
Delaware Register of Regulations

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IN THIS ISSUE:

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- Errata
- Proposed
- Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before February 16, 2016.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 16	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

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Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Tara Donofrio**, Administrative Specialist II; **Bethany Fiske**, Assistant Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Human Resources/Financials; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Research Analyst; **Verity Watson**, Joint Sunset Analyst; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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

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

ERRATA

ORDER

Pharmaceutical Services Reimbursement – 340B Drug Products
Title XIX Medicaid State Plan, Attachment 4.19-B Page 14

* **Please Note:** The submitted final regulation published in the February 1, 2016, Volume 19, Issue 8, of the Delaware *Register* by Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) amending the Delaware Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for entities that purchase 340B drug product* erroneously contained language that was inadvertently added to the proposed regulation, published in the November 2015 *Register* (Volume 19, Issue 5).

This errata removes the inadvertently added language from the final regulation. This is a typographical error and therefore not a substantive change. For the current version of the Pharmaceutical Service Reimbursement – 340B Drug Products regulation, see <http://regulations.delaware.gov/register/february2016/final/19%20DE%20Reg%20748%2002-01-16.pdf>.

The effective date for the final order regulation appearing in the February *Register* remains the same, February 11, 2016. The effective date for the errata below is March 11, 2016.

FINDINGS OF FACT:

The Department finds that the errata to the final regulation regarding Pharmaceutical Services 340B exclusions is being corrected to remove a word that was inadvertently added to two (2) lines of the final regulation.

THEREFORE, IT IS ORDERED, that the errata to the final regulation amending the Delaware Title XIX Medicaid State Plan regarding Pharmaceutical Services, specifically, *to clarify reimbursement methodology for entities that purchase 340B drug products*, is corrected and shall be effective March 11, 2016.

Rita M. Landgraf, Secretary, DHSS
 February 16, 2016

DMMA FINAL REGULATION #16-001

REVISION:

ATTACHMENT 4.19-B

Page 14

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

REIMBURSEMENT FOR PHARMACEUTICALS

Overview

The Delaware Medical Assistance Program (DMAP) will reimburse pharmaceuticals using the lower of:

- The usual and customary (U & C) charge to the general public for the product,

- National Average Drug Acquisition Cost (NADAC) or if a NADAC is not available the Average Wholesale Price (AWP) minus 19%,
- A State-specific maximum allowable cost (DMAC) when the purchase price is not appropriately represented by either the NADAC or the Average Wholesale Price (AWP) minus 19%,
- The Federal Upper Limit (FUL) will not be used since the NADAC reflects the actual acquisition cost.

~~[Contracted eE]~~ Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992 and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than their actual acquisition cost (AAC) plus a professional dispensing fee. The AAC must be supported by invoice and payment documentation.

~~[Contracted eE]~~ Entities that purchase Section 340B of the Public Health Service Act products are prohibited from using their stock for DMAP patients either directly or through coverage of the Managed Care Organization.

Professional Dispensing Fee

The professional dispensing fee rate is ten dollars (\$10.00). There is one-time professional fee per thirty (30)-day period unless the class of drugs is routinely prescribed for a limited number of days.

Definitions

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated, or
- when the NADAC does not reflect the most current cost of a multiple source drug, or
- if a single provider agrees to a special price.

Any willing provider can dispense the product.

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 3.4.1.15 relating to fines and suspensions; amend rule 8.11.4 and 8.13 relating to rider weight and attire for jockeys; adopt new rule 8.15 relating to safety items for jockeys; amend rule 10.1.1 relating to registration certificates for horses; adopt new rule 13.2.3 relating to voiding of claims upon death of a horse and to correct the spelling of the term "pari-mutuel" in rule 1.0 definition of Mutuel Entry, rule 3.4.1.15, rule 14.10.2 and rule 16.2. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the March 1, 2016 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments

must be received on or before April 1, 2016. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after April 1, 2016, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed amended rule 3.4.1.15 relating to fines and suspensions; amended rule 8.11.4 and 8.13 relating to rider weight and attire for jockeys; new rule 8.15 relating to safety items for jockeys; amended rule 10.1.1 relating to registration certificates for horses; new rule 13.2.3 relating to voiding of claims upon death of a horse and to correct the spelling of the term "pari-mutuel" in rule 1.0 definition of Mutuel Entry, rule 3.4.1.15, rule 14.10.2 and rule 16.2 or make additional changes because of the public comments received.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 802RFA 03-01-16.pdf>

1001 Thoroughbred Racing Rules and Regulations

1.0 Definitions and Interpretations

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

(Break in Continuity Within Section)

"Mutuel Entry": A single betting interest involving two or more horses entered in the same race and joined for ~~pari-mutuel~~ pari-mutuel purposes because of common ties as to ownership so that a wager on one horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry".

(Break in Continuity of Sections)

3.0 Stewards

(Break in Continuity Within Section)

3.4 Duties and Responsibilities of Stewards:

3.4.1 In addition to the duties and responsibilities necessary and pertinent to the general supervision, control and regulation of race meetings, and without limiting the authority of the Stewards to perform the same and other duties enumerated in these Rules, the Stewards shall have the following specific duties and responsibilities:

(Break in Continuity Within Section)

3.4.1.15 To impose fines upon any corporation, association or person participating in any Thoroughbred horse race meet at which ~~pari-mutuel~~ pari-mutuel wagering is conducted, other than as a patron, and whether licensed or not by the Commission, for a violation of any provision of 3 **Del.C.** Ch. 101 or these Rules and Regulations. In the event that a suspension is imposed together with a fine and the fine is not paid within 48 hours, the term of the suspension shall not begin to run until the fine has been paid.

(Break in Continuity of Sections)

8.0 Jockeys and Apprentice Jockeys

(Break in Continuity Within Section)

8.11 Weighing Out:

(Break in Continuity Within Section)

8.11.4 Whip, blinkers, number cloth, bridle and rider's safety helmet and rider's safety vest (~~with a minimum British rating of #5~~) shall not be included in a rider's weight.

Revised: 10/20/93

PROPOSED REGULATIONS

(Break in Continuity Within Section)

- 8.13 Attire: Upon leaving the Jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional Jockey costume with all jacket buttons and catches fastened. Except with the approval of the Stewards, each Jockey shall wear the cap and jacket racing colors registered in the name of the Owner of the horse he or she is to ride, white or light breeches, top boots, safety helmet ~~approved by the Commission~~, safety vest ~~approved by the Commission~~ and a number on his or her right shoulder corresponding to his or her mount's number as shown on the saddle cloth and daily race program. The Clerk of Scales and attending Valet shall be held jointly responsible with a rider for his or her neat and clean appearance and proper attire.

Revised: 10/20/93

(Break in Continuity Within Section)

- 8.15 Safety Helmets and Safety Vests. Every individual shall, when mounted on a horse while on the premise of a racetrack or handling a horse at the starting gate, wear a properly secured safety helmet and safety vest. The helmet and vest shall meet or exceed with one or more Commission approved safety standards or later revisions. All safety helmets and safety vests shall be permanently labeled with the identification of the manufacturer, including name and address of the manufacturer, or if a private labeler is on the label, the name and address of the private labeler (an Internet or website address shall not be considered an acceptable address), month and year of manufacture, model designation, and safety standard(s) meeting or exceeding. A safety helmet or a safety vest shall not be altered in any manner nor shall the Product Marking be removed or defaced. A safety vest shall not be attached to the horse or to any equipment carried by the horse. A safety helmet or safety vest shall not have any camera or other device affixed to the safety equipment unless the device is designed for the helmet and vest, and meets or exceeds a safety standard. The Stewards may at any time take possession of a safety helmet or safety vest for inspection and may at their discretion confiscate any safety helmet or safety vest that does not comply with these rules.

(Break in Continuity of Sections)

10.0 Horses

- 10.1 Registration required:

- 10.1.1 No horse may be entered or raced in the State unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for such horse is on file with the Racing Secretary except that, (a) for good cause, the Stewards, in their discretion, may waive this requirement if the horse is otherwise correctly identified to their satisfaction; and (b) the Stewards may, in their discretion, allow a horse to race provided that the registration certificate must be delivered to the racing office within 48 hours.

(Break in Continuity of Sections)

13.0 Claiming Races

(Break in Continuity Within Section)

- 13.12 Nature and Effect of a Claim:

(Break in Continuity Within Section)

- 13.12.3 In the event a horse dies during a claiming race or is euthanized on the racetrack during a claiming race, any claim on that horse will be declared void.

(Break in Continuity Within Section)

14.0 Running of the Race

(Break in Continuity Within Section)

- 14.10 Horses Left at Post:

(Break in Continuity Within Section)

14.10.2 If the Stewards find such horse was precluded from obtaining a fair start, the Stewards shall rule such horse a non-starter and shall order money wagered on such horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; provided, however, if such horse so ruled a non-starter is part of a mutuel entry and another horse in such entry is not left at the post, there shall be no pari-mutuel refund.

(Break in Continuity of Sections)

16.0 Pari-Mutuel Wagering

(Break in Continuity Within Section)

16.2 License is Revocable: Any license for the operation of pari-mutuel or totalizator pools issued by the Commission shall be revocable at any time by it, without hearing, in its absolute discretion.

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

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 106A

PUBLIC NOTICE

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

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to clarify policy and procedures for credentialing and re-credentialing of those who utilize the statewide teacher evaluation system. The regulation is also being amended to reduce the number of surveys educators receive for the evaluation of the teacher appraisal system by setting the requirement to biennial instead of annual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 7, 2016 to Tina Shockley, Policy Advisor, Delaware Department of Education. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will provide ongoing opportunities to help improve educator development and student achievement by clarifying existing credentialing requirements for the statewide teacher evaluation system. This will ultimately help to ensure quality control among observers.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments will help ensure that all students receive an equitable education. Credentialed Observers must meet baseline requirements when supporting teachers in terms of development and student growth. In addition, this regulation amendment helps to ensure quality control among observers.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the level of authority and flexibility at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.
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 amendments are consistent with the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments provide further clarification of the policy and process of Credentialing Observers for the statewide teacher evaluation system. The regulation amendment also seeks to reduce survey burden as part of the proposed revisions.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State or local school boards to be in compliance with this regulation amendment as proposed.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 805RFA 03-01-16.pdf>

**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised
(Break in Continuity of Sections)**

10.0 Credentialing

- ~~40.1 Credentialed Observers shall have successfully completed the DPAS II training as developed by the Department of Education. Each shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.~~
 - ~~40.1.1 The Department of Education shall annually monitor evaluation implementation.~~
- ~~40.2 The training shall occur no less than once every three (3) years and shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Revised Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.~~
- ~~40.3 The credentialing process shall be conducted by the Department of Education.~~
- 10.1 Credentialing processes and assessments shall be established and conducted by the Department of Education and developed in collaboration with school and district level administrators.
- 10.2 Evaluator credentials are earned upon successful completion of a credentialing assessment and related trainings. Evaluator credentials are valid for five years from the date of issue. Evaluators may seek to renew their credentials within 24 months prior to the expiration date.
 - 10.2.1 The Department shall establish an annual schedule during which the credentialing assessment will be offered in order to provide multiple opportunities for individuals to earn credentials. Individuals shall have the opportunity to sit for the assessment multiple times in order to earn credentials. The Department shall not limit the number of times individuals seeking credentials can sit for an assessment offered by the Department.

10.2.2 The Department shall offer no less than six (6) opportunities annually to earn or renew a credential.

11.0 Evaluation of Process

The Department of Education shall conduct ~~an annual~~ a biennial evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and Evaluators and interviews with a sampling of teachers and Evaluators. Data from the evaluation and proposed changes to DPAS II Revised shall be presented to the State Board of Education for review on an annual basis.

12.0 DPAS II Monitoring

The Department of Education shall annually monitor implementation of DPAS II for teachers and specialists.

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

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 107A

PUBLIC NOTICE

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

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to clarify policy and procedures for credentialing and re-credentialing of those who utilize the statewide specialist evaluation system. The regulation is also being amended to reduce the number of surveys educators receive for the evaluation of the specialist appraisal system by setting the requirement to biennial instead of annual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 7, 2016 to Tina Shockley, Policy Advisor, Delaware Department of Education. A copy of this regulation may be viewed online at the *Register of Regulation's* website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will provide ongoing opportunities to help improve educator development and student achievement by clarifying existing credentialing requirements for the statewide specialist evaluation system. This will ultimately help to ensure quality control among observers.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments will help ensure that all students receive an equitable education. Credentialed Observers must meet

baseline requirements when supporting teachers in terms of development and student growth. In addition, this regulation amendment helps to ensure quality control among observers.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the level of authority and flexibility at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.

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 amendments are consistent with the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments provide further clarification to the policy and process of Credentialing Observers for the specialist evaluation system. The regulation amendment also seeks to reduce survey burden as part of the proposed revisions.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State or local school boards to be in compliance with this regulation amendment as proposed.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 807RFA 03-01-16.pdf>

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised (Break in Continuity of Sections)

10.0 Credentialing

~~10.1 Credentialed Observers shall have successfully completed the DPAS II training as developed by the Department of Education. Each shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.~~

~~10.1.1 The Department of Education shall annually monitor evaluation implementation.~~

~~10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Revised Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.~~

~~10.3 The credentialing process shall be conducted by the Department of Education.~~

10.1 Credentialing processes and assessments shall be established and conducted by the Department of Education and developed in collaboration with school and district level administrators.

10.2 Credentialed Observer credentials are earned upon successful completion of a credentialing assessment and related trainings. Credentialed Observer credentials are valid for five years from the date of issue. Credentialed Observers may seek to renew their credentials within 24 months prior to the expiration date.

10.2.1 The Department shall establish an annual schedule during which the credentialing assessment will be offered in order to provide multiple opportunities for individuals to earn credentials. Individuals shall have the opportunity to sit for the assessment multiple times in order to earn credentials. The

Department shall not limit the number of times individuals seeking credentials can sit for an assessment offered by the Department.

10.2.2 The Department shall offer no less than six (6) opportunities annually to earn or renew a credential.

11.0 Evaluation of Process

The Department of Education shall conduct ~~an annual~~ a biennial evaluation of the specialist appraisal process. The evaluation shall, at a minimum, include a survey of teachers, specialists and Evaluators and interviews with a sampling of teachers, specialists and Evaluators. Data from the evaluation and proposed changes to DPAS II Revised shall be presented to the State Board of Education for review on an annual basis.

12.0 DPAS II Monitoring

The Department of Education shall annually monitor implementation of DPAS II for specialists.

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

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 292

PUBLIC NOTICE

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

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. The amendments reformat the regulation in order to clarify the approval process for Degree Granting Institutions of Higher Education.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by ensuring that Degree Granting Institutions of Higher Education are operating appropriately.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not address students' health and safety.

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

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

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

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

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 amendments are consistent with and not an impediment to the implementation of other state educational policies.

