the Delaware Board of Nursing.

/s/ Kimberly Hopkins, RN, President

(absent) Marlo Metz, RN

/s/ Pamela James, RN

(absent) Prameela Kaza, Public Member

(absent) Jacqueline Mainwaring, CRNA

/s/ Tiarra Davis, Public Member

/s/ Roger Akin, Public Member

(absent) Patricia Dickerson, LPN Member

(absent) Carol Abdill, RN, Vice President

(absent) Gayle Melvin, Public Member

/s/ Danielle Lowe, RN

/s/ William Hare, Public Member

(absent) Stephanie Evans-Mitchell, FNP

/s/ Christina Hushen, RN Member

/s/ Joshua Barnes, RN Member

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

***Please note that no changes were made to the regulation as originally proposed and published in the October 2024 issue of the *Register* at page 284 (28 DE Reg. 284). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 606 02-01-25.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) and 29 Delaware Code, Section 10113 (24 **Del.C.** §1906(a)(1) and 29 **Del.C.** §10113)
24 **DE Admin. Code** 1900

ORDER

1900 Board of Nursing

FINAL ORDER ADOPTING REGULATION CHANGES

Pursuant to 29 **Del. C.** §§ 10113(b)(2), (4) and (5) and 24 **Del. C.** § 1906(a)(1), the Delaware State Board of Nursing issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 **Del. C.** § 10113(b)(2), Regulation 6.5.1.3 must be stricken to accurately reflect the Board's practice and procedure for the submission of endorsement applications. Specifically, applications are strictly electronic and submitting photocopies of other licenses has not been required for years. This deletion will require regulations 6.5.1.4-6.5.1.6

to be renumbered accordingly. In addition, current Regulation 6.5.1.4 must be changed to eliminate references to the requirement that applicants submit paper forms. Under 29 Del. C. §§ 10113(b)(2) and (4), current Regulation 6.5.1.6 must be changed to correct a grammatical error and include language about the Board's current procedure for the submission of evidence of completion of continuing education contact hours. Finally, under 29 Del. C. § 10113(b)(5), 9.2.1.1 must be changed to reflect a change to the Board's basic law pertaining to required continuing education credits. 84 Del. Laws, c. 503, § 1.

The Board has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

SUMMARY OF THE EVIDENCE

1. Regulation 6.5.1.3 now states: all endorsement applicants shall "Attach to the application a photocopy of a current active or inactive license indicating date of expiration."

2. The Board makes the following change to its regulations (removals are stricken through):

~~6.5.1.3 Attach to the application a photocopy of a current active or inactive license indicating date of expiration.~~

3. Regulation 6.5.1.4 now states: all endorsement applicants shall "Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board."

4. The Board makes the following change to its regulations (removals are stricken through):

Provide official verification of original licensure in another jurisdiction ~~on a form acceptable to the Board.~~

5. Regulation 6.5.1.3 now states: all endorsement applicants shall "List all continuing education requirements for the 2 years immediately preceding application, unless submitting a refresher course completion certificate.

6. The Board makes the following change to its regulations (additions are underlined):

"List all continuing education requirements completed for the 2 years immediately preceding application in the CE tracker, unless submitting a refresher course completion certificate.

7. Regulation 9.2.1.1 now states: "During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium. At least 3 of these contact hours must be in the area of substance abuse. Nurses who work in adult gerontology must complete at least 1 hour in the diagnosis, treatment, and care of patients with Alzheimer's disease or other dementias. All contact hours must be earned through an approved method or by approved provider."

8. The Board makes the following change to its regulations (additions are underlined deletions are stricken through):

9.2.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium. At least 3 of these contact hours must be in the area of substance ~~abuse~~. Nurses who work in adult gerontology must complete at least 1 hour in the diagnosis, treatment, and care of patients with Alzheimer's disease or other dementias. ~~abuse, and at least one hour on the recognition of and response to suspected or known sexual abuse, physical abuse, exploitation, trafficking, or domestic violence of vulnerable persons including, but not limited to, children, elders, or persons with intellectual, physical and developmental disabilities, or on the reporting obligations under the rules and regulations promulgated by the Board of Nursing, reporting of known or suspected child abuse or neglect under § 903 of Title 16, and any successors thereto, and any other mandatory reporting obligations required by the Board. Licensees under this chapter should consider the Delaware Child Protection Accountability Commission a resource for continuing education programming relating to child abuse, exploitation, and trafficking. All contact hours must be earned through an approved method or by approved provider.~~

DECISION AND EFFECTIVE DATE

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

SO ORDERED this 8th day of January 2025 by the Delaware Board of Nursing.

