Delaware Register of Regulations

Issue Date: March 1, 2021

Volume 24 - Issue 9, Pages 814 - 892



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General Notices

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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 15, 2021.

"Sunset at Port Mahon" photo by Arun Reddy

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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 17	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. <u>Underlined text</u> 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 proposed regulations is to amend Rules 2.3, 2.5.1.17.1, 2.5.1.22, 2.10, 3.4.1.15, 6.1.7, 7.3.4, 11.4, 15.6.3, and 15.32. 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, 2021 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, 2021. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after April 1, 2021, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Thoroughbred Racing Commission, the amendments shall take effect ten days after being published as final in the Delaware Register of Regulations.

Delaware Thoroughbred Racing Commission Sarah A. Crane, Executive Director

*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/march2021/proposed/24 DE Reg 825RFA 03-01-21.pdf

(2) Due to the size of the proposed regulation, it is not being published here. 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 1049B (14 **Del.C.** § 1049B) 14 **DE Admin. Code** 210

PUBLIC NOTICE

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

210 District School Board Member Special Education Due Process Hearing Training

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §1049B, the Secretary of Education intends to amend 14 **DE Admin. Code** 210 District School Board Member Special Education Due Process Hearing Training. This regulation is being amended to include charter school board members, to ensure consistent and clear language when referencing school district, charter school and vocational technical school district, and to streamline language in accordance with the *Delaware Administrative Code Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

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

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

http://regulations.delaware.gov/register/march2021/proposed/24 DE Reg 826RFA 03-01-21.pdf

210 District and Charter School Board Member Special Education Due Process Hearing Training

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for the required training for members of district <u>and charter</u> school boards, including vocational technical school boards, pursuant to 14 **Del.C.** §1049B. The purpose of the training is to inform school board members of the educational and legal issues generally involved in special education due process hearings arising under the Individuals With Disabilities Education Act, 20 U.S.C.§ 1400 ("IDEA") and Chapter 31 of Title 14 of the **Delaware Code** ("Chapter 31") 14 **Del.C.** Ch. 31.

2.0 Definitions

"District School Board" or "Charter School Board" shall mean means a reorganized school district boards and board, a charter school board, or a vocational technical school district boards board duly appointed or elected pursuant to Chapter 10 of Title 14 of the Delaware Code 14 Del.C. Ch. 10.

"Materials" shall mean means training aids approved by the Secretary of Education for use in the Special Education Due Process Hearing Training.

"School Board Member" shall mean means a district school board District or Charter School Board member whether that person is elected, appointed, or is a volunteer volunteers.

"Special Education Due Process Hearing Training" means the program and materials approved by the Department of Education consisting of a minimum of two (2) hours covering the topics described in Section 3.0.

"Trainer" means an individual, agency, or organization approved by the Secretary of Education to provide the Special Education Due Process Hearing Training, in whole or in part.

3.0 Special Education Due Process Hearing Training Requirement

- 3.1 The Special Education Due Process Hearing Training means the program and materials approved by the Department of Education consisting shall consist of a minimum of two (2) hours and covering cover the following topics:
 - 3.1.1 Overview of special education requirements related to the identification, evaluation, and educational placement of children with disabilities, and the provision of a free, appropriate public education to children with disabilities; and
 - 3.1.2 Overview of the due process hearing system; and
 - 3.1.3 Summary of other procedural safeguards and dispute resolution options available to parents and school districts parents, school districts and charter schools under the IDEA and Chapter 31 14 Del.C. Ch. 31.
- 3.2 The training may be provided in a format that includes, but <u>is</u> not limited to, an electronic media format or in person.

4.0 Special Education Due Process Hearing Training Requirement for District <u>and Charter</u> School Board Members

- 4.1 Each <u>district</u> <u>District or Charter</u> School Board Member shall participate and complete the Special Education Due Process Hearing Training the later of the following: <u>within one (1) year of election</u>, appointment, or voluntary service to a District or Charter School Board.
 - 4.1.1 Within one (1) year of election, appointment, or voluntary service to a District School Board; or
 - 4.1.2 Within one year of the initial effective date of this regulation.

5.0 Trainer

The training required by this regulation shall be conducted by a trainer as defined in this regulation.

6.0 Materials

The materials used for the training required by this regulation shall be those as defined in this regulation.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3110(d) (14 **Del.C.** § 3110(d)) 14 **DE Admin. Code** 211

PUBLIC NOTICE

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

211 Notice to School Boards of Due Process Proceedings

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §3110(d), the Secretary of Education intends to amend 14 **DE Admin. Code** 211 Notice to School Boards of Due Process Proceedings. This regulation is being amended to specifically recognize vocational school and charter school board members and to streamline language in accordance with the *Delaware Administrative Code Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this

regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

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

http://regulations.delaware.gov/register/march2021/proposed/24 DE Reg 828RFA 03-01-21.pdf

211 Notice to District and Charter School Boards of Due Process Proceedings Hearings

1.0 Purpose

The purpose of this regulation is to outline the process for notifying <u>district</u>, <u>including vocational technical school</u>, <u>and charter</u> school board members pursuant to 14 **Del.C.** §3110(d) of special education administrative hearings under the Individuals With Disabilities Education Act, 20 U.S.C.§ 1400 et seq. ("IDEA") and 14 **Del.C.** §3101 et seq ("Chapter 31") involving the school <u>district</u> <u>district</u>, <u>vocational technical school</u>, or charter school.

2.0 Definitions

"School Board" shall mean means charter school boards of directors organized pursuant to Chapter 5 of Title 14 of the Delaware Code, 14 Del.C. Ch. 5, and reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the Delaware Code 14 Del.C. Ch. 10.

"School Board Member" shall mean means a district school board member district, vocational technical, or charter school board member whether that person is elected, appointed, or is a volunteer volunteers.

3.0 Privacy and Confidentiality Considerations

Actions taken and documents provided in accordance with this regulation and 14 **Del.C.** §3110(d) must comply with IDEA and its regulations, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and its regulations, the Delaware Freedom of Information Act, 14 **Del.C.** §10001 et seq. ("FOIA"), and all other applicable federal and state laws and regulations governing the privacy and confidentiality of student information and records.