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

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

***Please Note:**

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 809RFA 03-01-16.pdf>

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

[292 Post Secondary Institutions and Degree Granting Institutions of Higher Education](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 621

PUBLIC NOTICE

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

621 District and School Emergency Preparedness Policy

A. Type of Regulatory Action Required

Repeal of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to repeal 14 DE Admin. Code 621 District and School Emergency Preparedness Policy. This regulation is being repealed in order to eliminate confusion for districts and charter schools in terms of the policy to follow with regards to emergency preparedness. These entities are to comply with the 29 Del.C. §8237, otherwise known as the Omnibus School Safety Act (OSSA), and therefore this regulation is no longer needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the *Register of Regulation's* website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office, located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
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? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation is being repealed as districts and charter schools are now required to abide by 29 **Del.C.** §8237 instead of this regulation.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 810RFA 03-01-16.pdf>

621 District and School Emergency Preparedness Policy**4-0 Definitions**

~~“Charter School” shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.~~

~~“District” shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.~~

~~“Emergency Preparedness Guidelines” means the Department of Education developed documents that outline the steps, processes, procedures, audits and actions a school, local school district or charter school shall use to develop a plan to respond to an emergency event or crisis situation, including a major communicable disease event such as a Pandemic Influenza Outbreak that may occur in the school community. These documents may be revised from time to time. The documents shall be available on the Department of Education website.~~

~~“School Safety Team” means the individuals identified in the district or charter school emergency preparedness or crisis response plan responsible for the planning and implementation of the plan at the school level or district level.~~

PROPOSED REGULATIONS

~~2.0 District and Charter School Written Policy Required~~

- ~~2.1 Each school district and charter school shall have a written policy that outlines an emergency preparedness plan that is consistent with the Emergency Preparedness Guidelines. In addition, the district policy shall state how the emergency preparedness plan shall be implemented at each school within the district. The emergency preparedness plan shall be reviewed with students and staff annually.~~
- ~~2.2 The district policy shall describe how each school within the district shall plan and conduct at least one emergency event or crisis situation exercise annually. In addition, each district shall conduct at least one tabletop exercise on a major communicable disease event such as a Pandemic Influenza Outbreak every two years.~~
- ~~2.3 The charter school policy shall describe how the charter school will plan and conduct at least one emergency event or crisis situation exercise annually and at least one tabletop exercise on a major communicable disease event such as a Pandemic Influenza Outbreak every two years.~~

~~3.0 Reporting Requirements and Timelines~~

- ~~3.1 Each public school district and charter school shall have an electronic copy of its current Emergency Preparedness policy on file with the Department of Education. In addition, following the practice exercise(s) outlined in 2.0 of this regulation, the district superintendent or designee, or charter school administrator shall document the practice exercise(s) and the school safety team(s) meeting(s) to assess readiness and determine the effectiveness of the existing plans. The documentation of such practice exercise(s) and School Safety Team meeting(s) shall be provided to the Department upon request.~~
- ~~3.2 Each school district and charter shall provide an electronic copy of the its Emergency Preparedness policy within thirty (30) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance, policies or recommendations from the School Safety Team.~~

~~*Note: This regulation replaces 14 DE Admin Code 618 School Safety Audit and 14 DE Admin. Code 620 School Crisis Response Plan which were repealed. 29 Del.C. §8237, otherwise known as the Omnibus School Safety Act (OSSA), replaces this regulation and therefore this regulation is no longer needed.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1506

PUBLIC NOTICE

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

1506 Emergency Certificate

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1506 Emergency Certificate. This regulation is being amended to provide current formatting and to eliminate unnecessary language, as well as to allow the Department of Education the ability to process some Emergency Certificates automatically for those enrolled in an approved Alternate Routes program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 31, 2016 to Chris Kenton, Executive Director, Professional Standards Board, at 401 Federal Street,

Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill, and/or education to practice in a particular area, to teach a particular subject, or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill, and/or education to practice in a particular area, to teach a particular subject, or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is related to the Professional Standards Board and does not directly affect any changes to the protection of students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is related to the Professional Standards Board and does not directly affect any changes to students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulations do not change or weaken the ability to make decisions at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation, and 14 **Del.C.** §1221 requires that we promulgate this regulation.

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

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 812RFA 03-01-16.pdf>

1506 Emergency Certificate

1.0 Content

This regulation shall apply to the issuance of an Emergency Certificate, pursuant to 14 **Del.C.** §1221.

2.0 Definitions

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

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

~~“Certified” means holding a certificate in a specific content area at designated grade levels.~~

PROPOSED REGULATIONS

“Credentialed” means holding an active license and an active certificate in a specific content area at appropriate grade levels.

“Emergency Certificate” means a temporary credential issued to an individual educator who has obtained employment or an offer of employment with an employing authority and holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to immediately meet certification requirements in a specific content area. The temporary credential provides the individual educator with a limited time to meet the requirements for certification in the specific content area.

“Exigent Circumstances” means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

“Satisfactory Evaluation” means the overall rating of "Highly Effective" or "Effective" on the DPAS-II Summative Evaluation or other Department-approved evaluation system.

3.0 Issuance of Emergency Certificate

- 3.1 Upon receipt of a completed application from the employing authority, the Department may issue an Emergency Certificate to an individual educator who holds a valid Delaware Initial, Continuing, or Advanced License, but who is not eligible for certification in the area of need.
- 3.1.1 An Emergency Certificate is valid for one school year subject to a limited extension as indicated herein.
- 3.1.2 The Emergency Certificate is issued for a particular one school year and expires on June 30th unless a limited extension is granted.
- 3.1.3 The Department may grant a limited extension second-year Emergency Certificate if the individual educator has met the requirements for an extension outlined in Section 6.0 of this regulation.
- ~~3.2 An Emergency Certificate is only valid for the individual during their tenure with the employing authority requesting the Certificate unless a transfer is approved as specified in 3.7.~~
- ~~3.3 An Emergency Certificate may not be renewed or extended for a leave of absence.~~
- ~~3.4 An Emergency Certificate may be extended for an exigent circumstances. Extensions for exigent circumstances shall not exceed one (1) year in length.~~
- 3.52 Notwithstanding the foregoing, an Emergency Certificate issued to an individual educator in a Skilled and Technical Sciences specific career area is valid for up to six (6) years to provide time for completion of specified college level course work or professional development required for certification.
- 3.63 Notwithstanding the foregoing, an Emergency Certificate issued to an individual educator in an alternative routes for to teacher licensure and certification program shall be valid for the time specified in 14 Del.C. §1260 and 14 DE Admin. Code 1507 Alternative Routes to Teacher Licensure and Certification.
- ~~3.7 Transfer of Emergency Certificates to a New Employing Authority.~~
- ~~3.7.1 Upon application by a new employing authority, the Department may approve the transfer of the Emergency Certificate if the following requirements are met:~~
- ~~3.7.1.1 The new employing authority that hires an individual with a valid Emergency Certificate requests prior to the expiration of the original emergency certificate, the continued approval of the Emergency Certificate through the remainder of the original term or requests an extension.~~
- ~~3.7.1.2 The new employing authority must conduct an independent review of the individual's competency and assume the commitments and responsibilities of an employing authority within this regulation.~~
- ~~3.7.1.3 The new employing authority shall also review the individual's Emergency Certificate written plan and amend as necessary and submit the revised written plan and transfer request for Department approval.~~

3.8 Extension of Emergency Certificates

- ~~3.8.1 The Emergency Certificate may be valid for up to two (2) consecutive school years. An employing authority must request an extension of the Emergency Certificate prior to June 30th.~~
- ~~3.8.2 Emergency Certificates granted an extension shall expire on June 30th of the consecutive school year.~~
- ~~3.8.3 Prior to June 30th, the employing authority shall review the Emergency Certificate and if considered necessary, the employing authority may apply to the Department for an extension for an additional school year.~~
- ~~3.8.4 The Department may grant an extension of the Emergency Certificate if the following requirements are met:
 - ~~3.8.4.1 The employing authority submits a complete request and report prior to June 30th.~~
 - ~~3.8.4.2 The employing authority has established that the individual has made documented progress toward earning the Standard Certificate and has demonstrated continued competence through receiving a satisfactory summative evaluation on the annual DPAS.
 - ~~3.8.4.2.1 Documented progress toward the Standard Certificate would include but is not limited to evidence of the educator having:
 - ~~3.8.4.2.1.1 taken the necessary examination of content knowledge, such as the Praxis II test,~~
 - ~~or~~
 - ~~3.8.4.2.1.2 completed requisite coursework or professional development, or~~
 - ~~3.8.4.2.1.3 made significant growth toward the necessary degree or certificate.~~~~~~
 - ~~3.8.4.3 Notwithstanding the above requirements in 3.8.4.2.1, the Department may grant an extension upon a showing of exigent circumstances.~~~~

3.9 Notification to Parents

- ~~3.9.1 As a condition of the individual receiving an emergency certificate, an employing authority shall within sixty (60) days of the assignment notify the parents of the students within the educator's responsibility of the emergency certification.~~
- ~~3.9.2 The notification may be included in an already established form of communication to parents including but not limited to Highly Qualified Teacher status.~~
- ~~3.9.3 A copy of the employing authority letter shall be on file with the Department.~~
- ~~3.10 An Emergency Certificate shall not be issued more than once to an individual for a specific Standard Certificate.~~

4.0 Application Procedures

- 4.1 The employing authority shall:
 - 4.1.1 ~~Submit to the Department in its request for the issuance of an Emergency Certificate the need for the individual to receive an Emergency Certificate and certify that the employing authority has conducted a meaningful review of the applicant's credentials and found that the individual is competent.~~
 - 4.1.21 Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the individual's educator's license and other considerations. ~~The evidence must establish that the employing authority conducted a meaningful review of the individual's competence and may include, but is not limited to, evidence of course work or work experience in the area for which the Emergency Certificate is requested.~~
 - 4.1.32 Apply for the Emergency Certificate within sixty (60) calendar days of the individual's educator's hire or new job assignment.
 - 4.1.2.1 Notwithstanding the above, the Department may issue an Emergency Certificate to an employed educator enrolled in an approved alternative route to licensure and certification program.

PROPOSED REGULATIONS

- 4.1.3 Support and assist the educator in achieving the skills and knowledge necessary to meet applicable certification requirements.
- 4.1.4 ~~Set forth a written plan with the application of the Emergency Certificate, verified by the individual and the employing authority. The plan must be designed to support and assist the individual in achieving the skills and knowledge necessary to meet the applicable certification requirements. The written plan is subject to Department approval. The written plan shall contain at a minimum the following:~~
- 4.1.4.1 ~~A listing of all the outstanding certification requirements necessary to obtain the standard certificate in the area for which the Emergency Certificate is requested including but not limited to the specific examination of content knowledge such as Praxis II and any required course work, professional development, education or experience; and~~
 - 4.1.4.2 ~~The specific course work or professional development including the educational institution or provider the individual intends to use to fulfill the requirements; and~~
 - 4.1.4.3 ~~The anticipated time frame for the completion of the requirements; and~~
 - 4.1.4.4 ~~A specific listing of how the employing authority shall support and assist the individual in achieving the skills and knowledge necessary and completing the requirements.~~
- 4.1.4 Verify that the educator understands the Standard Certificate requirements, the deadline in which to complete requirements, and the expectation to earn a Standard Certificate.
- 4.2 Failure by the employing authority to fulfill the conditions set forth shall result in denial of the Emergency Certificate.

5.0 **Employing Authority Report**

- 5.1 ~~At the end of the validity period during which an Emergency Certificate is in effect, if the employing authority intends to request an extension for an additional school year, the employing authority shall file a status report with the Department detailing the individual's progress which shall:~~
- 5.1.1 ~~Establish that the recipient of the Emergency Certificate has demonstrated continued competence through receiving a satisfactory summative evaluation on the annual DPAS.~~
 - 5.1.2 ~~Document the progress made by the recipient of the Emergency Certificate toward fulfilling the written plan established by the employing authority and approved by the Department to meet the applicable certification requirements and any amendments to the written plan including but not limited to change in courses, providers, or time frames.~~
- 5.2 Failure by the employing authority to fulfill the conditions set forth in 5.1 prior to June 30th shall result in the expiration of the Emergency Certificate.

5.0 **Notification to Parents**

- 5.1 Any year that an educator holds an Emergency Certificate, the employing authority shall notify parents of the students within the educator's responsibility. Parents shall be notified within (60) days of the assignment or the start of the school year each year.
- 5.2 The notification may be included in an already established form of communication to parents including but not limited to Highly Qualified Teacher status.
- 5.3 The employing authority shall submit a copy of the parent notification to the Department each year.

6.0 **Expiration Second Year Reissue of Emergency Certificate**

- 6.1 ~~Prior to the expiration of an Emergency Certificate, the individual shall meet the requirements for issuance of a Standard Certificate (See 14 Del.C. §1505). If the educator does not meet all Standard Certificate requirements during the first school year, the employing authority may apply for a second-year of the Emergency Certificate in the same area.~~
- 6.2 ~~If no action is taken by the employing authority prior to the deadline, an Emergency Certificate automatically expires on June 30th. The Department may issue a second-year Emergency Certificate if the following requirements are met:~~

6.2.1 The employing authority submits a request for the Emergency Certificate within sixty (60) calendar days of the start of the next consecutive school year.

6.2.2 The employing authority has established that the educator has made documented progress toward earning the Standard Certificate and has demonstrated continued competence through receiving a satisfactory summative evaluation on DPAS-II or another Department-approved evaluation system.

6.2.2.1 Documented progress toward the Standard Certificate would include but is not limited to evidence of the educator having:

6.2.2.1.1 taken the necessary examination of content knowledge, or

6.2.2.1.2 completed requisite coursework or professional development, or

6.2.2.1.3 made significant growth toward the necessary degree or certificate.

6.3 Emergency Certificates that have expired may not be extended. For an employed educator enrolled in an approved alternative route to licensure and certification program, the Department may issue a second-year of the Emergency Certificate if requirements in subsection 6.2.2 have been met.

7.0 Expiration of Emergency Certificate

7.1 Emergency Certificates shall expire on June 30th.

7.2 Emergency Certificates that have been issued for two consecutive school years may not be extended. The educator shall meet the requirements for issuance of a Standard Certificate (See 14 **Del.C.** §1505).

7.3 Educators holding an active license without a current or valid certificate are not considered credentialed to teach.

7.4 An Emergency Certificate may not be renewed or extended for a leave of absence.

7.5 Notwithstanding the above, the Department may grant an extension upon a showing of exigent circumstances. Extensions for exigent circumstances shall not exceed one (1) year in length.

8.0 Transfer of Emergency Certificate to a New Employing Authority

The Department may approve the transfer of an Emergency Certificate from one employing authority to another if the new employing authority conducts an independent review of the educator's progress towards a Standard Certificate and assumes the commitments and responsibilities of an employing authority within this regulation.

79.0 Revocation of Emergency Certificate

79.1 An Emergency Certificate shall be revoked in the event the educator's Initial, Continuing, or Advanced License is revoked in accordance with 14 **DE Admin. Code** 1514.

79.1.1 An educator is entitled to a full and fair hearing before the Standards Board.

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

DEPARTMENT OF INSURANCE **OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 17 (18 **Del.C.** §311 & Ch. 17)
18 **DE Admin. Code** 602

PUBLIC NOTICE

602 Motor Vehicle Physical Damage Appraisers

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of re-proposed amended Department of Insurance **Regulation 602** relating to **Motor Vehicle Physical Damage Appraisers [Formerly Regulation 8]**. The docket number for this proposed AMENDED regulation is 2803-2015.

Amendments are being proposed to permit the use of digital imaging by appraisers. The Delaware Code authority for the change is 18 **Del.C.** §311 and Ch. 17; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at: www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Thursday, March 31, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
 Delaware Department of Insurance
 841 Silver Lake Boulevard
 Dover, DE 19904
 Phone: (302) 674-7379
 Fax: (302) 739-5566
 Email: Rhonda.West@state.de.us

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 817RFA 03-01-16.pdf>

602 Motor Vehicle Physical Damage Appraisers

Statement of Purpose

18 **Del.C.** Ch. 17 has been amended to include motor vehicle physical damage appraisers under the license requirements therein. The following regulation is required to set standards of conduct for appraisers and to implement the provisions of Chapter 17 and establish through regulations guideline procedures for the manner in which motor vehicle physical damage appraisers conduct their business. It is not contemplated that this regulation shall apply where no appraisal has been assigned. Recognition is given to the fact that many minor damage claims do not require a formal appraisal and to require such would be an undue burden upon the parties involved.

1.0 Definitions.

4-4 As used in 18 **Del.C.** Ch. 17:

“Appraisal” is not considered to include an estimate of repair to be performed by the individual or entity making such estimate.

“Appraiser” means a motor vehicle physical damage appraiser licensed under the provisions of 18 **Del.C.** Ch.17. This shall include all persons who in this State practice the appraisal of motor vehicle physical damage.

~~“Appraiser” is not considered to include an estimate of repair to be performed by the individual or entity making such estimate;~~

“Motor vehicle” means any "motor vehicle" as defined in 21 **Del.C.** §101.