/s/ Kimberly Hopkins, RN, President	(absent) Carol Abdill, RN, Vice President
(absent) Marlo Metz, RN	(absent) Gayle Melvin, Public Member
/s/ Pamela James, RN	/s/ Danielle Lowe, RN
(absent) Prameela Kaza, Public Member	/s/ William Hare, Public Member
(absent) Jacqueline Mainwaring, CRNA	(absent) Stephanie Evans-Mitchell, FNP
/s/ Tiarra Davis, Public Member	/s/ Christina Hushen, RN Member
/s/ Roger Akin, Public Member	/s/ Joshua Barnes, RN Member
(absent) Patricia Dickerson, LPN Member	

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

1900 Board of Nursing
(Break in Continuity of Sections)

6.0 Requirements and Procedures for Licensure

(Break in Continuity Within Section)

6.5 Licensure by Endorsement

6.5.1 All endorsement applicants shall:

- 6.5.1.1 Submit a completed, signed, online application.
- 6.5.1.2 Remit the required non-refundable fee.
- 6.5.1.3 ~~Attach to the application a photocopy of a current active or inactive license indicating date of expiration.~~
- 6.5.1.4 ~~6.5.1.3~~ Provide official verification of original licensure in another jurisdiction ~~on a form acceptable to the Board.~~
- 6.5.1.5 ~~6.5.1.4~~ Applicants who have not graduated from nursing school within 2 years of applying must attest that they have satisfied the active practice requirement of a minimum of 1000 practice hours in the past 5 years or 400 nursing practice hours in the past 2 years.
- 6.5.1.6 ~~6.5.1.5~~ If the applicant has not been employed in nursing a minimum of 1000 hours in the past 5 years or a minimum of 400 hours of nursing practice within the previous 2 years, the applicant must give evidence of satisfactory completion of an approved refresher program within a 2-year period before licensure by endorsement will be granted.
- 6.5.1.7 ~~6.5.1.6~~ List all continuing education requirements completed for the 2 years immediately preceding application in the CE tracker, unless submitting a refresher course completion certificate.

(Break in Continuity of Sections)

9.0 Rules and Regulations Pertaining to Mandatory Continuing Education

(Break in Continuity Within Section)

9.2 Continuing Education Licensure Renewal Requirements

- 9.2.1 Board Authority. The Board derives its authority under 24 Del.C. §1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in subsection 6.6.
 - 9.2.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium. At least 3 of these contact hours must be in the area of substance abuse. ~~Nurses who work in adult gerontology must complete at least 1 hour in the diagnosis, treatment, and care of patients~~

~~with Alzheimer's disease or other dementias, abuse, and at least one hour on the recognition of and response to suspected or known sexual abuse, physical abuse, exploitation, trafficking, or domestic violence of vulnerable persons including, but not limited to, children, elders, or persons with intellectual, physical and developmental disabilities, or on the reporting obligations under the rules and regulations promulgated by the Board of Nursing, reporting of known or suspected child abuse or neglect under § 903 of Title 16, and any successors thereto, and any other mandatory reporting obligations required by the Board. Licensees under this chapter should consider the Delaware Child Protection Accountability Commission a resource for continuing education programming relating to child abuse, exploitation, and trafficking.~~ All contact hours must be earned through an approved method or by approved provider.

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

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 607 02-01-25.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Examiners of Nursing Home Administrators

Statutory Authority: 24 Delaware Code, Section 5206(a)(1) (24 Del.C. §5206(a)(1))
24 DE Admin. Code 5200

ORDER

5200 Board of Examiners of Nursing Home Administrators

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on November 12, 2024 at a scheduled meeting of the Delaware Board of Examiners of Nursing Home Administrators (the "Board") to receive comments regarding proposed amendments to the Board's rules and regulations.