4.0 Notice of Due Process Complaint

- 4.1 After receiving notification that a due process complaint has been received by the Secretary of the Department of Education, the superintendent of a reorganized school district or a vocational technical school district ("superintendent") or the head of charter school principal ("principal") shall provide a copy of the complaint to each school board member at the next scheduled school board meeting.
- 4.2 The school board president shall sign a statement that all school board members received a copy of the complaint and the superintendent or principal head of charter school shall provide a copy of the statement to the parent(s) parent or legal guardian of the child named in the complaint by certified mail.

5.0 Notice of Due Process Hearing Panel Decision

- 5.1 Within 7 seven (7) school days of receiving a due process hearing decision, the superintendent or principal head of charter school shall provide a copy of the decision to each school board member.
- 5.2 The superintendent or principal head of charter school shall send a letter signed by the school board president to the parent or legal guardian of the child named in the hearing decision by certified mail, stating that the members of the school board were provided with a copy of the due process hearing decision.

6.0 Notice of Parent Request for Judicial Review of Due Process Hearing Panel Decision

- After receipt of the civil action filed by a parent or legal guardian seeking judicial review of a due process hearing decision pursuant to applicable laws and regulation, the superintendent or principal head of charter school shall provide each school board member with a copy of the civil action at the next regularly scheduled school board meeting.
- 6.2 The superintendent or principal head of charter school shall send a letter signed by the president of the school board by certified mail to the parent(s) parent or legal guardian of the child named in the civil action stating that the members of the school board were provided with a copy of the civil action.

7.0 School District or Charter School Request for Judicial Review of Due Process Hearing Panel Decision

A decision by a reorganized school district or district, a vocational technical school district or a charter school to seek judicial review of a due process hearing decision must be made by a majority of school board members.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(4) and (b)(5) and 153 (14 **Del.C.** §§122(b)(4) & (b)(5) and 153)

14 **DE Admin. Code** 230

PUBLIC NOTICE

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

230 Promotion

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(4) and (b)(5) and 14 **Del.C.** §153, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 230 Promotion. This regulation is being amended to align with the current student promotional process. The regulation will be effective July 1, 2021 and should be implemented for the 2021-2022 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

- 1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation specifically addresses the improvement of student achievement as measured against state achievement standards. The amended regulation will improve student achievement by ensuring that students do not pass through the elementary and middle school grade configurations without demonstrating proficiency in mathematics, as well as English Language Arts. The amendment also identifies science and social studies as core instructional areas of instruction.
- 2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
- 3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment regulation does not significantly impact students' health and safety.
- 4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
- 5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
- 6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
- 7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
- 8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies regarding the promotion of students.

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PROPOSED REGULATIONS

- 9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
- 10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated material costs to implementing this amended regulation. The additional "core" classes are offered in the school district's basic curriculum.

*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/march2021/proposed/24 DE Reg 831RFA 03-01-21.pdf

230 Promotion

1.0 Each Local School District and Charter School Shall Have a Promotion Policy for Kindergarten Through Grade 12

- 1.1 Local school districts and charter schools must follow, at a minimum, the requirements for promotion as defined in 14 Del.C. §153, titled Matriculation and Academic Promotion Requirements and 14 DE Admin. Code 925, Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.
- 1.2 The promotion policies for grades 1 to 8 must also, at a minimum, include the following:
 - 1.2.1 Students in grades 1 to 8 must receive instruction in English Language Arts or its equivalent, mathematics, social studies and science each year as defined in the Delaware <u>State</u> Content Standards.
 - 1.2.2 Students in grades 1 to 8 must pass 50% of their instructional program each year (excluding physical education) to be promoted to the next grade level. One of the subject areas that must be passed is English Language Arts or its equivalent. English Language Arts or its equivalent includes English as a Second Language (ESL), and bilingual classes that are designed to develop the English language proficiency of students who have been identified as LEP. Classes in English Language Arts, mathematics, science and social studies include those which employ alternative instructional methodologies designed to meet the needs of LEP students in the content areas.
 - 1.2.2 Students in grades K-8 must pass three (3) of the four (4) core classes to be promoted to the next grade level. Core classes are English Language Arts, mathematics, science and social studies.

 Two of the three core classes must be English Language Arts and mathematics.
 - 1.2.3 In addition to English Language Arts and mathematics mentioned in subsections 1.2.1 and 1.2.2, for promotion to grade 3 students must have passed science and social studies in at least one grade level from K-2. For promotion to grade 6, students must have passed science and social studies in at least one grade level from 3-5. For promotion to grade 9, students must have passed science and social studies in at least one grade level from 6-8.

2.0 Policy Reporting Requirements

- 2.1 Each lecal school district and charter school shall have an electronic copy of its current promotion policy on file with the Department of Education. post its promotion policy on its website, and notify a parent, guardian or relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or relative caregiver upon request.
- 2.2 Each lecal school district and charter school shall provide an electronic copy of its promotion policy to the Department of Education update their policy and website within thirty (30) days of any revision(s) revision regardless of whether said revisions were revision was made as a result of changes to Federal, state or local law, regulations, guidance, or policies.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 **Del.C.** §122(b)(6)) 14 **DE Admin. Code** 502

PUBLIC NOTICE

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

502 Alignment of Local School District Curricula to the State Content Standards

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(6), the Secretary of Education intends to amend 14 **De Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. This regulation needs to be amended to align with modifications in State Content Standards and Department of Education reporting expectations of school districts and charter schools, and to subsequently clarify the title of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

- 1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address student achievement as measured against state achievement standards.
- 2. Will the regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education by ensuring uniform curricula for public schools.
- 3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not directly impact student's health and safety.
- 4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
- 5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
- 6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
- 7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.
- 8. Will the regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies, specifically the desire to monitor uniformity of curricula across districts and charter schools.
- 9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.
- 10. What is the cost to the State and to the local school boards of compliance with the regulation? School districts should not incur any material costs to implementing this amended regulation. Some charter schools may incur non-substantive costs to document and report curricula alignment.

*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/march2021/proposed/24 DE Reg 833RFA 03-01-21.pdf

502 Alignment of Local School District and Charter School Curricula to the State Content Standards

1.0 Purpose

The purpose of this regulation is to provide a process through which all Delaware school districts <u>and charter schools</u> demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501 <u>as required by 14 **Del.C.** Ch. 1, §122(b)(6) and 14 **DE Admin. Code** 275.</u>

2.0 Definitions

"Adoption" means to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.

"Alignment" means meeting the expectations or outcomes outlined in each of the content area standards in 14 DE Admin. Code 501 and 14 DE Admin. Code 275.