2.0 Display of Appraiser License.

2-4 Each appraiser, while engaged in appraisal duties, shall carry the license issued to him by the Insurance Department and shall display it, upon request, to an owner whose vehicle is being

inspected, to the repair shop representative involved or to any authorized representative of the Insurance Department.

3.0 Copies of Appraisal—Specification of New Parts.

- 3-1 The appraiser shall exchange a legible copy of his appraisal with that of the repair shop selected to make the repairs and also furnish a copy to the owner of the vehicle. This appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license and the proper identification number of the vehicle being inspected. All unrelated or old damage should be clearly indicated on the appraisal which shall include an itemized listing of all damages, specifying those parts to be replaced or repaired. Because an appraiser is charged with a high degree of regard for the public safety, the operational safety of the vehicle shall be paramount in considering the specification of new parts. This consideration is vitally important where the parts involved pertain to the drive train, steering gear, suspension units, brake system or tires.

4.0 ~~Personal Inspection Required.~~ Manner of Inspection.

- 4-1 ~~No appraiser shall secure or use repair estimates that have been obtained by the use of photographs, telephone calls or in any manner other than a personal inspection. An appraiser may prepare an appraisal or a repair estimate on a motor vehicle that has been damaged as a result of a covered loss either from the appraiser's personal inspection of the vehicle or from photographs, videos, or electronically transmitted digital imagery of the motor vehicle; provided, however, that no insurer may require an owner of a motor vehicle to submit photographs, videos, or electronically transmitted digital imagery as a condition of an appraisal. If the owner of a motor vehicle is not satisfied with an appraisal based upon photographs, videos, or electronically transmitted digital imagery of the motor vehicle, the owner of the motor vehicle may require an insurer to obtain an appraisal based on a personal inspection.~~

5.0 Specified Repair Shop Requirement.

- 5-4 No appraiser shall require that repairs be made in a specified repair shop.

6.0 Supplementary Allowances.

- 6-4 Every appraiser shall promptly reinspect damaged vehicles prior to the repairs in question when supplementary allowances are requested by repair shops and the amount or extent of damages is in dispute.

7.0 Conduct of Appraisers.

- 7.1 Every appraiser shall:
- 7.1.1 Conduct himself in such a manner as to inspire public confidence by fair and honorable dealings;
 - 7.1.2 approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved in order to make fair and impartial appraisals;
 - 7.1.3 disregard any efforts on the part of others to influence his judgment in the interest of the parties involved;
 - 7.1.4 prepare an independent appraisal of damage;
 - 7.1.5 inspect a vehicle within six working days of assignment to the appraiser unless intervening circumstances (i.e., catastrophe, death, failure of the parties to cooperate) render such inspection impossible.

8.0 Gratuities or Other Consideration.

- 8.1 No appraiser shall:
- 8.1.1 Receive directly or indirectly any gratuity or other consideration in connection with his appraisal services from any person except his employer or, if self-employed, his customer;

PROPOSED REGULATIONS

8.1.2 Traffic in automobile salvage if such salvage is obtained in any way as a result of appraisal services rendered by him for his own benefit.

9.0 Effective Date.

This proposed amended regulation shall become effective 10 days after being published as a final regulation.

DEPARTMENT OF LABOR DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 3314(6) (19 Del.C. §§105(a)(8) and 3314(6))
19 DE Admin. Code 1202

PUBLIC NOTICE

1202 Unemployment Insurance Regulations

The Delaware Department of Labor, Division of Unemployment Insurance proposes this revised regulation in accordance with 19 Del.C. §3314(6) to establish procedures for notice to claimants and an opportunity for claimants to provide responsive information prior to the Division taking adverse action against the claimant, when the Division of Unemployment Insurance discovers that a claimant failed to report wages that the Division believes should have been reported.

The Delaware Department of Labor, Division of Unemployment Insurance solicits written comments from the public concerning the proposed revised regulation. Any such comments should be submitted to the Director of the Division of Unemployment Insurance, Thomas H. Ellis, by mail to: Delaware Division of Unemployment Insurance, P.O. Box 9950, Wilmington, DE 19809-0950, or by email to: Thomas.Ellis@state.de.us. Written comments must be received by Mr. Ellis on or before March 31, 2016 to be considered prior to the adoption of the proposed revised regulation. Copies of the proposed revised regulation are available upon request.

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

[http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 820RFA 03-01-16.pdf](http://regulations.delaware.gov/register/march2016/proposed/19%20DE%20Reg%20820RFA%2003-01-16.pdf)

1202 Unemployment Insurance Regulations (Break in Continuity of Sections)

17.0 Disqualification for Benefits

17.1 Section 3314(3) of Title 19, **Delaware Code** provides in part that an individual shall be disqualified for benefits "if he has refused to accept an offer of work which he is reasonably fitted....."

17.1.1 The determination of whether an individual is reasonably fitted for an offer of work that has been refused shall be based on the individual's previous work history, education, training, the O*NET (Occupational Information Network) Code assigned by the Delaware Division of Employment and Training, and the results of any skills assessment of the individual made by the Delaware Division of Employment and Training.

17.2 Section 3314(6) of Title 19, Delaware Code provides that an individual shall be disqualified for benefits "if the Department determines such individual has made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual was not lawfully entitled....."

17.2.1 When the Delaware Division of Unemployment Insurance cross-matches an individual's eligibility to receive benefits through a wage or other matching program and determines that wages were not reported by the individual, or otherwise discovers wages not reported by the individual, prior to taking any adverse action against the individual, the Delaware Division of Unemployment Insurance shall send the individual a notice providing the individual with an opportunity to submit additional information to contest the information discovered by the Delaware Division of Unemployment Insurance. The individual will have seven (7) days from the date the notice is mailed to respond to the notice. If the individual does not timely respond to the notice, the Delaware Division of Unemployment Insurance will make a decision based on the information it has obtained through its investigation. If the individual does timely respond to the notice, the Delaware Division of Unemployment Insurance will make a decision based on all information obtained through its investigation, including the individual's response.

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

1202 Unemployment Insurance Regulations

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Section 309 (31 Del.C. §309)
9 DE Admin. Code 301

PUBLIC NOTICE

301 Criminal History Record Checks for Child Care Persons

Summary

The Office of Child Care Licensing proposes to amend the DELACARE Regulations - Background Checks for Child-Serving Entities to comply with changes in Delaware and Federal Code.

Comments

A copy of the proposed regulations is being posted in the March 1, 2016 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Beth Kramer, Criminal History Unit, Hagley Building, 3411 Silverside Road Wilmington, Delaware 19810 or by email to Beth.Kramer@state.de.us by the close of business on March 31, 2016.

***Please Note:**

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 821RFA 03-01-16.pdf>

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

301 Criminal History Record Checks for Child Care Persons

PROPOSED REGULATIONS

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 11 Delaware Code, Section 8563 and 31 Delaware Code, Section 309
(11 **Del.C.** §8563 and 31 **Del.C.** §309)
9 DE Admin. Code 302

PUBLIC NOTICE

302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons

SUMMARY

The Office of Child Care Licensing proposes to amend the DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools, and Youth Camps to comply with changes in Delaware Code.

COMMENTS

A copy of the proposed regulations is being posted in the March 1, 2016 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Beth Kramer, Criminal History Unit, Hagley Building, 3411 Silverside Road Wilmington, Delaware 19810 or by email to Beth.Kramer@state.de.us by the close of business on March 31, 2016.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 822RFA 03-01-16.pdf>

~~302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons~~

4.0 ~~Legal Base~~

~~The legal base for these regulations is in 11 **Del.C.** §8563.~~

2.0 ~~Purpose~~

~~The overall purpose of these regulations is the protection for the “vulnerable” population in child care, public schools and health care facilities. To this end, persons seeking employment in a licensed child care facility, public school or health care facility shall submit to a Child Protection Registry check. A search of the Child Protection Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.~~

3.0 ~~Definitions~~

~~“**Child Protection Registry**” means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect since August 1, 1994.~~

~~“**Child Protection Registry Check**” means a computer search of the Child Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.~~

~~“**Child Care Facility**” means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.~~

~~“**Child Care Person**” means any person seeking employment in a child care facility with regular direct access to children in care. This definition shall also include any person applying for a license to operate a child care facility.~~

~~“Conditional Child Care Person” means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.~~

~~“Conditional Health Care Person” means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.~~

~~“Conditional Public School Person” means a public school person who has been offered a position or has agreed to volunteer in a public school. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.~~

~~“Criminal History Unit” means the Unit located in the Division of Family Services that is responsible for conducting the Child Protection Registry checks for child care, public school and health care persons.~~

~~“Department” means the Department of Services for Children, Youth and Their Families or any of the Divisions.~~

~~“Direct Access” means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.~~

~~“Division of Family Services” means the Division that maintains the Child Protection Registry.~~

~~“Employer” means any child care facility, public school or health care facility as defined.~~

~~“Health Care Facility” means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.~~

~~“Health Care Person” means any person seeking employment in a health care facility.~~

~~“Person Seeking Employment” means any person applying for employment in a public school or public school district, any person applying for employment in a health care facility or child care facility, or a person applying for licensure to operate a child care facility. This definition also includes volunteers.~~

~~“Person Seeking Employment With a Public School” means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.~~

~~“Public School” means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.~~

~~“Volunteer” means any person who has direct access to persons receiving care during the performance of unpaid duties.~~

4.0 Persons Subject to the Law

4.1 Persons subject to the law shall be those persons who are hired or apply for the status described below on or after February 1, 2003.

4.1.1 Child care, public school and health care persons subject to the Child Protection Registry check shall be persons seeking employment in a child care, public school or health care facility who have direct access to persons receiving care.

5.0 Employer Responsibilities

5.1 No employer who operates a child care facility, public school or health care facility shall hire any person without requesting a Child Protection Registry check for that person. The Child Protection Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.

- 5.2 ~~The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Protection Registry check. The release is a form developed by the Department.~~
- 5.3 ~~Any person hired prior to the employer receiving the results of the Child Protection Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Protection Registry check.~~

6.0 Child Protection Registry Check Process

- 6.1 ~~The child care, public school or health care person completes and signs a release form in order for a Child Protection Registry check to be conducted.~~
- 6.2 ~~Upon verification of the signed release, the Criminal History Unit will conduct a Child Protection Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.~~
- 6.3 ~~When the person is not listed in the Child Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.~~
- 6.4 ~~When the person is listed in the Child Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.~~

7.0 Review of Department Records

- 7.1 ~~When a person is listed in the Child Protection Registry as a perpetrator, that person will be allowed the opportunity to review the record information maintained by the Division of Family Services.~~
- 7.2 ~~The following procedures shall be established to permit the review of record information:~~
- 7.2.1 ~~The person shall submit a request in writing to the Child Protection Registry Substantiation Hearing Coordinator provided as part of the results of the Child Protection Registry check.~~
- 7.2.2 ~~Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.~~
- 7.2.3 ~~The review shall take place in the presence of a Division of Family Services staff member.~~

8.0 Voluntary Child Protection Registry Checks

~~Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this regulation may voluntarily submit to the provisions of this regulation at such person's or organization's expense pursuant to procedures established by the Department of Services for Children, Youth and Their Families. The provisions of 11 ~~Del.C.~~ §8562 do not apply to such persons or organizations.~~

9.0 Confidentiality

~~The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.~~

10.0 Penalty

~~Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.~~

302 Child Protection Registry Checks for Persons Working in Health Care Facilities, Public Schools, Private Schools, and Youth Camps

1.0 Legal Base

The legal base for these regulations is in 11 Del.C. §8563 and 31 Del.C. §309.

2.0 Purpose

The overall purpose of these regulations is to protect the "vulnerable" population in health care facilities, public schools, private schools, and youth camps. Therefore, persons seeking employment in a health care facility, public school, or youth camp shall submit to a child protection registry check. People seeking employment in a private school may voluntarily submit to a child protection registry check. A child protection registry search will be conducted to determine if the person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.

3.0 Definitions

"Active on the child protection registry" means substantiated by the Division of Family Services for abuse or neglect at level II, III or IV and reportable to employers.

"Child protection registry" means a central registry of information about people the Division of Family Services has found cause to believe or a court has substantiated through court adjudication as having committed child abuse or neglect since August 1, 1994. The substantiated incident shall be designated at one of three levels: II, III, IV.

"Child protection registry check" means a computer search of the child protection registry to determine if a person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.

"Criminal History Unit" means the unit located in the Division of Family Services that is responsible for completing child protection registry checks.

"Department" means the Department of Services for Children, Youth and Their Families.

"Direct access" means the opportunity to have personal contact with people receiving care or education during the course of one's assigned duties.

"Division of Family Services" means the division that maintains the child protection registry.

"Employer" means any health care facility, public school, private school, or youth camp as defined.

"Health care facility" means any custodial or residential facility where health, nutritional, or personal care is provided for people including nursing homes, hospitals, home health care facilities, and adult day care facilities.

"Person seeking employment" means any person applying for employment in a public school or public school district, or with an agency that supplies contracted services to students of a public school, or any other person who for any reason has regular direct access to children at any public school, or any person applying for employment in a health care facility or at a youth camp. This definition also includes volunteers and substitute teachers.

"Private School" means a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised.

"Public school" means any public school and includes any board of education, school district, charter school, or any person acting as a representative of one.

"Volunteer" means any person who has direct access to people receiving care or education during the course of one's assigned unpaid duties.

"Youth camp" means a child-serving entity having custody or control of one or more school-age children, unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, educational and/or religious instruction or guidance and operates for up to 12 weeks for three or more hours per day, during the months of May through September or some portion thereof, or during holiday breaks in the course of a school year, and is operated in a space or location that is not subject to licensing pursuant to 31 Del.C. §344.

4.0 Persons Subject to the Law

- 4.1 Persons seeking employment in a health care facility, public school, or youth camp who have direct access to people receiving care or education are subject to the child protection registry check.
- 4.2 Persons seeking to volunteer or work as a contractor in a public school or youth camp who have direct access to people receiving care or education are subject to the child protection registry check.

5.0 Employer Responsibilities

- 5.1 No employer who operates a health care facility, public school, or youth camp shall hire any person without requesting a child protection registry check for that person.
- 5.2 The employer shall obtain a completed and signed full release form from each person subject to the law in order to receive the child protection registry check results. The release form is issued by the Department.
- 5.3 Any person hired before the employer receives the results of the child protection registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and depends upon the receipt and evaluation of the child protection registry check results.

6.0 Child Protection Registry Check Process

- 6.1 The person seeking employment completes and signs a release form in order for a child protection registry check to be conducted.
- 6.2 After receiving the signed release and payment from the applicant, the Criminal History Unit conducts a child protection registry check to find out if the person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.
- 6.3 When the person is not listed in the child protection registry as a perpetrator of child abuse or neglect, the employer is notified of the results.
- 6.4 When the person is listed in the child protection registry as a perpetrator of child abuse or neglect, the employer is notified of the results with a request to provide a copy of the results to the person seeking employment.

7.0 Criteria for Ineligibility

No employer who operates a health care facility or youth camp and no public school may hire any person seeking employment if the person is currently on the child protection registry at child protection Level III or IV as provided in 16 Del.C. §923.

8.0 Review of Department Records

- 8.1 When a person is listed as active on the child protection registry as a perpetrator, that person will be allowed the opportunity to review the record information maintained by the Division of Family Services.
- 8.2 The following procedures shall be established to permit the review of record information:
 - 8.2.1 The person shall submit a request in writing to the child protection registry substantiation hearing coordinator provided as part of the results of the child protection registry check.
 - 8.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.
 - 8.2.3 The review shall take place in the presence of a Division of Family Services staff member.

9.0 Voluntary Child Protection Registry Checks

Any private school or youth camp operated by a private school may voluntarily submit to having a child protection registry check conducted at such person's or organization's expense according to the Department of Services for Children, Youth and Their Families' procedures.