Amendments are proposed to Regulation subsection 2.3 to clarify which examinations are required.

Amendments are proposed to Regulation subsections 5.1 and 7.4.1 to clarify the time frame during which continuing professional education must be completed.

Amendments are proposed to Regulation subsections 5.2 and 5.4 to strengthen the Board's biennial continuing professional education requirements by mandating course time in subject areas of patient abuse and neglect, infection prevention, and professional ethics. The Board is authorized specifically to establish by rule and regulation continuing education standards by 24 Del.C. §5206(a)(10).

Additional revisions are technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 28, Issue 2 on August 1, 2024 contemplating a hearing on September 10, 2024. On October 1, 2024 in Volume 28, Issue 4 of the *Delaware Register of Regulations*, public notice was given that the public hearing had been rescheduled to be held on November 12, 2024 at 12:00 p.m. Notice of the November 12, 2024 hearing was also published in the *News Journal* (Exhibit 1) and the *Delaware State News* (Exhibit 2).

The Board held a public hearing on November 12, 2024 in the second-floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was November 27, 2024, 15 days following the public hearing. No public comment was received during the hearing and no written comments were submitted.

The Board deliberated on the proposed revisions at its regularly scheduled meeting on January 14, 2025.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

No public comment was made during the hearing nor was any submitted in writing.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There were no comments provided to the Board in writing or during the public hearing.

Pursuant to 24 **Del.C.** §5206(a)(1), the Board has the statutory authority to promulgate rules and regulations related to the practice of nursing home administration services in the State of Delaware. And, having received no comments concerning the proposed amendment, the Board finds reason to amend the regulations as proposed and hereby takes action to do so.

The Board has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the achievement of the State's greenhouse gas emission reduction targets or on the State's resiliency to climate change is not practical in view of the nature of the proposed amendments.

Decision and Effective Date

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

IT IS SO ORDERED this 14 day of January 2025.

Board of Examiners of Nursing Home Administrators

/s/ Felisha Alderson, President, Professional [ABSENT] Eleanor Allione, Public Member
Member

/s/ Julia Frawley, Vice-President, Public Member [VACANT], Healthcare Member

/s/ Dr. Lois Rogers, Secretary, Professional [VACANT], Healthcare Member
Member

/s/ Dr. Denise Davis, Public Member [VACANT], Public Member

/s/ Steven Smith, Professional Member

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

***Please note that no changes were made to the regulation as originally proposed and published in the**

August 2024 issue of the *Register* at page 109 (28 DE Reg. 109). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 610 02-01-25.htm>

DIVISION OF SMALL BUSINESS

Statutory Authority: 29 Delaware Code, Section 8705A (29 Del.C. §8705A)

ORDER

The Delaware Grocery Initiative

SUMMARY OF THE EVIDENCE

1. Senate Substitute No. 1 for Senate Bill 254 of the 152nd General Assembly and 29 Del.C. §8705A authorize the Department of State, Division of Small Business to promulgate regulations in relation to the powers, duties, and functions for the administration of The Delaware Grocery Initiative.
2. Pursuant to this authority, the Division of Small Business is responsible to and intends to promulgate regulations regarding the process, procedures, and requirements concerning the initiative.
3. The Division of Small Business will administer the initiative.
4. Notice of the proposed regulations was published in the December 1, 2024 edition of the *Delaware Register of Regulations*, and the public was given 30 days to provide written comment.
5. The Division did not receive any comments.
6. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Order adopting the proposed regulations published previously with non-substantive changes.

FINDINGS OF FACT

1. The Director of the Division of Small Business finds that it is necessary to promulgate the proposed regulations published previously, in order to comply with Senate Substitute No. 1 for Senate Bill 254 regarding The Delaware Grocery Initiative.

IMPACT ON GREENHOUSE GAS EMISSIONS

An assessment of the impact of the proposed regulations on the achievement of the State's greenhouse gas emissions reduction targets is not practical for The Delaware Grocery Initiative.