"Curricula" means a coherent set of high-quality instructional materials, academic lessons, and content implemented for a particular subject and designed for teachers to facilitate learning that leads to students' mastery of standards.

"Department" means the Delaware Department of Education.

"Evidence" means certification the documents maintained by the district or charter school that its curriculum is aligned to the state content standards, which is supported by documentation maintained by the district State Content Standards.

"Grade Level Expectations" means the documents created and officially released by the Delaware Department of Education which detail student learning objectives in each content area for kindergarten through grade twelve.

"High Quality Instructional Materials" means comprehensive materials that are aligned with the adopted Delaware content standards. The materials are written with clear purpose, effective lesson structure, and pacing to provide equitable access to the course- or grade-level content, when used in accordance with their intended design.

"Implemented" means using aligned materials according to their intended design and with processes in place for continuous improvement, including initial and sustained professional learning to support the educators who are using or leading the use of the instructional materials.

"Recommended Statewide Uniform Gurricula" means one or more of the following documents: Academic Content Standards, Clarifications, and Grade Level Expectations posted to the Delaware Department of Education website. The Department may update the document(s) based on changes to the State Content Standards in 14 **DE Admin. Code** 501.

<u>"Supports"</u> means professional learning and feedback required to successfully implement high quality instructional materials and curricula.

3.0 Alignment Requirement

All Each school districts district and charter school shall provide evidence to the Department that their school district-curricula are aligned with the State Content Standards. State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and Family and Consumer Sciences Computer Science, Career and Technical Education programs of study, and Financial Literacy. Content standards adopted by the Department in the future shall also be included under this section section.

4.0 Documentation of Curriculum Alignment

- 4.1 Alignment of school district <u>or charter school</u> curricula to the State Content Standards shall be certified annually by the district <u>or charter school</u> through an assurance in the consolidated grant application.
- 4.2 Documentation of Upon the request of the Department, documentation demonstrating alignment of school district or charter school curricula shall be given to the Department and include: curriculum maps or scope and sequence of instructional topics, unit plans, lesson plans, and assessments and may be subject to Department review. Included in the documentation shall also be the names of the implemented high quality instructional materials, a description of the method alignment process, and level of involvement in the alignment process by building administrators, teachers teachers, and specialists.
- 4.3 Documentation for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and Family and Consumer Sciences Career and Technical Education programs of study shall follow requirements in 14 **DE Admin. Code** 525 for Career and Technical Education.

5.0 Documentation for Specific Student Populations

As part of its documentation, Upon the request of the Department, the district or charter school shall explain modifications or enhancements to the supports provided in its curricula for specific subgroups such as as, but not limited to, students with disabilities, gifted students, and English learners or any other special population of students and certify alignment to the State Content Standards. The district or charter school shall also certify alignment and equitable access to the grade-level or course-level State Content Standards.

6.0 Subsequent Review of Alignment

Each district <u>or charter school</u> shall be required to <u>certify curriculum maintain</u> alignment if <u>there are major any</u> changes to a <u>content area in the approved curricula</u> in curriculum occur. The district <u>or charter school</u> shall <u>enly</u> be required to submit documentation of curriculum alignment in <u>the affected any</u> content area upon <u>the</u> request <u>by of</u> the Department. Further, districts may be required to submit documentation of aligned curriculum in the assessed <u>content area or areas which form the basis for any school rating.</u>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b)) 14 **DE Admin. Code** 915

PUBLIC NOTICE

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

915 James H. Groves High School

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del. C.** §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School (Groves). This regulation is being updated to amend language related to the age of a student in the In School Credit (ISC) Program. Specifically, there is no longer a requirement that the ISC Program mirror federal regulations since Groves does not receive federal funding. This change to the regulation will be in effect until June 30, 2022 as it is the result of the COVID-19 pandemic. Other minor changes were made to the regulation to comply with the *Delaware Administrative Code Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before April 1, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

- 1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
- 2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that certain high school students may participate in the Groves In School Credit program enhancing their opportunity to receive an equitable education.
- 3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not alter the current students' health and safety protocols. All students will be adequately protected.
- 4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
- 5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
- 6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
- 7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated.
- 8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
- 9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
- 10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

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

http://regulations.delaware.gov/register/march2021/proposed/24 DE Reg 835RFA 03-01-21.pdf

915 James H. Groves High School

1.0 Definitions

"Certificate of Educational Attainment (CEA3)" (Certificate of Educational Attainment" or (CEA3)" means that the holder of the certificate has passed the designated assessments with the required scores in each sub test area and has written an approved Groves content area research paper.

"Department" means the Delaware Department of Education.

"Groves Leadership Team" means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and prison education teacher supervisor(s) supervisors. The Associate Secretary, Student Supports shall be an ex officio member of the leadership team.

- "James H Groves Center" or "Center(s)" (Center" or "Centers") means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.
- "James H. Groves High School" or "Groves" means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

2.0 Admission Criteria and Process

- 2.1 The following individuals may enroll in the James H. Groves High School:
- 2.12.1.1 An adult 18 years of age and older, who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of six (6) months prior to enrollment.
 - 2.1.12.1.1.1 The applicant shall:
 - 2.1.1.12.1.1.1.1 Submit an application on forms approved by the Department;
 - 2.1.1.22.1.1.1.2 Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.
- 2.22.1.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.
 - 2.2.12.1.2.1 To apply for an age waiver, the prospective student shall submit to the Groves Center administrator the following.
 - 2.2.1.12.1.2.1.1 A letter of request for admission with the rationale for granting a waiver;
 - 2.2.1.22.1.2 A letter of recommendation from the high school of record;
 - 2.2.1.32.1.2.1.3 Proof of exit from high school; and
 - 2.2.1.42.1.2.1.4 Proof of age.
 - 2.2.2.1.2.2 The prospective student seeking the age waiver shall be subject to subsection 2.1.1.1.
 - 2.2.32.1.2.3 The decision regarding admission shall be made by the Center administrator.
 - 2.2.42.1.2.4 The names of all students receiving an age waiver shall be forwarded within five (5) working days of approval by the Center administrator or designee to the Department's Director of Adult and Prison Education Resources for reporting purposes.
- 2.32.2 High school students who are at least 46 14 years of age age, have completed at least one semester of high school and enrolled for at least one (1) credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record until June 30, 2022.
 - 2.3.12.2.1 To enroll in this program, students shall have the permission of their high school of record, their parent(s), guardian(s) parent, guardian or Relative Caregiver relative caregiver and the Groves High School principal or designee.
 - 2.3.22.2.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.
 - 2.3.32.2.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.
 - 2.3.42.2.4 Students in the Groves In School Credit program shall not receive instruction during the school's regularly scheduled school day.
- 2.42.3 Individuals expelled or pending expulsion from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion or pending expulsion without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.