10.0 Confidentiality

The Department shall ensure that confidentiality regarding case file reviews and that information is only given out according to Department policy.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 3300 BOARD OF VETERINARY MEDICINE

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))
24 **DE Admin. Code** 3300

PUBLIC NOTICE

3300 Board of Veterinary Medicine

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on April 12, 2016 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 27, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes a new Rule 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.** §3004F. Other Rules are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. In addition, various regulations are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the Rules are re-numbered to accommodate the new Rule 2.0.

***Please Note:**

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 827RFA 03-01-16.pdf>

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

3300 Board of Veterinary Medicine

DIVISION OF PROFESSIONAL REGULATION 3600 BOARD OF GEOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 **Del.C.** §3606(a)(1))
24 **DE Admin. Code** 3600

PUBLIC NOTICE

3600 Board of Geologists

Pursuant to 24 **Del.C.** §3606(a)(1), the Board of Geologists has proposed revisions to its rules and regulations.

A public hearing will be held on April 1, 2016 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Geologists, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 16, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board's proposed revisions include a new requirement that two of the five professional references submitted by applicants must be dated within the two year period preceding submission of the application. Rule 3.0, pertaining to Seal Requirements, has been re-written. Pursuant to the proposed amendment, licensees will be required to comply with the new seal requirements no later than September 30, 2018. The Board's continuing education rules have been updated for greater clarity for licensees. Rule 5.0 is amended to state that licensure renewal must be accomplished on-line. Finally, a new Rule 7.4 is added to specify that an applicant who fails to pass either part of the ASBOG exam within two years shall be required to re-apply as a new applicant.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 827aRFA 03-01-16.pdf>

**3600 Board of Geologists
(Break in Continuity of Sections)**

2.0 Procedures for Licensure

2.1 Application - Initial Licensure

An applicant who is applying for licensure as a geologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3608. The applicant must submit the following documentation:

2.1.1 An application for licensure, which shall include:

(Break in Continuity Within Section)

2.1.1.3 Five professional references on forms provided by the Board. The references must attest that the applicant has completed at least five (5) years of work experience in geologic work satisfactory to the Board. A minimum of three (3) years of work experience must be in a responsible position. A minimum of two (2) of the five (5) professional references shall be dated within the two year period preceding submission of the application.

(Break in Continuity Within Section)

3.0 Stamp/Seal Requirements

3.1 ~~The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.~~

3.2 ~~All reports, drawings, maps, or similar technical submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.~~

3.3 ~~Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.~~

3.4 ~~No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 **Del.C.** Ch. 36.~~

- ~~3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.~~
- ~~3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:~~
- ~~This submission is made in compliance with 24 Del.C., Ch. 36 by (name) _____, P.G., DE license number _____ on this date _____.~~

3.0 Seal Requirements

- 3.1 No later than September 30, 2018, pursuant to 24 Del.C. §3619, each licensed geologist shall procure a seal, which shall contain the name of the geologist, his/her license number and the phrase "STATE OF DELAWARE - LICENSED PROFESSIONAL GEOLOGIST." This seal shall comply in all respects with the specimen shown below.



- 3.2 The seal authorized by the Delaware State Board of Geologists shall not be less than one and one-half (1 ½) inches in diameter. The seal may be a rubber stamp, an embossed seal, or an electronic seal. An electronic seal and signature may be used in lieu of a stamped or embossed impression of the seal and original signature only for documents that are transmitted electronically. The graphic image of the electronic seal shall have the same graphic appearance in all respects as in Rule 3.1 above.
- 3.3 All technical submissions prepared by a licensed geologist, or under that geologist's direct supervision, and that will become a matter of public record, or relied upon by any person, within this state as the result of the practice of geology as defined in 24 Del.C. §3602(5), shall be affixed with that geologist's seal. No licensed geologist shall affix that geologist's seal on any technical submission unless it has been prepared under that geologist's direct supervision. The seal will indicate that the licensed geologist has accepted responsibility for the submission and the work performed.
- 3.4 No person shall seal any plans, reports, specifications, plats or similar technical submissions with the seal of a licensed geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 Del.C. Ch. 36.
- 3.5 No person shall seal any plans, specifications, plats, reports, or a similar document with the seal of a licensed geologist if his/her license has been suspended, revoked or has expired.
- 3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:
- This submission is made in compliance with 24 Del.C., Ch. 36 by [Name _____], P.G., DE license number [License Number] on this date [Date _____].

(Break in Continuity of Sections)

5.0 Issuance and Renewal of License

- 5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her license expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **Del.C.** Ch. 36.
- 5.2 Renewal ~~may~~ shall be effected online at www.dpr.delaware.gov and by:
- 5.2.1 ~~filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;~~
- 5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
- 5.2.3 ~~attesting on the renewal application to the completing of continuing education as required by Rule 6.0;~~
- 5.2.4 ~~payment of fees as determined by the Division of Professional Regulation.~~
- 5.3 Failure of a licensee to renew his/her license shall cause his/her license to lapse. A geologist whose license has lapsed may renew his/her license within three (3) months after the license expiration date upon fulfilling items 5.2.1 - ~~5.2.4~~ 5.2.3 above, after providing a notarized letter certifying that he/she has not practiced geology in Delaware while his/her license has been lapsed, and paying the renewal fee and a late fee which shall be 50% of the renewal fee as determined by the Division of Professional Regulation.

(Break in Continuity Within Section)

6.0 Continuing Education**6.1 Preamble**

- 6.1.1 In order to protect the general public and ensure a high standard of integrity, skills and knowledge in the practice of geology, the following continuing education requirements are established by the Board in accordance with 24 **Del.C.** §3606(a)(8).
- 6.1.2 Regular participation in technical, professional and ethical training, and participation in professional and technical organizations assures that professional geologists are exposed to new ideas and keep their skills current. The overriding consideration in determining if a specific program or activity qualifies as continuing education shall be that it is a means to update and/or expand the professional's knowledge and skills in the practice of geology beyond their normal job-related activities. The requirement that all professional geologists must participate in such activities is meant to further safeguard the health, safety and welfare of the public.
- 6.4 ~~2~~ The Board will require continuing education as a condition of license renewal.
- 6.4.1 ~~2~~ Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.
- 6.4.2 ~~2~~ Renewal and aAttestation ~~may~~ shall be completed electronically ~~if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~
- 6.4.3 ~~2~~ Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3~~4~~.
- 6.2 ~~3~~ Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.
- 6.3 ~~4~~ Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted

one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

- 6.45 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.
- 6.56 Continuing education shall be prorated for new licensees in the following manner:
- 6.56.1 If at the time of renewal, a licensee has been licensed for less than one (1) year, no continuing education is required; if he/she has been licensed for more than one (1) year, but less than two (2) years, twelve (12) of the twenty-four (24) hours will be required; if he/she has been licensed for two (2) years or more the full twenty-four (24) hours is required.
- 6.67 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.
- 6.78 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.
- 6.89 Categories of Continuing Education & Maximum Credit Allowed:
- 6.89.1 ~~Courses/Workshops~~ Geologic courses – 24 CEUs Total
Academic – 24 CEUs
~~Professional Development~~ – 24 CEUs
Documentation – Proof of Completion
- 6.89.2 ~~Professional Activities~~ Development in the Application of Practice of Geologic Sciences – 12 24 CEUs Total
Meetings – 12 CEUs (excluding job related meetings such as department meetings, supervision of students and business meetings within the work setting)
Workshops - 12 CEUs
Field Trips – 12 CEUs
Seminars - 12 CEUs
Documentation – Proof of Attendance and Duration
- 6.89.3 ~~Peer Reviewed Publications~~ – 12 CEUs Total
Composition – 12 CEUs
Review – 12 CEUs
Documentation – Proof of Participation
- 6.8.4 ~~Presentations/Seminars~~ – 12 CEUs Total
~~Presentation~~ – 12 CEUs (1 hour prep time per hour presented)
~~Attendance~~ – 12 CEUs
~~Documentation~~ – Proof of Attendance and Duration
- 6.8.59.4 ~~Research/Grants~~ – 12 CEUs Total
Documentation – Proof of Submission
- 6.8.69.5 ~~Specialty Certifications~~ – 12 CEUs Total
Documentation – Proof of Completion
- 6.8.79.6 ~~Online courses and Web seminars~~ – 12 CEUs Total
Documentation – Proof of Completion
- 6.8.89.7 ~~Teaching/Presentations~~ – 12 CEUs Total

PROPOSED REGULATIONS

Presentation - 12 CEUs (1 hour prep time per hour presented of original presentation)

Documentation – Verification from Sponsoring Institution

6.8.99.8 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total

Documentation – Proof of Appointment

6.8.109.9 Regulatory Based Activities – 12 CEUs Total

Certifications/Training – 12 CEUs Total

Documentation – Proof of Completion

6.8.149.10 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.

6.910 Automatic Approval for course work sponsored by the following Professional Societies:

6.910.1 American Association of Petroleum Geologists (AAPG)

6.910.2 American Association of Stratigraphic Palynologists (AASP)

6.910.3 American Geosciences Institute (AGI)

6.910.4 American Geophysical Union (AGU)

6.910.5 American Institute of Hydrology (AIH)

6.910.6 American Institute of Professional Geologists (AIPG)

6.910.7 American Rock Mechanics Association (AMRA)

6.910.8 American Water Resources Association (AWRA)

6.910.9 Association for the Sciences of Limnology and Oceanography (ASLO)

6.910.10 Association of American Geographers (AAG)

6.910.11 Association of American State Geologists (AASG)

6.910.12 Association of Earth Science Editors (AESE)

6.910.13 Association of Environmental and Engineering Geologists (AEG)

6.910.14 Association of Ground Water Scientists & Engineers (AGWSE)

6.910.15 Association of Women Geoscientists (AWG)

6.910.16 Clay Mineral Society (CMS)

6.910.17 Council on Undergraduate Research-Geosciences Div. (CUR)

6.910.18 Environmental and Engineering Geophysical Society (EEGS)

6.910.19 Friends of Mineralogy (FOM)

6.910.20 Geochemical Society (GS)

6.910.21 Geo-Institute of the American Society of Civil Engineers (GI)

6.910.22 Geologic Society of America (GSA)

6.910.23 Geological Society of London (GSL)

6.910.24 Geoscience Information Society (GIS)

6.910.25 History of Earth Sciences Society (HESS)

6.910.26 International Medical Geology Association (IMGA)

6.910.27 International Association of Hydrogeologists/US National Committee (IAH)

6.910.28 Karst Waters Institute (KWI)

6.910.29 Mineralogical Society of America (MSA)

6.910.30 National Association of Black Geologists and Geophysicists (NABGG)

6.910.31 National Association of Geoscience Teachers (NAGT)

6.910.32 National Association of State Boards of Geology (ASBOG)

6.910.33 National Cave and Karst Research Institute (NCKRI)

6.910.34 National Earth Science Teachers Association (NESTA)

6.910.35 National Ground Water Association (NGWA)

- 6.910.36 National Speleological Society (NSS)
 - 6.910.37 North American Commission on Stratigraphic Nomenclature (NACSN)
 - 6.910.38 Paleobotanical Section of the Botanical Society of America (PSBSA)
 - 6.910.39 Paleontological Research Institution (PRI)
 - 6.910.40 Paleontological Society (PS)
 - 6.910.41 Palynological Society (AASP)
 - 6.910.42 Petroleum History Institute (PHI)
 - 6.910.43 Seismological Society of America (SSA)
 - 6.910.44 Society of Economic Geologists (SEG)
 - 6.910.45 Society of Exploration Geophysicists (SEG)
 - 6.910.46 Society of Independent Professional Earth Scientists (SIPES)
 - 6.910.47 Society of Mineral Museum Professionals (SMMP)
 - 6.910.48 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
 - 6.910.49 Society for Organic Petrology (TSOP)
 - 6.910.50 Society for Sedimentary Geology (SEPM)
 - 6.910.51 Society of Vertebrate Paleontology (SVP)
 - 6.910.52 Soil Science Society of America (SSSA)
 - 6.910.53 United States Permafrost Association (USPA)
 - 6.910.54 Other professional or educational organizations as approved periodically by the Board.
- 6.101 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.
- Note: Since regulation 6.910 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.101, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.910. Furthermore, one CEU = one Contact Hour.
- 6.142 Audit. Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.123 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 6.134 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of geology, pursuant to 24 Del.C. §3612(a)(7). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Board may impose any of the additional penalties specified in 24 Del.C. §3612.
- 6.145 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required

PROPOSED REGULATIONS

CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEUs. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.

- 6.156 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

7.0 ASBOG Examination

(Break in Continuity Within Section)

- 7.4 An applicant who fails to pass either part of the ASBOG exam within two years shall re-apply as a new applicant pursuant to Rule 2.0.

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

3600 Board of Geologists

DIVISION OF PROFESSIONAL REGULATION CONTROLLED SUBSTANCE ADVISORY COMMITTEE

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

PUBLIC NOTICE

Uniform Controlled Substances Act Regulations

Pursuant to 16 Del.C. §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. Subsection 4.10.1 addresses the requirement that a pharmacist must verify the identification of the receiver of a controlled substance prescription by reference to valid photographic identification. The Regulation is amended to provide that Federal, including military, identification meets this requirement. In addition, Subsection 4.10.1.5 is added to provide an exemption to the photographic identification requirement where the person receiving the controlled substance prescription is a patient at an inpatient facility or has been discharged from an inpatient facility and is obtaining the controlled substance from the facility's outpatient pharmacy immediately upon discharge.

A public hearing will be held on April 27, 2016 at 9:00 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Christine Mast, Administrative Specialist for the Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be May 12, 2016, which is 15 days following the public hearing. The Committee will deliberate on the proposed revisions at its next regularly scheduled meeting.

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 834RFA 03-01-16.pdf>

Uniform Controlled Substances Act Regulations (Break in Continuity of Sections)

4.0 Prescriptions

(Break in Continuity Within Section)

4.10 The pharmacist must establish that a practitioner is properly registered to prescribe controlled substances under Federal Law.

4.10.1 The pharmacist and/or an employee under his/her direct supervision must verify the identification of the receiver of the controlled substance prescription by reference to valid photographic identification. For the purposes of this section, a valid photographic identification is limited to the following:

(Break in Continuity Within Section)

4.10.1.2 A valid Delaware or Federal, including military, identification card which contains the photograph of the person receiving the prescription - record the identification number listed on the card as part of the patient record.

(Break in Continuity Within Section)

4.10.1.5 A person receiving a controlled substance prescription is not required to produce photographic identification where such person is a patient at an inpatient facility, or has been discharged from an inpatient facility and is obtaining a prescribed controlled substance from the facility's outpatient pharmacy immediately upon discharge.

(Break in Continuity Within Section)

5.0 Labeling

(Break in Continuity Within Section)

5.3 Practitioners who sell drugs directly to patients shall label all such drugs in accordance with Regulation subsection 5.2 with the exception of a prescription number.

(Break in Continuity of Sections)

8.0 Practitioner Dispensing of Controlled Substances

8.1 No prescriber who is not the owner of a pharmacy or who is not in the employ of such owner, may dispense more than a 72-hour supply of schedule II through V controlled substances except for the following, who still must comply with other sections of this Regulation including but not limited to Regulation subsection 4.7:

(Break in Continuity Within Section)

9.0 Procedures for Adoption of Regulations

(Break in Continuity Within Section)

9.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer ~~then~~ than twenty (20) days notice and states in writing his/her reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing he/she finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

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

Uniform Controlled Substances Act Regulations

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 30 Delaware Code, Section 3003; 29 Delaware Code, Section 8404
(30 Del.C. §3003; 29 Del.C. §8404)
2 DE Admin. Code 2266

PUBLIC NOTICE

2266 Vehicle Document Fees

Background

The Delaware Department of Transportation Division of Motor Vehicles (DMV) is seeking public comment regarding the provision of Vehicle Document Fees.

Under Chapter 30 of Title 30 of the Delaware Code, the DMV is authorized to collect a motor vehicle document fee. The fee is paid by the vehicle owner and collected by DMV for deposit to the transportation trust fund. The document fee is calculated on the gross purchase price less any trade-in or allowance given by the seller of the motor vehicle to the owner.