DECISION AND ORDER

For the foregoing reasons, the Director concludes that it is appropriate to promulgate regulations regarding The Delaware Grocery Initiative and in which the text of the final regulation shall be in the form referenced herein. Therefore, the regulations shall be adopted in accordance with this Order. The effective date of this Order shall be 10 days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 13th day of January, 2025.

Regina Mitchell, Director
Division of Small Business
Department of State

*Please note that no changes were made to the regulation as originally proposed and published in the December 2024 issue of the *Register* at page 441 (28 DE Reg. 441). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/february2025/final/28 DE Reg 612 02-01-25.htm>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Delaware Manufactured Home Installation Board

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))
24 **DE Admin. Code** 4400

NOTICE

4400 Delaware Manufactured Home Installation Board

Pursuant to 24 **Del.C.** §4416(b)(1), the Delaware Manufactured Home Installation Board (the "Board") has the authority to promulgate rules and regulations that carry out the objectives of Chapter 44 of Title 24.

The proposed addition of subsection 5.4 provides that the Board proposes to accept a passing score on the United States Department of Housing and Urban Development's certification course final examination in lieu of the State's otherwise-designated examination. Proposed amendments to Section 7.0 modify the process and requirements for entering and maintaining inactive licensure status. The other proposed amendments reflect corrections to embedded links and technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

These proposed amendments were published on page 441 of the December 1, 2024 issue of the *Delaware Register of Regulations* (28 **DE Reg.** 441(12/1/24)). The Board planned to hold a hearing on January 13, 2025, but the hearing was cancelled. As a result, the Board will now hold a public hearing on the proposed regulation changes on April 14, 2025, at 9:00 a.m. in the second-floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Manufactured Home Installation Board, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at Maya.Echols@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be April 29, 2025. The Board will deliberate on the public comments at its next regularly scheduled meeting thereafter.

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Engineering Section

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

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - East Trap Pond Rd (S62)

January 2, 2025

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

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18,

2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

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

§4505. Traffic control devices.

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

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

"No Trucks Over 2 Axles Except Local Services" on East Trap Pond Road (S62) between US Route 113 (S113) and Hardscrabble Road (S20).

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

Thank you,
Peter Haag
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Operation Section

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

GENERAL NOTICE

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - US 13 Dupont Highway (K2)

January 14, 2025

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

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

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

"Trailers, semi-trailers, and recreational trailers unattached to a motor vehicle, shall be prohibited from making a U-turn traveling northbound along" US 13 Dupont Highway (K2) at Smyrna Leipsic Road (K12).

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

Thank you,
Peter Haag, P.E., PTOE
Chief of Traffic Engineering

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Commission's quarterly business meeting will be held on **Wednesday, March 12, 2025**, commencing at **10:30 a.m.** The business meeting will be held remotely. An agenda, along with details about the remote platform and how to attend, will be posted on the Commission's website, <https://www.drbc.gov>, at least ten (10) days prior to the meeting date.

For additional information, including a link to the live stream of this event, please visit the DRBC website at <https://www.drbc.gov> or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly, generally at 5:00pm on the third Thursday of the month. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

The State Board of Education provides information about meeting dates and times, materials, minutes, and audio recordings on its website:

<https://education.delaware.gov/community/governance/state-board-of-education/sbe-monthly-meetings/>

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS
PUBLIC NOTICE**2401 Utilities Manual Regulations**

Pursuant to the authority provided in Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted the 2401 Utilities Manual Regulations. The Department seeks to reorganize the content to address stakeholder requests for improved clarity on permitting and project related standards, via adoption of revisions to the regulation.

DelDOT will take written comments on the proposed revisions to Section 2401 of Title 2, Delaware Administrative Code, from February 1, 2025 through March 3, 2025. The public may submit their comments to:

Eric Cimo, P.E., Utilities Engineer, Division of Transportation Solutions

(eric.cimo@delaware.gov) or in writing to their attention,

Delaware Department of Transportation

Division of Transportation Solutions

P.O. Box 778 Dover, DE 19903