- 2.4.12.3.1 An applicant for an expulsion or pending expulsion waiver shall meet the following requirements:
 - 2.4.1.12.3.1.1 Be 16 or 17 years of age;
 - 2.4.1.22.3.1.2 Intend to graduate from the James H James H. Groves High School;
 - 2.4.1.32.3.1.3 Be expelled or be pending expulsion for a nonviolent reason and not be a security threat;
 - 2.4.1.42.3.1.4 Submit a letter of recommendation signed by the principal or designee of their high school of record;
 - 2.4.1.52.3.1.5 Meet with the Department's Director of Adult and Prison Education Resources or designee to orally present his or her their case for entry into Groves. The decision regarding admission shall be made by the Director or designee; and
 - 2.4.1.62.3.1.6 Meet the requirements in subsection 2.1.1 2.1.1.1.
- 2.52.4 An adult 18 years of age and older who is a registered Sex Offender and who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of six (6) months prior to enrollment shall:
 - 2.5.12.4.1 Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within two (2) months prior to enrollment in the Groves Center.
 - 2.5.22.4.2 An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in subsection 2.5.1 2.4.1.
 - 2.5.32.4.3 The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the State Director within five (5) working days.

3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:
 - 3.1.1 High school classroom courses;
 - 3.1.2 Summer school courses offered through a district or charter school;
 - 3.1.3 Groves classroom courses;
 - 3.1.4 Distance learning courses;
 - 3.1.5 Independent study courses;
 - 3.1.6 Correspondence courses;
 - 3.1.7 Courses completed through schools in foreign countries and evaluated in terms of content equivalent to the State's high school graduation requirements;
 - 3.1.8 Career technical courses and apprenticeship courses;
 - 3.1.9 Higher education courses;
 - 3.1.10 Internships designed to provide practical <u>real life</u> experiences and based on the skills gained and the length of time of the experience;
 - 3.1.11 Military Experience experience based on military training and experience;
 - 3.1.12 Employment or training experience based on the length of employment, the level of job responsibility and the scope of work;
 - 3.1.13 Community Service service that recognizes the community life experiences of the student and encourages the student to assume civic responsibility. The emphasis is upon volunteer service within a non-profit or governmental agency given freely for the betterment of the community and other persons and is based on verification of length of service;

- 3.1.14 The knowledge assessments approved by the Groves Leadership Team for students to demonstrate their knowledge of course content; and
- 3.1.15 The Certificate of Educational Attainment (CEA3) that may provide up to 10 ten (10) units of credit toward graduation.

4.0 Attendance, Grading and Graduation Criteria

- 4.1 A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or his or her the student's designee.
- 4.2 Students enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours in order to receive a unit of credit. No provision is made for excused absences.
- 4.3 The grading system for the James H. Groves High School shall be based on a 40 ten (10) point numeric scale. An alpha conversion chart to determine level of performance shall be:
 - 4.3.1 Students receiving a grade of "A" (90 to 100) demonstrate superior understanding of the content and have demonstrated knowledge and competence at the highest level.
 - 4.3.2 Students receiving a grade of "B" (80-89) demonstrate better than average understanding of the content and have demonstrated above average knowledge and competence.
 - 4.3.3 Students receiving a grade of "C" (70-79) demonstrate average understanding of the content and have demonstrated knowledge and competence.
 - 4.3.4 Students receiving a grade of "D" (60-69) demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.
 - 4.3.5 No credit is awarded for grades less than 60.
- 4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements, pursuant to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas, in effect at the time of their graduation, except as noted below:
 - 4.4.1 Physical education is waived in lieu of another credit.
 - 4.4.2 Students who were or would have been a first time 9th grader in the 2011-2012 school year or after shall be subject to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas.
 - 4.4.3 Students who were or would have been a first time 9th grader in the 2010-2011 school year or prior shall be subject to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas.
 - 4.4.4.2 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School shall successfully complete and receive credit for a minimum of one (1) Groves course in order to receive a State of Delaware diploma.
 - 4.4.54.4.3 The James H. Groves High School must offer at least one (1) computer science course pursuant to 14 **Del.C.** §4139 and 14 **De Admin. Code** 505 High School Graduation Requirements and Diplomas.

5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

6.0 Students Rights and Responsibilities

Students enrolled in each Center shall have such rights and be subject to such responsibilities as set forth in the *James H. Groves Student Rights and Responsibilities* document, and as such may be amended from time to time by the Department.

7.0 Establishing a Center

7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than one (1) Groves Center.

- 7.1.1 An affiliation shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot Center.
- 7.1.2 After a two (2) year affiliation as a satellite Center of an existing Groves Center or two (2) year success as a pilot Center, the Department may grant full Center status to the satellite site or the pilot Center.
 - 7.1.2.1 A formal request for full Center status shall be made to the Department at the end of year one the first year as a satellite or pilot Center. The request shall include:
 - 7.1.2.1.1 A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing Centers, and rationale for requesting a Groves Center;
 - 7.1.2.1.2 A description of the district, agency or organization's experience and success in adult program delivery;
 - 7.1.2.1.3 An explanation of the commitment to the Groves adult education program and assurances:
 - 7.1.2.1.4 Budget requirements including in kind contributions;
 - 7.1.2.1.5 Submission of an annual performance report; and
 - 7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth month of the first year.
- 7.1.3 The district agency or organization representatives shall meet with the Groves Leadership Team to review the Center request.
- 7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director for Adult Education to the Secretary of Education.
- 7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.
- 7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.
- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or his or her the Secretary's designee.