The draft regulation would authorize the DMV to not impose collecting the document fee when the vehicle is a gift from a family member to another family member if there is a lien on the vehicle. The regulation would allow dealers that title a vehicle that is intended for resale to be exempt from the document fee if there is a lien entered on the vehicle.

Public Comment Period

The Department will take written comments on the proposed Regulation for this vehicle document fee exemption from March 1, 2016 through March 31, 2016. The proposed Regulation appears below.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Scott Clapper
Chief of Vehicle Services
Division of Motor Vehicles
Delaware Department of Transportation
303 Transportation Circle
Dover, DE 19904
(302) 744-2533 (telephone)
(302) 739-4750 (fax)
scott.clapper@state.de.us

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

<http://regulations.delaware.gov/register/march2016/proposed/19 DE Reg 836RFA 03-01-16.pdf>

2266 Vehicle Document Fees (Break in Continuity of Sections)

2.0 Exceptions

In addition to the waivers of the vehicle document fee as specified in Section 3002(a), Chapter 30, Title 30, the document fee shall not be imposed on the sale, transfer or registration of motor vehicles or trailers in the following circumstances.

-
- 2.1 Transfer of a motor vehicle, vehicle, or trailer by way of a gift between a husband and wife, parent and child, grandparent and child, or brother and sister. ~~No vehicle shall be considered a gift if there is a lien entered against the title. The document fee would be assessed on the amount of the lien. This exemption only applies on the transfer of Delaware title.~~

(Break in Continuity of Sections)

5.0 Licensed Dealer

A certificate of title issued in the name of a licensed dealer, which has a lien or encumbrance entered against such title, shall not be considered for the sole purpose of resale and shall not be exempt from the vehicle document fee unless the vehicle is part of a manufacturer's warranty program such as a loaner vehicle and the manufacturer is the lien holder.

(Break in Continuity of Sections)

14.0 ~~Repeal of Regulation~~

~~Policy Regulation Number 38 concerning vehicle document fees has been deleted.~~

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

2266 Vehicle Document Fees

Symbol Key

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

Final Regulations

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

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

DELAWARE RIVER BASIN COMMISSION

Statutory Authority: 53 Delaware Laws, Chapter 71, Approved May 26, 1961

ORDER

Amendments to the Rules of Practice and Procedure to Allow Each Signatory Party and the DRBC to Administer a Single Process for the Review and Adjudication of Projects

Proposed: Delaware *Register of Regulations* (18 DE Reg. 926-930 (06/01/2015)) on June 1, 2015

Adopted: December 9, 2015 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary.

Filed: February 12, 2016 as a final regulation.

Effective: March 4, 2016 (thirty days after publication in the Federal Register, which occurred on February 3, 2016).

Summary: By Resolution No. 2015-9 on December 9, 2015, the Delaware River Basin Commission ("DRBC" or "Commission") approved amendments to the Commission's *Administrative Manual Part II – Rules of Practice and Procedure* to provide for the One Process/One Permit Program. The Program is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects.

Contacts: For technical information, David Kovach, 609-477-7264. For legal information, Pamela Bush, 609-477-7203.

Supplementary Information: The Delaware River Basin Commission is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

Background. This final rule amends the *Administrative Manual Part II – Rules of Practice and Procedure* by the

addition of a new section 2.3.11 (18 CFR § 401.42), providing for DRBC and each of the parties to the *Delaware River Basin Compact* (United States Public Law 87-328, Approved September 27, 1961, 75 U.S. Statutes at Large 688; 53 Delaware Laws, Chapter 71, Approved May 26, 1961; New Jersey Laws of 1961, Chapter 13, Approved May 1, 1961; New York Laws of 1961, Chapter 148, Approved March 17, 1961; and Pennsylvania Acts of 1961, Act No. 268, Approved July 7, 1961 (“the Compact”)) – Delaware, New Jersey, New York, Pennsylvania and the federal government (“Signatory Parties”) – to coordinate and collaborate in the administration of a single process for the review and adjudication of certain projects, including, where appropriate, issuance of a single permit or other approval instrument.

Currently, the sponsors of many water resource-related projects in the Delaware River Basin are required to apply to both the DRBC and a state agency, among others, for approvals. New §2.3.11 (18 CFR 401.42) of the Commission’s *Rules of Practice and Procedure* provides for the DRBC and the administrative agencies of the Signatory Parties to identify regulatory programs that by mutual agreement will be managed through a single process that may result in one decision or approval. The program, known as One Process/One Permit (hereinafter, “the Program” or “One Permit”) is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects. Importantly, the rule expressly preserves the authorities of the DRBC and each of its Signatory Parties and effects no change to federal, state or DRBC substantive standards and requirements.

In accordance with this final rule, administrative agreements between DRBC and Signatory Party agencies to implement the Program may be approved by the Commission after each such agreement undergoes a duly noticed public hearing. Notably, each Signatory Party may choose whether and when to initiate an agreement or agreements with DRBC under the Program.

In accordance with Resolution No. 2015-4 of the Commission, which was adopted on March 11, 2015 following a public hearing on March 10, 2015, an administrative agreement between the DRBC and the New Jersey Department of Environmental Protection (NJDEP) was executed, in part to demonstrate how the Program would operate in New Jersey. With adoption of the final rule, DRBC and NJDEP will fully implement their March 2015 agreement. A draft agreement between DRBC and the New York State Department of Environmental Conservation (NYSDEC) was published on January 29, 2016. The earliest date on which the Commission could approve the agreement with NYSDEC is at its next scheduled public meeting on March 16, 2016.

Procedural background. The Commission introduced One Permit to the basin community during meetings with regulated entities, environmental organizations and other stakeholders on February 12 and March 3, 2015 and through publication on the DRBC website of a press release and a set of FAQs on February 27, 2015. During the Commission’s quarterly public meeting on March 10-11, 2015, the Commission approved Resolution No. 2015-4, in part authorizing and directing the Executive Director to initiate rulemaking to amend DRBC’s *Rules of Practice and Procedure* to provide specific authorization for and define the scope of the Program. A notice of proposed rulemaking was published on the Commission’s web site on May 17, 2015.

Notice of the proposed amendments appeared in the *Federal Register* at 80 FR 28567, May 19, 2015; *Delaware Register of Regulations*, 18 DE Reg. 1002, June 1, 2015; *New Jersey Register*, 47 N.J.R. 1256, June 1, 2015; *New York State Register*, May 27, 2015 (page 4); and *Pennsylvania Bulletin*, 45 Pa. B. 2611, May 30, 2015. The Commission held a public hearing on the proposed rule on June 9, 2015 and accepted written comments on the rule through July 1, 2015.

Changes to the draft rule. In its action adopting the final rule, the Commission also adopted a detailed comment and response document identifying the commenters and comments received during the comment period and setting forth the Commission’s responses, including changes to the rule to address concerns and respond to recommendations submitted by stakeholders.

Revisions to the draft rule include the following:

- Paragraph B (18 CFR 401.42(b)) was clarified to provide that applications for approvals required by the Compact and Commission regulations, but not within the scope of the Program, must continue to be submitted to the Commission. This clarification makes express the intent of the draft rule.
- To ensure continued public access to information on the status of all projects under review pursuant to the *Delaware River Basin Compact*, including those administered under One Permit, a new paragraph D.2. (18 CFR 401.42(d)(2)) was added, establishing that participating Signatory Party agencies will notify DRBC at least once monthly of applications received under the Program; and paragraph D.5 18 CFR 401.42(d)(5)) was revised to establish that the list that the Commission will maintain of projects

being administered under One Permit will be posted on the Commission's website. Additional benefits of these changes are described in the comment and response document.

- Paragraph H (18 CFR 401.42(h)) of the draft rule was revised to clarify that DRBC's current Project Review Fee Schedule as set forth in Resolution No. 2009-2 will be the operative fee schedule for projects reviewed under the Program, unless and until the Commission replaces it.
- Paragraph I (18 CFR 401.42(i)) was revised to provide more efficient mechanisms for the disposition of Commission dockets during the transition to One Permit. A new paragraph I.1 (18 CFR 401.42(i)(1)) provides that for projects covered by the Program, the most recent docket will be deemed administratively continued when a renewal application is timely submitted to the Signatory Party Agency. A new paragraph I.2 (18 CFR 401.42(i)(2)) eliminates the need for separate Executive Director action to terminate provisions of each docket by providing that unless the Executive Director or the Commission otherwise directs, upon the Signatory Party Agency's final action on an application for a project subject to the Program, (a) any existing or administratively continued docket will terminate as to all of its provisions and conditions within the scope of the Signatory Party Agency approval; and (b) such docket will continue in effect as to any provisions and conditions outside the scope of the Signatory Party Agency approval, including for example, addition of a project to the Comprehensive Plan.
- The rule as proposed authorizes Signatory Party agencies, in accordance with an applicable administrative agreement, to issue in their approvals for projects to be administered under the Program the finding and determination required by section 3.8 of the Compact that a project subject to section 3.8 review does not substantially impair or conflict with the Commission's Comprehensive Plan ("the finding"). Paragraph D.4 (18 CFR 401.42(d)(4)) of the draft rule was revised to clarify that where in accordance with an applicable administrative agreement implementing One Permit the finding continues to be made by the Commission, the Signatory Party agency may include the Commission's finding in the agency's approval, together with any conditions identified by the Commission as necessary to support it, thereby achieving a unified permit.

Minor additional revisions to the rule text were made as deemed necessary for clarity or accuracy. In particular, changes were made to underscore two aspects of the rule that have been part of One Permit from the start: (1) that participation in the program by Signatory Party agencies is voluntary; and (2) that the scope of a Signatory Party Agency's participation is defined by an administrative agreement between DRBC and the agency that has been duly adopted in accordance with paragraph D (18 CFR 401.42(d)) of the rule.

Additional Materials: Additional materials can be found on the Commission's web site at www.drbc.net. These include DRBC Resolution No. 2015-9 approving the final rule, at http://www.nj.gov/drbc/library/documents/Res2015-09_OPOPwith-final-rule-text.pdf; and the Commission's detailed comment and response document, which identifies commenters, summarizes comments received on the proposed rule, and sets forth the Commission's responses, at http://www.nj.gov/drbc/library/documents/OPOP/comment-and-response_OPOP.pdf.

The version of the *Rules of Practice and Procedure* that is currently posted on DRBC's website at http://www.nj.gov/drbc/library/documents/admin_manual.pdf uses DRBC's original numbering system, which is different from that of the *Code of Federal Regulations*. In the DRBC codification, the One Permit Program rules are set forth at new section 2.3.11. A list of the CFR units and corresponding DRBC units follows. A complete stand-alone version of the Rules of Practice and Procedure using the CFR system will be available on the DRBC website shortly.

<u>CFR Unit</u>	<u>DRBC Unit</u>	<u>Title or Caption</u>
Title 18		
Conservation of Power and Water Resources	—	—
Chapter III— Delaware River Basin Commission	—	—
Subchapter A— Administrative Manual	Administrative Manual [Part II]	—

Part 401—Rules of Practice and Procedure	Rules of Practice and Procedure	—
Subpart C—Project Review Under Section 3.8 of the Compact	Article 3 – Project Review Under Section 3.8 of the Compact	—
401.42	2.3.11	One Permit Program
401.42(a)	2.3.11 A.	Purpose
401.42(b)	2.3.11 B.	Scope
401.42(c)	2.3.11 C.	Regulatory programs
401.42(d)	2.3.11 D.	Procedure
401.42(e)	2.3.11 E.	Comprehensive Plan projects
401.42(f)	2.3.11 F.	Retention of Commission review and enforcement authorities
401.42(g)	2.3.11 G.	Exhaustion of Signatory Party administrative remedies prerequisite to appeal
401.42(h)	2.3.11 H.	Fees
401.42(i)	2.3.11 I.	Effect of One Permit Program on Commission dockets
401.42(j)	2.3.11 J.	Modification of Rules of Practice and Procedure to conform to this section
401.42(k)	2.3.11 K.	No interference with Supreme Court decree

Pamela M. Bush
 Commission Secretary and Assistant General Counsel
 Dated: February 9, 2016

The rule text, shown with the CFR numbering system, follows:

§ 401.42 One Permit Program.

(a) *Purpose.* The purpose of the One Permit Program set forth in this section is to provide the opportunity for the environmental agency and/or other administrative agency of a Signatory Party (“Signatory Party Agency”) and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement under paragraph (d) of this section.

(b) *Scope.* This section applies to all projects that:

- (1) Are reviewable under the Compact;
- (2) Meet the thresholds for review set forth in § 401.35 of these *Rules of Practice and Procedure*;
- (3) Are subject to review by a Signatory Party Agency under its own statutory authorities; and
- (4) Are within regulatory programs that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this section. For any project that requires an approval under the Compact that is outside the scope of the Signatory Party Agency’s approval issued in accordance with an Administrative Agreement under this

section, the project sponsor shall apply to the Commission in accordance with procedures established by the Commission.

(c) *Regulatory programs.* Regulatory programs eligible for administration under the One Permit Program may include but are not limited to those concerning: Basin discharges, Basin water withdrawals, and Basin flood plain requirements.

(d) *Procedure.* The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by the Commission following a duly noticed public hearing and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

1. Except as provided in paragraphs (b) and (e) of this section or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.
2. To enable the Commission to compile and make available to the public a current list of pending applications for projects within the Basin subject to Commission jurisdiction, the Signatory Party Agency shall notify the Commission at least monthly of applications the Signatory Party has received during the preceding month that may be eligible for review under the One Permit Program.
3. For those categories of projects identified in the Administrative Agreement as requiring Commission input, the Commission staff shall provide the Signatory Party Agency with such input, including where specified by the Administrative Agreement, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under Section 3.8 of the Compact as to those regulatory programs identified in an Administrative Agreement in accordance with paragraph (b) of this section.
4. Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under Section 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under Section 3.8 of the Compact, as specified in the Administrative Agreement, as to the regulatory program covered by the Signatory Party Agency's approval and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor. If in accordance with the applicable Administrative Agreement the determination under Section 3.8 of the Compact is made by the Commission, the Signatory Party Agency may include the determination together with any associated conditions of approval in its permit or other approval instrument covering the project.
5. The Commission will maintain on its website a list of all projects being administered pursuant to the Program.

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

(f) *Retention of Commission review and enforcement authorities.* Notwithstanding any other provision of this section, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this section shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this section may include collaborative and cooperative compliance and enforcement procedures, nothing in this section shall limit the authority of the Commission to exercise its

enforcement authority under the Compact and applicable regulations.

(g) *Exhaustion of Signatory Party administrative remedies prerequisite to appeal.* Before commencing an action in a court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency under this section, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

(h) *Fees.* The Commission shall establish and maintain a schedule of fees for any or all of the services it renders pursuant to this section. The applicable fee(s) for Commission services rendered pursuant to this section shall be those set forth in DRBC Resolution No. 2009-2 (available at <http://www.nj.gov/drbc/library/documents/Res2009-2.pdf>) for the review and renewal of project approvals. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with the current schedule and applicable rules.

(i) *Effect of One Permit Program on Commission dockets.*

(1) Unless the Executive Director or Commission otherwise directs, if a docket holder submits, or has submitted, a timely application to a Signatory Party Agency for a project subject to review under an Administrative Agreement duly adopted under paragraph (d) of this section, the most recent docket for the project shall, upon expiration, be deemed administratively continued until final action is taken in accordance with paragraph (i)(2) of this section.

(2) Unless the Executive Director or Commission otherwise directs, upon a Signatory Party Agency's final action on an application for a project subject to the One Permit Program:

(i) Any existing or administratively continued docket for such project shall terminate as to all of its provisions and conditions that pertain to regulatory programs administered by the Signatory Party Agency under the Administrative Agreement ("the Covered Programs"); and

(ii) The docket shall continue in effect as to any provisions and conditions not pertaining only to Covered Programs, including, as applicable, the incorporation of the project in the Commission's Comprehensive Plan.

(j) *Modification of rules of practice and procedure to conform to this section.* Any project subject to review under an Administrative Agreement duly adopted under paragraph (d) of this section, shall be governed by this section and not §§ 401.4, 401.5, 401.6, 401.8, 401.34(a), (c) and (e), 401.37, 401.38 and 18 CFR part 401, subpart F, where they are inconsistent with the procedures provided in this section.

(k) *No interference with Supreme Court decree.* In accordance with Sections 3.3(a) and 3.5 of the Compact, nothing in this section shall grant the authority to any Signatory Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree"). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))
1 DE Admin. Code 701-706

ORDER

701 Administration and Enforcement

702 Fire Protection in Building Construction

703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers

704 Hazardous Processes and Operations

705 General Fire Safety

706 Specific Occupancy Requirements

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** §6604(1), proposed to revise:

Regulation 701 by removing the limitation that the regulations apply only to buildings modified by 50% or more following the enactment of the regulations. The revision also removes Annexes A and B and reorganizes the content into a newly created Chapter 7. Finally, the revision removes references to Appendixes that are no longer part of the regulations.

Regulation 702 by making changes to the occupancy conversion regulation, clarifying the building rehabilitation requirements, clarifying the automatic sprinkler system, and standpipe regulations to prevent a submission for review and approval of a project in such stages that would have the effect of being less than 50% of the square footage of any building. These proposed changes also make substantive additions to the regulations regarding floor level identification and fire pumps.

Regulation 703 by adding a definition for "major deficiency," clarifying that at the time of renewal, a certificate holder must maintain current NICET certification at the minimum level that was required at the time of original licensure. The proposed changes also remove reference to the Annexes and Appendixes, which are no longer part of the regulations.

Regulation 704 by deleting Regulation 4.3 in its entirety, eliminating the requirement that a member of a local fire department be present on the scene of any fireworks display from the time the fireworks are delivered until the termination of the display, and reverting to Regulation 4.2, leaving the level of fire protection to the discretion of the local fire department.

Regulation 705 to clarify that one elevator car in any building must be of sufficient size to accommodate an ambulance cot in its horizontal position, and further clarifying that elevator cars existing as of September 1, 2015 are exempt from this requirement. These changes further clarify that all gates at gated communities must be either automatic or manual, and establishes guidelines for demarcating both primary and secondary entrance doors.

Regulation 706 by removing bond requirement for electricians added to the list of installers for the hard-wired smoke detector program.

Following publication in the Delaware *Register of Regulations* on August 1, 2015 a public hearing was held on September 22, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and as Board Exhibit 2, documentation of publication of the notice of the public hearing in the *Delaware State News*. During the written public comment period, written public comments were received from the following, and marked as indicated:

Board Exhibit 3: An August 6, 2015 letter from Bryan J. Soukup, Esquire of the International Code Council, urging the Commission to adopt the 2015 International Fire Code in its entirety and an August 28, 2015 letter from Kevin Brinkman, PE of the National Elevator Industry, Inc, requesting the Commission (1) look again at the proposed language of Regulation 15.2 as it appears to require two elevator cars that accommodate a stretcher where elevators are located on both sides of an elevator lobby, even if they served the same floors; (2) clarify what is meant by "key for access" as used in Regulation 15.3; (3) define one and two family elevators in Exception 1; (4) clarify Exception 2; (5) look again at Exception 3 and consider making a language change for consistency.

Board Exhibit 4: Technical, non-substantive changes suggested by the Office of the Fire Marshall upon further review of the proposed regulations.

Board Exhibit 5: A September 8, 2015 letter from Robert J. Duke, of the Surety and Fidelity Association of America, urging the Commission not to remove the bond requirement from the regulations.

Board Exhibit 6: An email from John Caufield, NFPA Mid-Atlantic Regional Director, indicating that the proposed regulations state that the Commission is adopting the 2002 edition of the NFPA 42: *Storage of Pyroxylin Plastic*, but the Commission had previously adopted the 2009 edition.

At the time of the public hearing, the Commission received public comment from Jeffrey Sargent of the Regional Electrical Code. Mr. Sargent indicated he was speaking in support of the regulation changes with a friendly suggestion regarding proposed Regulation 210.12 regarding circuit interrupters. Mr. Sargent indicated that residential smoke alarms are required to have dedicated branch circuits without arc pull circuit interrupters. These have been around since 1999 and they have proven to be a good fire prevention tool. Mr. Sargent asked that the Commission please do away with the ban on AFCI for smoke alarms.

The Commission also received public comment from Maria Evans with the Delaware Association of Realtors. Ms. Evans asked what the timing of these regulation changes would be.

Summary of the Findings of Fact

Pursuant to discussions held during open public Commission meetings, it was determined that Regulation 701 needed to be revised to remove the limitation that the regulations apply only to buildings modified by 50% or more following the enactment of the regulations. The revision also removes Annexes A and B and reorganizes the content into a newly created Chapter 7. Finally, the revision removes references to Appendixes that are no longer part of the regulations. These changes are necessary to begin to revise the entire administrative code to a more clear, user-friendly regulatory structure that reflects best practices and removes out of date material.

Pursuant to discussions held during open public meetings of the Commission, it has been determined that Regulation 702 need to be changed *vis a vis* the occupancy conversion regulation, clarifying the building rehabilitation requirements, clarifying the automatic sprinkler system, and standpipe regulations to prevent a submission for review and approval of a project in such stages that would have the effect of being less than 50% of the square footage of any building. These changes also make substantive additions to the regulations regarding floor level identification and fire pumps. These changes are necessary to begin to revise the entire administrative code to a more clear, user-friendly regulatory structure that reflects best practices and removes out of date material.

Pursuant to discussions held during open public meetings of the Commission, it has been determined that Regulation 703 required the addition of a definition for "major deficiency," clarifying that at the time of renewal, a certificate holder must maintain current NICET certification at the minimum level that was required at the time of original licensure. These changes also removed reference to the Annexes and Appendixes which are no longer part of the regulations. These changes are necessary to begin to revise the entire administrative code to a more clear, user-friendly regulatory structure that reflects best practices and removes out of date material.

Pursuant to discussions held during open public hearings of the Commission, it was determined that Regulation 704 required the deletion of Regulation 4.3 in its entirety, eliminating the requirement that a member of a local fire department be present on the scene of any fireworks display from the time the fireworks are delivered until the termination of the display, and reverting to Regulation 4.2, leaving the level of fire protection to the discretion of the local fire department. These changes are necessary to begin to revise the entire administrative code to a more clear, user-friendly regulatory structure that reflects best practices and removes out of date material.

Pursuant to discussions held during open public hearings of the Commission, it was determined that Regulation 705 needed to be clarified to indicate that one elevator car in any building must be of sufficient size to accommodate an ambulance cot in its horizontal position, and further clarifying that elevator cars existing as of September 1, 2015 are exempt from this requirement. These changes were further needed to clarify that all gates at gated communities must be either automatic or manual, and establish guidelines for demarcating both primary and secondary entrance doors. These changes are necessary to begin to revise the entire administrative code to a more clear, user-friendly regulatory structure that reflects best practices and removes out of date material.

Pursuant to discussions held during open public hearings of the Commission, it was determined that Regulation 706 required removal of the bond requirement for electricians added to the list of installers for the hard-wired smoke detector program. These changes are necessary to begin to revise the entire administrative code to a more clear, user-friendly regulatory structure that reflects best practices and removes out of date material.

Decision of the Board

With regard to the letter from Bryan J. Soukup, Esquire of the International Code Council, urging the Commission to adopt the 2015 International Fire Code in its entirety, the Commission finds that Delaware is a NFPA state, we have always have followed the NFPA and not the International Codes for the Fire Codes. Although municipalities may adopt the IFC, that is generally more stringent than the NFPA, which municipalities are free to therefore adopt. However, the NFPA is the state fire standard that has always been used and changing to the International code.

With regard to the letter from Kevin Brinkman, PE of the National Elevator Industry, Inc, regarding Regulation 15.2, when the committee met to discuss this change, the committee felt that if one elevator in a hoistway is placed out of service for maintenance, there would still be an stretcher accommodating elevator available in another hoistway. Currently, every elevator must be stretcher accommodating, so this is a less onerous requirement than the current regulation. "Keys to access" refers to the fire fighter recall key. The Commission will change "Keys for

access" to "fire fighter recall key" as suggested. Further, one and two family dwellings are defined elsewhere in the regulations and, moreover, are outside of the jurisdiction of this Commission. The term "dwelling" will be added after the term "one and two family" as suggested. Exception 2 eliminates the requirement for an elevator that accommodate a stretcher if the outside grade permits stretchers to access upper levels from the outside. This is clear. Exception 3, however, will be rewritten as suggested.

The technical, non-substantive changes suggested by the Office of the Fire Marshall will be made.

With regard to the letter from Robert J. Duke, of the Surety and Fidelity Association of America, urging the Commission not to remove the bond requirement from the regulations, the Commission finds that the bond requirement was originally added due to the bid requirements. Ultimately, the amount of the bond that was being required was in excess of the projects under bid. Changes in state law and procurement procedures have rendered the bond requirement superfluous.

With regard to the email from John Caufield, NFPA Mid-Atlantic Regional Director, indicating that the proposed regulations state that the Commission is adopting the 2002 edition of the NFPA 42, this is a typographical error and will be corrected.

With regard to the public comment from Jeffrey Sargent of the Regional Electrical Code regarding circuit interrupters, the Commission finds the ban is necessary because a circuit may trip and a homeowner would not even know it. When originally put in, there was a great deal of contention as to whether the AFCI would work as contemplated. Now, the ban has been in place for so long and it's working so the Commission is not inclined to remove the ban.

Therefore, the Commission adopts the regulations as proposed, with the minor non-substantive changes reflected in Exhibit A.

IT IS SO ORDERED this 17th day of November, 2015 by the Delaware State Fire Commission.

David J. Roberts, Chairman
 Anthony Guzzo
 Marvin C. Sharp (absent)
 Tom DiCristofaro

Alan Robinson, Jr., Vice Chairman
 Ron Marvel
 Lynn Truitt

***Please Note: Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:**

701 Administration and Enforcement
702 Fire Protection in Building Construction
703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems...
704 Hazardous Processes and Operations
705 General Fire Safety
706 Specific Occupancy Requirements

DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
 14 DE Admin. Code 1590

REGULATORY IMPLEMENTING ORDER

1590 Delaware Administrator Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education,

seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1590 Delaware Administrator Standards. The regulation concerns the nationally recognized standards that describe leadership behaviors and skills established for Delaware school leaders, and serves as the foundation for the preparation and appraisal of school leaders. This regulation shall apply to all school administrators employed within the public schools and charter schools of the State of Delaware.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on January 1, 2016. The notice invited written comments. No comments were received.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to recognize the change in the national standards, now recognizing the Professional Standards for Educational Leaders, as the Delaware State Administrator Standards.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended shall be in the form attached, and said regulation shall be cited as 14 **DE Admin. Code** 1590 of the *Administrative Code of Regulations* of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the January 2016 issue of the *Register* at page 554 (19 DE Reg. 554). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1590 Delaware Administrator Standards

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)o (16 **Del.C.** §122(3)o)
16 **DE Admin. Code** 4406

ORDER

4406 Home Health Agencies- Aide Only (Licensure)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Home Health Agencies Aide Only (Licensure). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** §122 (3)o.

On November 1, 2015 (Volume 19, Issue 5), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions

from the public concerning the proposed regulations be delivered to DHSS by December 17, 2015, or be presented at a public hearing on December 2, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE:

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Home Health Agencies - Aide Only (Licensure) were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (November 1, 2015 through December 17, 2015).

Entities offering written comments include:

- State Council for Persons with Disabilities, Daniese McMullin-Powell, Chairperson
- Governor's Advisory Council for Exceptional Citizens, Robert D. Overmiller, Chairperson

As the comments from both agencies were similar in scope and nature, they are addressed concurrently in this summary of evidence. Public comments and the DHSS (Agency) responses are as follows:

Comment:

In §1.0, definition of "Home Health Agency (HHA)", the second sentence reads as follows: "The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent." This new limitation may be ill-conceived. An HHA "located" in Kent County could serve the entire State. However, an Agency "located" in New Castle County (NCC) could not serve clients in Sussex and an Agency "located" in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term "located" is not defined. It is not based on statute. See 16 **Del.C.** §122(3)o. Delaware is a small state and the limitation may unnecessarily restrict residents' choice of providers.

Incidentally, inclusion of this limitation in a definition violates Section 4.3 of the Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

Agency Response: The Agency appreciates and acknowledges these comments. The purpose of this revision was not meant to restrict the choice of providers, but to ensure the provision of safe and quality care. This requirement has been part of the protocol for all home health agencies - aide only for many years.

The rationale behind this requirement is that the home health agencies - aide only need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision. The agencies must have the ability to adequately supervise and monitor all services to assure that the quality and scope of services provided to all patients promotes the highest practicable functional capacity for each patient to meet their individual needs. Supervision of services requires that a qualified person be physically present to directly supervise the provision of services. Most of the people receiving services from these agencies are part of a very vulnerable population. Inadequate supervision of the employees/contractors providing care in the patient's private residence has the potential to lead to more abuse/crimes/theft against these vulnerable people.

To comply with Section 4.3 of the Delaware Administrative Code Style Manual, the following technical changes will be made:

1. The definition of "Home Health Agency" will revert back to the original definition.
"Home Health Agency (HHA) means any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides, to an individual primarily in his/her place of residence."
2. The definition of "located" will be added as follows:
"Located" means the physical address of the agency's business office.
3. The requirement that the home health agency - aide only shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent will be added to "2.0 Licensing Requirements and Procedures" as follows:
2.1.7 The agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.

The public comment period was open from November 1, 2015 through December 17, 2015. In addition, a

public hearing was held December 2, 2015. Based on comments received, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Changes made to the regulations based on the comments received are detailed in the summary of evidence. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Home Health Agencies - Aide Only (Licensure) is adopted and shall become effective March 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary
February 16, 2016

4406 Home Health Agencies--Aide Only (Licensure)

1.0 Definitions

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

(Break in Continuity Within Section)

"Home Health Agency (HHA)" means any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides home health aide services, to an individual primarily in their place of residence. ~~[The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent.]~~

(Break in Continuity Within Section)

["Located" means the physical address of the agency's business office.]

(Break in Continuity Within Section)

2.0 Licensing Requirements and Procedures

- 2.1 General Requirements

(Break in Continuity Within Section)

- [2.1.7 The agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.]

***Please note that no additional changes were made to the regulation as originally proposed and published in the November 2015 issue of the *Register* at page 388 (19 DE Reg. 388). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

4406 Home Health Agencies- Aide Only (Licensure)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)o (16 Del.C. §122(3)o)
16 DE Admin. Code 4410

ORDER

4410 Skilled Home Health Agencies (Licensure)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Skilled Home Health Agencies (Licensure). The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** §122(3)o.

On November 1, 2015 (Volume 19, Issue 5), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 17, 2015, or be presented at a public hearing on December 2, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Skilled Home Health Agencies (Licensure) were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (November 1, 2015 through December 17, 2015).

Entities offering written comments include:

- State Council for Persons with Disabilities, Daniese McMullin-Powell, Chairperson
- Governor's Advisory Council for Exceptional Citizens, Robert D. Overmiller, Chairperson

As the comments from both agencies were similar in scope and nature, they are addressed concurrently in this summary of evidence.

Public comments and the DHSS (Agency) responses are as follows:

Comment:

In §1.0, definition of "Home Health Agency (HHA)", the second sentence reads as follows: "The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent." This new limitation may be ill-conceived. An HHA "located" in Kent County could serve the entire State. However, an Agency "located" in New Castle County (NCC) could not serve clients in Sussex and an Agency "located" in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term "located" is not defined. It is not based on statute. See 16 **Del.C.** §122(3)o. Delaware is a small state and the limitation may unnecessarily restrict residents' choice of providers.