8.0 Closing a Center

- 8.1 Voluntary Closing: A school district, agency or organization shall close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district, agency or organization shall announce by November its intention to discontinue service at the end of the fiscal year. The following steps shall be followed:
 - 8.1.1 Within two (2) months of closing, the district, agency or organization shall:
 - 8.1.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center. Records of active students shall be sent to the new Center;
 - 8.1.1.2 Provide all current and past student and administrative records to the Department;
 - 8.1.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
 - 8.1.1.4 Return unspent funds to the Department.
 - 8.1.2 District, agency or organization representatives shall meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

9.0 Non-Voluntary Closing

- 9.1 A non voluntary non-voluntary closing shall be made by the Secretary of Education when:
 - 9.1.1 There is insufficient enrollment or graduates to sustain a Center; or

- 9.1.2 The Center does not follow the policies, procedures, rules, regulations regulations, or instructional program set forth for the James H. Groves High School; or
- 9.1.3 The Secretary of Education determines the Center is not providing a quality instructional program to the students at that Center.
- 9.2 The Secretary of Education shall provide notice to the school district, agency agency, or organization of the closing by November giving eight (8) months to close the Center.
 - 9.2.1 Within two (2) months of closing, the district, agency agency, or organization shall:
 - 9.2.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center.
 - 9.2.1.2 Provide all current and past student and administrative records to the Department;
 - 9.2.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
 - 9.2.1.4 Return unspent funds to the Department.
- 9.3 The District, agency or organization representatives shall meet with the James H. Groves Leadership Team at the monthly meetings to implement a smooth closing.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DELAWARE HEALTH CARE COMMISSION

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

PUBLIC NOTICE

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

Pursuant to 16 *Del. C.* § 9903, the Delaware Health Care Commission, Department of Health and Social Services, is proposing revisions to the regulations governing the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund. On March 1, 2021, the Delaware Health Care Commission plans to publish as "proposed" revisions to the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund. The regulations revise some of the administrative procedures for the reinsurance program.

Copies of the proposed regulations are available for review in the March 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: http://regulations.delaware.gov or by calling the Delaware Health Care Commission at (302) 255-4750.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Elisabeth Massa by Thursday, April 1, 2021, at:

Elisabeth Massa

Delaware Health Care Commission

1901 North DuPont Highway

New Castle, DE 19720

Email: elisabeth.massa@delaware.gov

Phone: (302) 255-4750

*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/march2021/proposed/24 DE Reg 841RFA 03-01-21.pdf

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

1.0 Purpose

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

2.0 Authority

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

3.0 Definitions

The following definitions shall apply to this regulation:

- "Attachment point" means the threshold dollar amount, adopted by the Executive Director, after which point the claims costs of an insured individual's covered benefits under a reinsurance-eligible health benefit plan in a benefit year are eligible for reinsurance payments.
- "Benefit year" means a calendar year beginning on or after January 1, 2020 for which reinsurance eligible health benefit plan provides health insurance coverage.
- "Cabinet Secretary" means the Cabinet Secretary of Delaware Health and Social Services.
- "Coinsurance rate" means the rate at which the Executive Director may reimburse a reinsurance eligible health benefit plan for claims costs incurred after the attachment point and before the reinsurance cap for an insured individual's covered benefits in a benefit year.
- "Commission" or "DHCC" mean means the Delaware Health Care Commission created pursuant to 16 Del.C. §9902.
- "DHSS" means Department of Health and Social Services.
- "DOI" means Department of Insurance.
- "Executive Director" means the Executive Director of the Delaware Health Care Commission (DHCC) or designee.
- "Health insurance carrier" or "carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes an insurance company, health service corporation, health maintenance organization, managed care organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. The entities providing insurance under the following types of plans do not meet the definition of carrier, per this regulation: plans of health insurance or health benefits designed for issuance to persons eligible for coverage under Titles XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq.), known as Medicare, Medicaid; Chapter 52 of Title 29 of the Delaware Code; or any other similar coverage under state or federal governmental plans. Additionally, this regulation shall not apply to stand-alone dental insurance, stand-alone vision insurance, long-term care insurance, disability income insurance and all accident-only insurance.
- "Health insurance coverage" means legal entitlement to payment or reimbursement for health care costs, generally under a contract with a health insurance company or a group health plan offered in connection with employment.
- "Program" means the Delaware Health Insurance Individual Market Stabilization Reinsurance Program created by 16 Del.C. §9903(g).

- "Regulations" mean means parts of the Rules and Regulations pertaining to the Delaware Health Insurance Individual Market Stabilization Reinsurance Program.
- "Reinsurance cap" means the threshold dollar amount, adopted by the Executive Director, for claims costs incurred by a reinsurance eligible health benefit plan for an insured individual's covered benefits in a benefit year, after which threshold the claims costs for the benefits are no longer eligible for reinsurance payments.
- "Reinsurance eligible claim" means a claim for services covered under a reinsurance eligible health benefit plan that is incurred by a reinsurance eligible issuer during the applicable benefit year and within the period of eligibility for the member that is paid by the reinsurance eligible issuer before June 1 of the following year. A reinsurance eligible claim shall not be adjusted for risk nor for pharmacy rebates. A reinsurance eligible claim does include a claim for certain abortion services, as defined in 45 CFR §156.280(d)(1).
- "Reinsurance eligible health benefit plan" means health insurance coverage offered on the individual market that:
 - 1. Constitutes minimum essential coverage, as set forth in 26 U.S.C. §5000A(f);
 - 2. Is approved by the State's Insurance Commissioner;
 - 3. Is delivered or issued for delivery by a carrier in the State; and
 - 4. Is not a grandfathered plan as defined in §1251 of the Patient Protection and Affordable Care Act, 29 CFR §2590.715-1251.
- "Reinsurance eligible individual" means an individual who is insured in a reinsurance eligible health benefit plan on or after January 1, 2020.
- "Reinsurance eligible issuer" means a health insurance carrier that offers a reinsurance eligible health benefit plan to reinsurance eligible individuals.
- "Reinsurance payment" means payments issued to a reinsurance eligible issuer in accordance with Section 6.0.
- "State" means the State of Delaware.