Incidentally, inclusion of this limitation in a definition violates Section 4.3 of the Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

Agency Response: The Agency appreciates and acknowledges these comments. The purpose of this revision was not meant to restrict the choice of providers, but to ensure the provision of safe and quality care. This requirement has been part of the protocol for all skilled home health agencies for many years.

The rationale behind this requirement is that the skilled home health agencies need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision. The agencies must have the ability to adequately supervise and monitor all services to assure that the quality and scope of services provided to all patients promotes the highest practicable functional capacity for each patient to meet their individual needs. Supervision of services requires that a qualified person be physically present to directly supervise the provision of services. Most of the patients receiving services from these agencies are part of a very vulnerable population. Inadequate supervision of the employees/contractors providing care in the patient's private residence has the potential to lead to more abuse/crimes/theft against these vulnerable people.

To comply with Section 4.3 of the Delaware Administrative Code Style Manual, the following technical changes will be made:

1. The definition of "Home Health Agency" will revert back to the original definition.
"Home Health Agency (HHA) means any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides, to an individual primarily in his/her place of residence."
2. The definition of "located" will be added as follows:

“Located” means the physical address of the agency’s business office.

3. The requirement that the skilled home health agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent will be added to “2.0 Licensing Requirements and Procedures” as follows:

2.1.7 The agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.

The public comment period was open from November 1, 2015 through December 17, 2015. In addition, a public hearing was held December 2, 2015. Based on comments received, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General’s office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Changes made to the regulations based on the comments received are detailed in the summary of evidence. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Skilled Home Health Agencies (Licensure) is adopted and shall become effective March 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

4410 Skilled Home Health Agencies (Licensure)

1.0 Definitions

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

(Break in Continuity Within Section)

“Home Health Agency (HHA)” means any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides, to an individual primarily in her/his place of residence, two (2) or more home care services, one of which must be either licensed nursing services or home health aide services. ~~[The HHA shall only provide services in the county in which the HHA is located and/or the county(ies) which are immediately adjacent.]~~

(Break in Continuity Within Section)

[“Located” means the physical address of the agency’s business office.]

(Break in Continuity Within Section)

2.0 Licensing Requirements and Procedures

- 2.1 General Requirements

(Break in Continuity Within Section)

- [2.1.7 The agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.]**

***Please note that no additional changes were made to the regulation as originally proposed and published in the November 2015 issue of the *Register* at page 391 (19 DE Reg. 391). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

4410 Skilled Home Health Agencies (Licensure)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)x (16 Del.C. §122(3)x)
16 DE Admin. Code 4469

ORDER

4469 Personal Assistance Services Agencies

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Personal Assistance Service Agencies. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Del.C. Ch. 101 and authority as prescribed by 16 Del.C. §122(3)o.

On November 1, 2015 (Volume 19, Issue 5), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 17, 2015, or be presented at a public hearing on December 2, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

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

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Personal Assistance Service Agencies were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (November 1, 2015 through December 17, 2015).

Entities offering written comments include:

- State Council for Persons with Disabilities, Daniese McMullin-Powell, Chairperson
- Governor’s Advisory Council for Exceptional Citizens, Robert D. Overmiller, Chairperson

As the comments from both agencies were similar in scope and nature, they are addressed concurrently in this summary of evidence.

Public comments and the DHSS (Agency) responses are as follows:

Comment:

In §1.0, definition of “Personal Assistance Service Agency (PASA)”, the second sentence reads as follows: “The PASA shall only provide services in the county in which the PASA is located and/or the county(ies) which are immediately adjacent.” This new limitation may be ill-conceived. A PASA “located” in Kent County could serve the entire State. However, an Agency “located” in New Castle County (NCC) could not serve clients in Sussex and an Agency “located” in Sussex could not serve clients in NCC. The rationale for this change is not provided. The term “located” is not defined. It is not based on statute. See 16 Del.C. §122(3)o. Delaware is a small state and the limitation may unnecessarily restrict residents’ choice of providers.

Incidentally, inclusion of this limitation in a definition violates subsection 4.3 of the Delaware Administrative Code Style Manual since it creates a substantive standard in a definition.

Agency Response: The Agency appreciates and acknowledges these comments. The purpose of this revision was not meant to restrict the choice of providers, but to ensure the provision of safe and quality care. This requirement has been part of the protocol for all skilled home health agencies for many years.

The rationale behind this requirement is that the skilled home health agencies need to be in close enough proximity to their patients and employees/contractors to provide adequate supervision. The agencies must have the ability to adequately supervise and monitor all services to assure that the quality and scope of services provided to all patients promotes the highest practicable functional capacity for each patient to meet their individual needs. Supervision of services requires that a qualified person be physically present to directly supervise the provision of services. Most of the patients receiving services from these agencies are part of a very vulnerable population. Inadequate supervision of the employees/contractors providing care in the patient’s private residence

has the potential to lead to more abuse/crimes/theft against these vulnerable people.

To comply with subsection 4.3 of the Delaware Administrative Code Style Manual, the following technical changes will be made:

1. The definition of "Personal Assistance Services" will be revised to the following:
"Personal Assistance Services Agency" is an agency that employs or contracts with direct care workers to provide personal assistance services to consumers ~~of the agency~~ primarily in his/her place of residence.
2. The requirement that the PASA shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent will be added to "2.0 Licensing Requirements and Procedures" as follows:
2.1.7 The agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.

The public comment period was open from November 1, 2015 through December 17, 2015. In addition, a public hearing was held December 2, 2015. Based on comments received, only non-substantive changes have been made to the proposed regulations. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Changes made to the regulations based on the comments received are detailed in the summary of evidence. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Personal Assistance Service Agencies is adopted and shall become effective March 11, 2016, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary
February 16, 2016

4469 Personal Assistance Services Agencies

1.0 Definitions

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

(Break in Continuity Within Section)

"Personal Assistance Services Agency" is an agency that employs or contracts with direct care workers to provide personal assistance services to consumers ~~of the agency~~ primarily in his/her place of residence. ~~[The personal assistance services agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.]~~

"Plan of Correction" means a personal assistance services agency's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the licensing agency, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the licensing agency.

(Break in Continuity Within Section)

2.0 Licensing Requirements and Procedures

- 2.1 General Requirements

(Break in Continuity Within Section)

- 2.1.7 The agency shall only provide services in the county in which the agency is located and/or the county(ies) which are immediately adjacent.]**

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2015 issue of the *Register* at page 392 (19 DE Reg. 392). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4469 Personal Assistance Services Agencies

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4702(c) (7 **Del.C.** §4702(c))
7 **DE Admin. Code** 9201

Secretary's Order No.: 2016-P-0006

9201 Regulations Governing State Parks

Date of Issuance: February 15, 2016

Effective Date of the Amendment: April 1, 2016

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

Background, Procedural History and Findings of Fact

This Order relates to proposed revised regulation Amendments to 7 **DE Admin. Code** 9201: *Regulations Governing State Parks*. The Department's Division of Parks and Recreation ("Parks") commenced the regulatory development process with Start Action Notice 2015-09 dated September 1, 2015. The Department published its initial proposed regulation Amendments in the December 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on December 22, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through January 6, 2016.

The primary purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed revised Amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks* ("Amendments"), in order for Delaware to mirror the recent changes made to Delaware law as a result of the passing of Senate Bill 114 ("SB 114") by the 148th General Assembly in 2015. This bill declassifies a number of minor violations associated with state parks by changing some violations from an unclassified misdemeanor to a Class "D" environmental violation. As a result, the first offense of a Class "D" environmental violation will not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under 11 **Del.C.** §8513(c). Subsequent offenses will, however, be reported for employment purposes.

On December 1, 2015, the Delaware *Register of Regulations* published the Department's initial proposed Amendments to Delaware's existing *Regulations Governing State Parks*, which included the aforementioned SB 114 requirements. Senate Bill 114 becomes effective following the publication of final regulations consistent with the bill, or on April 1, 2016, whichever occurs first. Adoption of these proposed Amendments will further enable the Department to (1) mirror the recent changes made to Delaware Code as a result of the passing of SB114 by the 148th General Assembly; (2) add a formal definition within these present regulations of the term "firearm", consistent with such definition already existing within Delaware Code (see 11 **Del.C.** §222[12]); (3) provide clarifying language regarding the definition and use of electric bicycles on state park lands; (4) correct previous clerical error; (5) provide additional clarity and overall consistency throughout the Department's existing *Regulations Governing State Parks*; and (6) make other changes to reflect updated Division policies and concerns.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on December 22, 2015. Members of the public attended that public hearing, and provided comment to the Department regarding the same, both at the time of the hearing and during the post-hearing time period. The public comment period closed on January 6, 2016.

Subsequent to the record closing for comment after this public hearing, the Department's Division of Parks and Recreation conducted a thorough review of the hearing record and prepared its formal Technical Response Memorandum ("TRM"), dated February 12, 2016, which documents the Department's review of the record, and offers Parks' response to all comments received throughout this regulatory process. In all, there were three main concerns addressed in the aforementioned TRM: (1) the proposed definition of "firearm" and the existing prohibition of a "firearm" on state park lands; (2) the proposed regulatory language to prohibit use of mechanically propelled bait launchers on state park lands; and (3) the proposed definition of "bicycle" and use of "electric bicycles" on state park lands.

With regard to the first and second concerns referenced above, Dan Triano, President of "Bunker Up Fishin" and inventor of the fishing casting system known as "The Sand Blaster Bait Caster" ("Bait Caster"), offered numerous written and verbal comment concerning the Department's proposed regulatory amendments at all phases of this proposed promulgation. Mr. Triano is the manufacturer and seller of the aforementioned Bait Caster device, which uses combustion to project frozen bait up to 300 yards out into the ocean. It is Mr. Triano's contention that his device is not a firearm, but rather a patented fishing apparatus that has been formally classified by the U.S. Patent Office as "A01K91/02: Fishing line device for casting lines". Moreover, Mr. Triano alleges that, since the Bait Caster was not classified as a firearm by the federal government, it may be legally sold in commerce without the requirement of having a National Firearms Act Stamp, and thus should not be prohibited from use on state park lands. He further notes that his device has had a positive impact on the lives of disabled fishermen, as the device enables those persons to once again enjoy casting fishing lines, and believes that there is an economic benefit to the communities where this device is in use, in that those customers spend their money for local hotels, bait shops, fishing licenses, restaurants, and surf fishing passes. Thus, for the reasons stated above, Mr. Triano believes his device should be allowed to be used in Delaware State Park lands, and not prohibited from use as a firearm.

In response to Mr. Triano's comments as noted above, it is the Department's position that Mr. Triano's device (or any such similar device) should be prohibited from use at Delaware State Parks' multi-use beaches for several reasons. First, Delaware's surf fishing beaches are frequently at capacity, and anglers are in close proximity of each other. The Department has safety concerns for other user groups in such areas, such as kayakers, walkers, body surfers and swimmers, when a device such as this is being operated within such close proximity. Moreover, operator error with such a device draws additional safety concerns when used on Division-managed lands. The Department notes that just one individual improperly using such a device could severely injury or kill other recreational users of the park. Furthermore, DNREC has had complaints from members of the fishing community against these types of devices, as use of the same has been seen as giving some fishermen a competitive advantage over others, and could be perceived as targeting some restricted species. Lastly, while such devices are primarily marketed to the surf fishing community, the Division has concerns that the same could also be used at any of the Division's inland ponds.

Additional written comment was received by the Department in this matter from Rich King, who voiced his opposition to mechanically propelled bait launchers in general, and offered his opinion on numerous safety concerns regarding the use of same in State Parks. In response, the Department's TRM indicated support of Mr. King's opposition to mechanically propelled bait casters.

Lastly, the Department received written comment in this matter from the Bicycle Products Suppliers Association ("BPSA") and People for Bikes. People for Bikes is a non-profit organization acting on behalf of the U.S. bicycle industry, and is comprised of companies throughout the United States which provide "...a unified front for advocating for bicycling on a national level...". Three recommendations were submitted by People for Bikes for the Department's consideration in this matter, to wit: (1) create a specific definition for "electric bicycles" using language identical to 21 **Del.C.** §101(4); (2) expressly permit the use of electric bicycles on roadways; and (3) permit the use of electric bicycles on paved, multi-use paths.

In response to the above recommendations, the Department proposes to *revise* its initial proposed regulatory amendments by adding some additional language to the proposed amended definition of a bicycle, in order to (1) provide clarity with respect to formally defining an electric bicycle within these regulations; and (2) clarify the use of electric bicycles on multi-use trails, as set forth in Section 12.0 of these regulations. It should be noted that, since electric bicycles are already permitted on established roadways, there is no need for further clarification of this matter in these regulations.

It should also be noted that, while the Department has made revisions to the proposed Amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks* as a result of the comment received in this matter as noted above, such changes are non-substantive, as they neither alter the meaning or intent of the proposed

regulatory amendments, and therefore, no additional noticing or re-publication of the same is necessitated at this time. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to receiving the Division of Parks and Recreation's aforementioned TRM, the Department's presiding hearing officer, Lisa A. Vest, then prepared a Hearing Officer's Report dated February 12, 2016 ("Report"). The Report documents the proper completion of the required regulatory development process, establishes the record, and recommends the adoption of the revised proposed regulatory Amendments as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the *revised* proposed regulatory Amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the revised proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Parks and Recreation fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware's regulations to remain consistent with recent changes made to Delaware law as a result of the passing of SB114 by the 148th General Assembly, add a formal definition within these present regulations of the term "firearm" (consistent with such definition already existing within Delaware Code at 11 **Del.C.** §222[12]), provide clarity with regard to formally defining an electric bicycle within these regulations, clarify the use of electric bicycles on multi-use trails in Section 12.0 of these regulations, correct previous clerical error, provide additional clarity and overall consistency throughout Delaware's existing Regulations Governing State Parks, and make other changes to reflect updated Division policies and concerns.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the revised proposed amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks*, pursuant to 7 **Del.C.** Ch. 47 and 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these revised proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on December 22, 2015, and held the record open through close of business on January 6, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. While the Department has made revisions to the initial proposed regulatory amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks*, as set forth above, such changes are non-substantive, as they neither alter the meaning or intent of the proposed regulatory amendments, and therefore no additional re-publication or noticing of this proposed regulation is necessitated at this time;
5. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed regulatory Amendments as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;
6. Promulgation of the *revised* proposed regulatory amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks*, will enable the Department to (1) mirror the recent changes made to Delaware law as a result of the passing of SB114 by the 148th General Assembly; (2) add a formal definition within these present regulations of the term "firearm", consistent with such definition already existent within Delaware Code (see 11 **Del.C.** §222[12]); (3) provide clarifying language regarding the definition and use of electric bicycles on state park lands; (4) correct previous clerical error; (5) provide additional clarity and overall consistency throughout the Department's existing Regulations Governing State Parks; and (6) make other changes to reflect updated Division policies and concerns;

7. The Department has reviewed these *revised* proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or before December 31, 2015), and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
8. The Department's proposed regulatory amendments, as initially published in the December 1, 2015 Delaware *Register of Regulations*, and as revised and set forth in Appendix "B" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final revised regulatory amendments, which shall go into effect April 1, 2016 after their publication in the next available issue of the Delaware *Register of Regulations*; and
9. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 **DE Admin. Code** 9201, *Regulations Governing State Parks*, to the Delaware Registrar 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.

David S. Small, Secretary

9201 Regulations Governing State Parks

1.0 Definitions

(Break in Continuity Within Section)

"Bicycle" shall include that certain class of vehicles which are exclusively human-powered by means of foot pedals, which the driver normally rides astride, which have not in excess of 3 wheels and which may be commonly known as unicycles, bicycles and tricycles. **[The term "bicycle" also includes a 2- or 3-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 horsepower), whose maximum speed on a paved level surface, when powered solely by such motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. (21 Del.C. §101(4)).]**

(Break in Continuity Within Section)

"Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. **[(11 Del.C. §222(12)).]**

(Break in Continuity of Sections)

132.0 Bicycles and Skating Equipment- Environmental D Violations

132.1 Anyone riding a bicycle or propelling a vehicle by human power shall have all the rights and all the duties applicable to the operator of any other vehicle referenced within these Regulations and shall be in compliance with all State laws, rules and regulations when operating on lands administered by the Division.