4.0 Information Reporting

- As a condition of receiving reinsurance payments from the program, a reinsurance eligible issuer must provide the following information to the program in the form and manner prescribed by the Executive Director: The State entered into an intergovernmental agreement with the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), to calculate reinsurance payments to issuers participating in the State of Delaware's reinsurance program under Delaware's State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act. CMS will identify paid claims eligible for reimbursement under the reinsurance program from data submitted to "EDGE Servers."
 - 4.1.1 The name and company code assigned to the reinsurance eligible issuer by the National Association of Insurance Commissioners:
 - 4.1.2 The identification number assigned to the reinsurance eligible issuer by the DHCC;
 - 4.1.3 The total amount of the reinsurance eligible issuer's reinsurance eligible claims for the benefit year;
 - 4.1.4 The portion of the reinsurance eligible issuer's total reinsurance eligible claims for the benefit year that fall between the attachment point and reinsurance cap;
 - 4.1.5 A summary data file containing de identified information for each reinsurance eligible individual with claims for which reinsurance payments are being requested:
 - 4.1.5.1 The start and end dates of coverage for the reinsurance eligible individual;
 - 4.1.5.2 The DHCC plan identification number for the reinsurance eligible health benefit plan in which the reinsurance eligible individual was enrolled;
 - 4.1.5.3 The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year; and

- 4.1.5.4 The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year that fall between the attachment point and reinsurance cap.
- 4.1.6 If requested by the Executive Director, a de identified claims file extracted from the reinsurance eligible issuer's claims processing system that includes the issuer's complete record of all reinsurance eligible claims for the benefit year, in accordance with applicable state and federal confidentiality laws:
- 4.1.7 An attestation signed by an executive officer of the reinsurance eligible issuer stating that the information is accurate as of the date of submission; and
- 4.1.8 Any other information requested by the Executive Director that he or she deems necessary to administer the program, in accordance with applicable state and federal confidentiality laws.
- 4.2 In lieu of subsections 4.1.1 through 4.1.8, the State may enter a legal agreement with the Centers for Medicare and Medicaid Services (CMS), whereby the State shall use the CMS EDGE server for the purposes of the program.
- 4.3 <u>4.2</u> Carriers must sign an attestation that they meet the submission and data requirements of the State Reinsurance Program through their participation in CMS EDGE Server.
- 4.4 <u>4.3</u> As a condition of receiving reinsurance payments from the program, a <u>A</u> reinsurance eligible issuer must submit one interim report due on March 31st after the benefit year, containing de-identified data from the prior benefit year with claims paid by February 28th or February 29th, and an estimate of claims payments still outstanding. This report will be used to aid the Executive Director in setting parameters for future program years; the EDGE Server, and not this report, shall be used to calculate the paid claims eligible for reimbursement under the reinsurance program. The report shall be issued using a secure method of transmission approved by the Executive Director. The Executive Director may, in his or her discretion, waive the interim report.
- 4.4 The interim report must contain the following data elements for the individual ACA plan:
 - 4.4.1 De-identified Member ID:
 - 4.4.2 Benefit Year Member Months;
 - 4.4.3 Benefit Year Incurred Claims (paid through February 28th or February 29th of the current calendar year); and
 - 4.4.4 <u>Estimate of Benefit Year 2020 claim payments outstanding, e.g., to be paid after February 28th or February 29th of the current calendar year.</u>
- 4.5 DHCC shall annually receive from the Department of Insurance the actual Second Lowest Cost Silver Plan premium under the Affordable Care Act 1332 waiver, 45 U.S.C. §18052, and an estimate of the premium as it would have been without the waiver.
- 4.6 If the State's participation in the CMS EDGE Server were to be discontinued, as a condition of receiving reinsurance payments from the program, a reinsurance eligible issuer would provide the following information to the program in the form and manner prescribed by the Executive Director:
 - 4.6.1 The name and company code assigned to the reinsurance eligible issuer by the National Association of Insurance Commissioners;
 - 4.6.2 The identification number assigned to the reinsurance eligible issuer by the DHCC;
 - 4.6.3 The total amount of the reinsurance eligible issuer's reinsurance eligible claims for the benefit vear:
 - 4.6.4 The portion of the reinsurance eligible issuer's total reinsurance eligible claims for the benefit year that fall between the attachment point and reinsurance cap;
 - 4.6.5 A summary data file containing de-identified information for each reinsurance eligible individual with claims for which reinsurance payments are being requested:
 - 4.6.5.1 The start and end dates of coverage for the reinsurance eligible individual;
 - 4.6.5.2 The DHCC plan identification number for the reinsurance eligible health benefit plan in which the reinsurance eligible individual was enrolled;
 - 4.6.5.3 The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year; and

- 4.6.5.4 The total amount of reinsurance eligible claims for the reinsurance eligible individual for the benefit year that fall between the attachment point and reinsurance cap.
- 4.6.6 If requested by the Executive Director de-identified claims file extracted from the reinsurance eligible issuer's claims processing system that includes the issuer's complete record of all reinsurance eligible claims for the benefit year, in accordance with applicable state and federal confidentiality laws:
- 4.6.7 <u>An attestation signed by an executive officer of the reinsurance eligible issuer stating that the information is accurate as of the date of submission; and</u>
- 4.6.8 Any other information requested by the Executive Director that he or she deems necessary to administer the program, in accordance with applicable state and federal confidentiality laws.

5.0 Reinsurance Parameters

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

6.0 Reinsurance Payments

- 6.1 A reinsurance eligible issuer becomes eligible for a reinsurance payment when the claims costs for at least one reinsurance eligible individual's covered benefits in a calendar year exceed the attachment point.
- 6.2 The <u>Under the intergovernmental agreement with CMS, the Executive Director shall calculate receives from CMS reports detailing</u> the total reinsurance payment payments on a cumulative basis, to date, owed to each reinsurance eligible issuer.
 - 6.2.1 Subject to subsections 6.2.2 and 6.2.3, the reinsurance payment made to each reinsurance eligible issuer for a benefit year will be the product of the coinsurance rate and the portion of the reinsurance eligible issuer's total reinsurance eligible claims for the benefit year that fall between the attachment point and the reinsurance cap.
 - 6.2.2 The Executive Director shall uniformly reduce or increase the coinsurance rate to the extent necessary, but at no time shall the increase exceed 100%, to ensure that reinsurance payments do not exceed the total available funding for the benefit year, as determined by the Executive Director in his or her sole discretion.
 - 6.2.3 In making the calculation under subsection 6.2.1, the Executive Director in his or her sole discretion may disregard any or all reinsurance eligible claims reported by a reinsurance eligible issuer under Section 4.0 that cannot be verified as part of the audit described under subsection 7.1.
- 6.3 The program shall issue reinsurance payments to all reinsurance eligible issuers on an annual basis in the year following each benefit year. The Executive Director shall issue a payment schedule to all issuers.
- 6.4 Payments shall be made directly to reinsurance eligible issuers by a method designated by the Executive Director.
- 6.5 If the Executive Director determines that a reinsurance eligible issuer has substantively failed to comply with this regulation, he or she shall give notice thereof to the issuer stating the Executive Director's findings and stating how the nonconformance can be remedied. The Executive Director shall specify a time period for remedying the nonconformance. The program shall not issue reinsurance payments until the nonconformance is remedied.