132.1.1 Bicycling is permitted only on roadways designated for public use, designated and signed bike paths and multiple-use trails designated and signed for such use. **[Bicycles with electric motors are prohibited on all trails except with written permission from the Director.]**

(Break in Continuity Within Section)

12.1.8 Persons riding bicycles upon a roadway or trail shall obey the instructions of any traffic control device, including traffic signal lights, traffic signs, **[and]** traffic markings**[, and trail markings].**

(Break in Continuity of Sections)

164.0 Domesticated Animals/Pets- Environmental D Violations

(Break in Continuity Within Section)

~~164.34~~ Except ~~service animals as defined by the Americans with Disabilities Act, guide dogs accompanying blind and/or deaf persons,~~ dogs and other domesticated animals, shall not be permitted within or upon designated picnic areas, nature trails, public buildings, structures and other designated areas administered by the Division.

164.34.1 Except ~~[guide dogs accompanying blind and/or deaf persons~~ **service animals as defined by the Americans with Disabilities Act]**, dogs and other domesticated animals shall not be permitted upon or within any Division-administered swimming area, or swimming area beach or surfboard/sailboard areas at anytime, day or night, from May 1 through September 30 each year, 7 Del.C. §1715.

(Break in Continuity of Sections)

26.0 Effective Date

The amendments to these regulations become effective ~~[XX-XX-XX~~ April 1, 2016].

*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2015 issue of the *Register* at page 471 (19 DE Reg. 471). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

9201 Regulations Governing State Parks

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304(a) (4 Del.C. §304(a))

4 DE Admin. Code 202

ORDER

202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

House Bill No. 16 of the 148th General Assembly was approved March 23, 2015. That bill changed the definition of "Restaurant" and instead of requiring a restaurant to have a minimum of 35 dining seats for patrons, the bill provided that a restaurant must have a minimum of 12 dining seats. Rule 202 (formerly Rule 19) required a minimum of 35 dining seats in accordance with the former statute, but now is in conflict with the statutorily changed requirement. Therefore the Rule 202 3.1 must be changed by deleting the numerals "35" and replacing them with the numerals "12".

Pursuant to 29 Del.C. §10113(b)(5), this regulation is exempt from the procedural requirements of the Administrative Procedures Act and may be adopted informally.

IT IS SO ORDERED this 22nd day of February, 2016.

John H. Cordrey, Commissioner of Alcohol

202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

This Rule supplements the definition of Hotel, Motel, Dinner Theater and Restaurant contained in the Liquor Control Act.

1.0 Hotel

- 1.1 "Hotel" means any establishment provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.
- 1.2 There shall also be adequate and sanitary kitchen and dining room equipment and an approved storage space where alcoholic liquor may be kept. A hotel shall be advertised as such. A State or

County license to operate the premises as a hotel shall also be issued and in possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

2.0 Motel

"**Motel**" shall mean the same as the word "**hotel**" except that a motel may consist of one or more buildings so long as it otherwise qualifies with the requirements set forth in the above definition of "**hotel**". The provisions of the Liquor Control Act shall likewise apply to applications to sell alcoholic liquor in a motel.

3.0 Restaurant

- 3.1 "**Restaurant**" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for ~~35~~ 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. Seats at a bar shall not exceed 25% of the dining seats. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of "meals".
- 3.1.1 Complete meals shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.
- 3.1.2 There shall also be adequate and sanitary kitchen and dining room equipment, and an approved storage space where alcoholic liquor may be kept.
- 3.1.3 A State or County license to operate the premises as a "**restaurant**" shall also be issued and in the possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

4.0 Complete Meals - Hotel and Restaurant

The sale of alcoholic beverages by a hotel or restaurant shall be considered as a supplement to the original purpose of providing food and lodging and furnishing food, respectively. "**Complete Meals**" shall be considered to mean the normal meals provided at breakfast, lunch and dinner, offered from menus consisting of, but not limited to: breakfast foods, soups, appetizers, entrees, salads, vegetables, dessert's and beverages other than alcoholic. Restaurants licensed to sell "Beer Only" and "Wine Only" shall be required to furnish only two out of the four following accompaniments to meals: appetizers, soups, salads and vegetables.

5.0 Dinner Theater

- 5.1 The dinner theater shall serve at least one meal consisting of, but not limited to, appetizers, entrees, salads, vegetables, desserts and beverages other than alcoholic. There shall also be an adequate and sanitary kitchen and dining equipment with an approved storage space where alcoholic liquor may be kept.
- 5.2 The dinner theater licensee shall supply to the Commissioner the hours during which the licensee shall permit consumption of alcoholic beverages on its premises. In no event shall the dinner theater licensee allow consumption of alcoholic liquors on its premises at times other than in conjunction with meals served at the theatrical performances and during intermissions or at any other time which is not permitted by the Delaware Liquor Control Act. The hours of consumption of alcoholic liquors shall first be approved by the Commissioner before the issuance of a license.
- 5.3 Persons not of sufficient age to consume alcoholic liquors shall be allowed and permitted to be on the licensed premises of the dinner theater so long as all of the other provisions of the Liquor Control Act and Rules of this Commissioner are being complied with.

FINAL REGULATIONS

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2500 BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

ORDER**2500 Board of Pharmacy**

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 21, 2015 at a scheduled meeting of the Delaware Board of Pharmacy ("Board") to receive comments regarding the Board's proposed revisions to its rules and regulations. Specifically, the Board proposed amendments to Regulation 5.1.7.1 which concerns office use of compounded products.

The initial public hearing, which addressed both Regulations 5.1.7.1 and 10.0, was held on August 19, 2015. The Board deliberated on all of the comments at its meeting on September 16, 2015. While the Board voted to accept Regulation 10.0 as proposed, the Board decided to make substantive revisions to Regulation 5.1.7.1. The proposed substantive revisions amend Regulation 5.1.7.1 to state that non-patient specific compounded products may not be sold to a practitioner for office use unless covered under federal authority.

The proposed changes to Regulation 5.1.7.1 were published in the Delaware *Register of Regulations*, Volume 19, Issue 4, on October 1, 2015. Notice of the October 21, 2015 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was November 5, 2015, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on November 18, 2015.

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.

Board Exhibit 3: Correspondence from Road Runner Pharmacy.

Board Exhibit 4: October 21, 2015 letter from David Dryden, Executive Secretary to the Board of Pharmacy.

In addition, Andrew Wilson from the Medical Society of Delaware testified to the effect that the Medical Society is in support of the proposed revisions.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations.

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

As set forth in Mr. Dryden's correspondence, applicable federal regulations require a patient specific prescription to dispense a compounded medication. In addition, a facility must be established as an "outsourcing facility" in order to compound beyond prescriptive limits. The Board finds that revised Regulation 5.1.7.1 is consistent with the requirements of federal law. In addition, the Board finds that the language of the Regulation provides clear direction for members of the profession.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 19, Issue 4 on October 1, 2015.

IT IS SO ORDERED this 20th day of January, 2016 by the Delaware Board of Pharmacy.

Susan Esposito, R.Ph., Professional Member,
President

Hooshang Shanehsaz, R.Ph., Professional Member,
Vice President

Kimberly Robbins, R.Ph., Professional Member

Bonnie Wallner, R.Ph., Professional Member

Tejal Patel, R.Ph., PharmD, Professional Member

Joli Martini, R.Ph., Professional Member (absent)

Julia Wheatley, Public Member

Jay Galloway, Public Member

Kenneth Sellers, Public Member

***Please note that no additional changes were made to the regulation as originally proposed and published in the October 2015 issue of the *Register* at page 282 (19 DE Reg. 282). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

2500 Board of Pharmacy

CALENDAR OF EVENTS/HEARING NOTICES

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

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend rule 3.4.1.15 relating to fines and suspensions; amend rule 8.11.4 and 8.13 relating to rider weight and attire for jockeys; adopt new rule 8.15 relating to safety items for jockeys; amend rule 10.1.1 relating to registration certificates for horses; adopt new rule 13.2.3 relating to voiding of claims upon death of a horse and to correct the spelling of the term "pari-mutuel" in rule 1.0 definition of Mutuel Entry, rule 3.4.1.15, rule 14.10.2 and rule 16.2. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the March 1, 2016 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before April 1, 2016. Written materials submitted will be available for inspection at the above address.

**DEPARTMENT OF EDUCATION
PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, March 17, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MANAGEMENT SERVICES
PUBLIC NOTICE****Birth to Three Early Intervention System**

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. Public Comment is being accepted from February 15 - March 15, 2016, and the application will be available until April 21, 2016.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application. Send your written comments to Part C/Birth to Three, DMS/DHSS, Main Building, 2nd floor, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

**DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER
PUBLIC NOTICE****602 Motor Vehicle Physical Damage Appraisers**

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of re-proposed amended

Department of Insurance **Regulation 602** relating to **Motor Vehicle Physical Damage Appraisers [Formerly Regulation 8]**. The docket number for this proposed AMENDED regulation is 2803-2015.

Amendments are being proposed to permit the use of digital imaging by appraisers. The Delaware Code authority for the change is 18 **Del.C.** §311 and Ch. 17; and 29 **Del.C.** Ch. 101.

The Department of Insurance does not plan to hold a public hearing on the proposed amended regulation. The proposed amended regulation appears below and can also be viewed at the Delaware Insurance Commissioner's website at:

www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, Thursday, March 31, 2016. Any such requests should be directed to:

Regulatory Specialist Rhonda West
Delaware Department of Insurance
841 Silver Lake Boulevard
Dover, DE 19904
Phone: (302) 674-7379
Fax: (302) 739-5566
Email: Rhonda.West@state.de.us

DEPARTMENT OF LABOR
DIVISION OF UNEMPLOYMENT INSURANCE
PUBLIC NOTICE
1202 Unemployment Insurance Regulations

The Delaware Department of Labor, Division of Unemployment Insurance proposes this revised regulation in accordance with 19 **Del.C.** §3314(6) to establish procedures for notice to claimants and an opportunity for claimants to provide responsive information prior to the Division taking adverse action against the claimant, when the Division of Unemployment Insurance discovers that a claimant failed to report wages that the Division believes should have been reported.

The Delaware Department of Labor, Division of Unemployment Insurance solicits written comments from the public concerning the proposed revised regulation. Any such comments should be submitted to the Director of the Division of Unemployment Insurance, Thomas H. Ellis, by mail to: Delaware Division of Unemployment Insurance, P.O. Box 9950, Wilmington, DE 19809-0950, or by email to: Thomas.Ellis@state.de.us. Written comments must be received by Mr. Ellis on or before March 31, 2016 to be considered prior to the adoption of the proposed revised regulation. Copies of the proposed revised regulation are available upon request.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
PUBLIC NOTICE
301 Background Checks for Child-Serving Entities

The Office of Child Care Licensing proposes to amend the DELACARE Regulations - Background Checks for Child-Serving Entities to comply with changes in Delaware and Federal Code.

A copy of the proposed regulations is being posted in the March 1, 2016 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written

suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Beth Kramer, Criminal History Unit, Hagley Building, 3411 Silverside Road Wilmington, Delaware 19810 or by email to Beth.Kramer@state.de.us by the close of business on March 31, 2016.

DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
PUBLIC NOTICE

302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons

The Office of Child Care Licensing proposes to amend the DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps to comply with changes in Delaware Code.

A copy of the proposed regulations is being posted in the March 1, 2016 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Beth Kramer, Criminal History Unit, Hagley Building, 3411 Silverside Road Wilmington, Delaware 19810 or by email to Beth.Kramer@state.de.us by the close of business on March 31, 2016.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2930 Council on Real Estate Appraisers
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §4006(a)(1), the Delaware Council on Real Estate Appraisers has proposed revisions to its rules and regulations. The rules pertaining to continuing education and the AQB criteria are amended to conform to new Appraisal Qualifications Board criteria.

The Board originally scheduled a hearing on this matter for February 16, 2016 at 9:30 a.m. but was unable to hold the hearing due to lack of proper newspaper publication of the hearing under the Delaware Administrative Procedures Act. The Board has rescheduled the public hearing on the proposed rule change to April 19, 2016 at 9:30 a.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
3300 BOARD OF VETERINARY MEDICINE
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on April 12, 2016 at 1:00 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 27, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board proposes a new Rule 2.0 to address euthanasia of animals held in shelter, as set forth in 16 **Del.C.**

§ 3004F. Other Rules are revised accordingly to accommodate the specific legal requirements pertaining to shelter animals. In addition, various regulations are amended to clarify the requirements for license renewal, reinstatement and inactive status. Typographical errors are corrected and the Rules are re-numbered to accommodate the new Rule 2.0.

DIVISION OF PROFESSIONAL REGULATION
3600 BOARD OF GEOLOGISTS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3606(a)(1), the Board of Geologists has proposed revisions to its rules and regulations. A public hearing will be held on April 1, 2016 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Geologists, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 16, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comments at its next regularly scheduled meeting, at which time the Board will decide whether to adopt the revisions as proposed.

The Board's proposed revisions include a new requirement that two of the five professional references submitted by applicants must be dated within the two year period preceding submission of the application. Rule 3.0, pertaining to Seal Requirements, has been re-written. Pursuant to the proposed amendment, licensees will be required to comply with the new seal requirements no later than September 30, 2018. The Board's continuing education rules have been updated for greater clarity for licensees. Rule 5.0 is amended to state that licensure renewal must be accomplished online. Finally, a new Rule 7.4 is added to specify that an applicant who fails to pass either part of the ASBOG exam within two years shall be required to re-apply as a new applicant.

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

Pursuant to 16 **Del.C.** §4731, the Delaware Controlled Substance Advisory Committee has proposed revisions to its rules and regulations. Subsection 4.10.1 addresses the requirement that a pharmacist must verify the identification of the receiver of a controlled substance prescription by reference to valid photographic identification. The Regulation is amended to provide that Federal, including military, identification meets this requirement. In addition, Subsection 4.10.1.5 is added to provide an exemption to the photographic identification requirement where the person receiving the controlled substance prescription is a patient at an inpatient facility or has been discharged from an inpatient facility and is obtaining the controlled substance from the facility's outpatient pharmacy immediately upon discharge.

A public hearing will be held on April 27, 2016 at 9:00 a.m., Buena Vista Conference Center, 661 South DuPont Highway, New Castle, DE 19720. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Controlled Substance Advisory Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Christine Mast, Administrative Specialist for the Committee, 861 Silver Lake Boulevard, Dover, Delaware 19904. In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 12, 2016, which is 15 days following the public hearing. The Committee will deliberate on the proposed revisions at its next regularly scheduled meeting.

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
PUBLIC NOTICE
2266 Vehicle Document Fees

The Delaware Department of Transportation Division of Motor Vehicles (DMV) is seeking public comment regarding the provision of Vehicle Document Fees.

Under Chapter 30 of Title 30 of the Delaware Code, the DMV is authorized to collect a motor vehicle document fee. The fee is paid by the vehicle owner and collected by DMV for deposit to the transportation trust fund. The document fee is calculated on the gross purchase price less any trade-in or allowance given by the seller of the motor vehicle to the owner.

The draft regulation would authorize the DMV to not impose collecting the document fee when the vehicle is a gift from a family member to another family member if there is a lien on the vehicle. The regulation would allow dealers that title a vehicle that is intended for resale to be exempt from the document fee if there is a lien entered on the vehicle.

The Department will take written comments on the proposed Regulation for this vehicle document fee exemption from March 1, 2016 through March 31, 2016. The proposed Regulation appears below.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Scott Clapper
Chief of Vehicle Services
Division of Motor Vehicles
Delaware Department of Transportation
303 Transportation Circle
Dover, DE 19904
(302) 744-2533 (telephone)
(302)739-4750 (fax)
scott.clapper@state.de.us