7.0 Duties of the Administrator

- 7.1 The program shall be administered by the Executive Director. As administrator of the program, the Executive Director may:
 - 7.1.1 Conduct an audit of the information submitted received under Section 4.0.

- 7.1.2 Notify reinsurance eligible issuers of the results of the calculation described in Section 6.0, including any modifications of the coinsurance rate once HCC DHCC receives the results from CMS.
- 7.1.3 Issue reinsurance payments to each reinsurance eligible issuer in accordance with Section 6.0.
- 7.1.4 Assign the functions vested in him or her by the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and these regulations to subordinate officers and employees as he or she deems necessary. The designee shall have the same power and authority that would be afforded to the Executive Director.
- 7.1.5 Contract with other state agencies and third parties as he or she deems necessary to administer the program.
- 7.1.6 Use, access, store, and disclose the information submitted to the program under Section 4.0, including disclosing the information to the Insurance Commissioner, in accordance with applicable state and federal confidentiality laws, for the purposes of ensuring the efficient administration of the program and to reduce the reporting burden on issuers.
- 7.1.7 Submit an annual report to the Governor and General Assembly, in consultation with the DHSS and DOI and in accordance with applicable state and federal confidentiality laws.
- 7.1.8 Perform other functions he or she deems reasonably necessary to administer the program.

8.0 Document Retention and Audits

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

9.0 Severability

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512) 16 **DE Admin. Code** 16000

PUBLIC NOTICE

MAGI Methodology

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Modified Adjusted Gross Income (MAGI) Methodology, specifically, to align with recently issued federal guidance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2021. Please identify in the subject line: MAGI Methodology.

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

SUMMARY OF PROPOSAL

Attached is a request for public notice to be published in the March 2021 *Delaware Register of Regulations*. The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Modified Adjusted Gross Income (MAGI) Methodology, specifically, to align with recently issued federal guidance.

Statutory Authority

Section 1902(e)(14) of the Social Security Act Tax Cuts and Jobs Act (Pub. L. No. 115-97, "TCJA"), enacted on December 22, 2017

Background

Section 1902(e)(14) of the Social Security Act requires that state Medicaid agencies generally use "modified adjusted gross income" and "household income," as defined at section 36B(d)(2) of the Internal Revenue Code of 1986 (the IRC) to determine Medicaid eligibility. There have been recent legislative changes to the modified adjusted gross income MAGI-based methodologies: the Tax Cuts and Jobs Act (Pub. L. No. 115-97, "TCJA"), enacted on December 22, 2017; the Bipartisan Budget Act of 2018 (Pub. L. No. 115-123, "BBA of 2018"), enacted on February 9, 2018; and the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (Pub. L. No. 115-120, "HEALTHY KIDS Act"), enacted on January 22, 2018.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to revise MAGI-based income methodologies to align with the most recently issued federal guidance.

Summary of Proposed Changes

Effective for services provided on and after May 11, 2021, DHSS/DMMA proposes to amend sections 16100, 16500.1, 16500.1.1, 16500.2 and 16500.3 of the DSSM regarding MAGI Methodology, specifically, to align with federal guidance.

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PROPOSED REGULATIONS

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 31, 2021.

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact.

*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/march2021/proposed/24 DE Reg 847RFA 03-01-21.pdf

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

MAGI Methodology

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Streamline Application

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, *to include questions for the justice-involved population and retroactive eligibility.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2021. Please identify in the subject line: Streamline Application.

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

SUMMARY OF PROPOSAL

Attached is a request for public notice to be published in the March 2021 *Delaware Register of Regulations*. The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medicai Assistance (DMMA) is proposing to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, *to include questions for the justice-involved population and*

retroactive eligibility.

Statutory Authority

45 CFR § 155.405

Background

On December 4, 2018, Delaware Governor John Carney signed Executive Order 27. This executive order established The Delaware Correctional Reentry Commission (DCRC) with the objective of effectively coordinating services for the recently released, strengthening data sharing among state agencies, and improving the availability of programming prior to an inmate's release in hopes of reducing recidivism.

In June 2018, DMMA, in collaboration with other state agencies, including the Delaware Division of Substance Abuse and Mental Health, the Division of Social Services, and the Department of Corrections, held the first Justice Involved Individuals Steering Committee meeting, to develop a plan to facilitate access to covered Medicaid services for eligible individuals immediately upon release from a correctional institution.

On July 31, 2019, the Centers for Medicare & Medicaid Services (CMS) approved Delaware's request for extension and amendment of its Medicaid demonstration project entitled, "Diamond State Health Plan" for beneficiaries beginning the month they submit an application, and to waive the three month retroactive eligibility period.

As a result of the approval of the Medicaid 1115 Waiver, retroactive coverage is potentially available, if general financial and technical eligibility requirements are met, to the following groups: Pregnant women, including during the 60-day postpartum period beginning on the last day of pregnancy; infants under age 1; and individuals under age 19 (listed separately from the group above due to the different income limits).

The changes to the streamline application are to reflect changes to include questions for the justice-involved population and retroactive eligibility.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to include questions for the justice-involved population and retroactive eligibility changes to the Medicaid Streamline Application.

Summary of Proposed Changes

Effective for services provided on and after May 11, 2021 DHSS/DMMA proposes to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, to include questions for the justice-involved population and retroactive eligibility.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS)/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

Also, there may be additional provider manuals that may require updates as a result of these changes. The applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals and/or Delaware

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Medical Assistance Portal will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: https://medicaid.dhss.delaware.gov/provider

Fiscal Impact

There is no anticipated fiscal impact.

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

http://regulations.delaware.gov/register/march2021/proposed/24 DE Reg 848RFA 03-01-21.pdf

Appendix A 08-2013 Health Coverage from Jobs

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

http://regulations.delaware.gov/register/march2021/proposed/Appendix A 08-2013 Health Coverage from Jobs.pdf

Appendix B 08-2013 American Indian or Alaska Native Family Member AIAN

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

http://regulations.delaware.gov/register/march2021/proposed/Appendix B 08-2013 American Indian or Alaska Native Family Member AIAN.pdf

Appendix C 01-2014 Assisting With Applications

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

http://regulations.delaware.gov/register/march2021/proposed/Appendix C 01-2014 Assisting With Applications.pdf

Benefit Application Form 100 Justice Involved and Retro Changes

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

http://regulations.delaware.gov/register/march2021/proposed/Benefit Application Form 100 Justice Involved and Retro Changes.pdf

CCADP 1

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

http://regulations.delaware.gov/register/march2021/proposed/CCADP 1.pdf

CCADP 2

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

http://regulations.delaware.gov/register/march2021/proposed/CCADP 2.pdf

Draft CMS Submission

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

http://regulations.delaware.gov/register/march2021/proposed/Draft CMS Submission.pdf

Health Coverage - Family Justice Involved and Retro

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

http://regulations.delaware.gov/register/march2021/proposed/Health Coverage - Family Justice Involved and Retro.pdf

Health Coverage - Short Form Justice Involved and Retro

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

http://regulations.delaware.gov/register/march2021/proposed/Health Coverage - Short Form Justice Involved and Retro.pdf

LTC Application 03-2020 Revised

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

http://regulations.delaware.gov/register/march2021/proposed/LTC Application 03-2020 Revised.pdf

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Medication-Assisted Treatment (MAT)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Medication-Assisted Treatment (MAT) to move coverage of the MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2021. Please identify in the subject line: Medication-Assisted Treatment (MAT).

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Medication-Assisted Treatment (MAT) to move coverage of the MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.

Statutory Authority

- Section 1905(a)(29) of the Social Security Act
- Section 1006(b) of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) Act
- Section 1135(b) of the Social Security Act

Background

Section 1006(b) of the SUPPORT Act, signed into law on October 24, 2018, amends section 1902(a)(10)(A) of the Social Security Act (the Act) to require state Medicaid plans to include coverage of MAT for all eligible to enroll in the state plan or waiver of state plan. States are also required to cover counseling services and behavioral therapies associated with provision of the required drug and biological coverage.

States that already use existing Medicaid authorities to cover items and services that will now be covered under the new mandatory MAT benefit, including FDA-approved or licensed drugs and biologicals used for MAT to treat Opioid Use Disorder (OUD), and associated counseling services and behavioral therapies, are expected to submit a State Plan Amendment (SPA) to move their coverage of these items and services to a new page in their Medicaid state plans for the new mandatory benefit at section 1905(a)(29) of the Act. Delaware currently covers MAT as an optional benefit and is publishing this regulation so as to move this coverage from an optional benefit to a mandatory benefit.

Upon receipt of the State Health Official dated December 30, 2020, issuing guidance about the requirements of section 1006(b), Delaware submitted a modification request of SPA submission requirements at 42 C.F.R. 430.20 in order to submit a SPA implementing section 1905(a)(29) of the Act by March 31, 2021 that would take effect on October 1, 2020. Pursuant to section 1135(b) of the Act, Delaware requested modification of the public notice time frames set forth at 42 C.F.R. 447.205 in order to obtain an effective date of October 1, 2020.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to move coverage of MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.

Summary of Proposed Changes

Effective for services provided on and after October 1, 2020 DHSS/ DMMA proposes to amend Attachment 3.I-A Page 2A and Attachment 4-19-B Page 18 of Title XIX Medicaid State Plan regarding MAT to move coverage of the MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware

Code, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on March 31, 2021.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact as Delaware currently covers MAT.

*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/march2021/proposed/24 DE Reg 851RFA 03-01-21.pdf

Attachment 3.1-A Page 2A

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

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

1905(a)(29) Medication-Assisted Treatment (MAT)

i. General Assurance

MAT is covered under the Delaware Medicaid state plan for all Medicaid beneficiaries who meet the medical necessity criteria for receipt of the service for the period beginning October 1, 2020, and ending September 30, 2025.

ii. Assurances

- a. The state assures coverage of Naltrexone, Buprenorphine, and Methadone and all of the forms of these drugs for MAT that are approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).
- <u>b.</u> The state assures that Methadone for MAT is provided by Opioid Treatment Programs that meet the requirements in 42 C.F.R. Part 8.

iii. Service Package

The state covers the following counseling services and behavioral health therapies as part of MAT.

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Outpatient Addiction Services

MAT may be provided as part of outpatient addiction services which are community-based addiction services not provided in an outpatient hospital setting and include individual-centered activities consistent with the beneficiary's assessed treatment needs with a rehabilitation and recovery focus designed to promote skills for coping with and managing symptoms and behaviors associated with substance use disorders (SUD). These activities are designed to help beneficiaries achieve and maintain recovery from SUDs. Outpatient SUD services include medically necessary care according to assessed needs including the four (4) component activities: (1) Assessment and clinical treatment plan development - The purpose of the assessment is to provide sufficient information for problem identification, SUD treatment or referral for the beneficiary to gain access to other needed Medicaid SUD or mental health services. The treatment plan for Medicaid SUD or mental health services must be patient centered and developed in collaboration with the patient; (2) Skill development for coping with and managing symptoms and behaviors associated with substance use disorders (SUD) such as the participant's perspective and lack of impulse control or signs and symptoms of withdrawal; (3) Counseling to address a beneficiary's major lifestyle, attitudinal, and behavioral problems. Counseling includes highly structured psychosocial therapy to address issues that have the potential to undermine the goals of treatment; (4) Medication Assisted Therapies (MAT), when clinically appropriate and desired by the patient, including the direct administration of medication.

TN No. SPA	Approval Date
Supersedes TN No. SPA NEW	Effective Date

Attachment 3.1-A Page 2B

Outpatient activities are delivered on an individual or group basis in a wide variety of settings including site-based facility, in the community or in the beneficiary's place of residence. These services may be provided on site or on a mobile basis as defined by Delaware Health and Social Services (DHSS) or its designee. The setting will be determined by the goal which is identified to be achieved in the beneficiary's written treatment plan. Outpatient services may be indicated as an initial modality of care for a beneficiary whose severity of illness warrants this level of treatment, or when a beneficiary's progress warrants a less intensive modality of service than they are currently receiving. The intensity of the services will be driven by medical necessity. Medication Assisted Therapies (MAT) should only be utilized when a beneficiary has an established SUD (e.g., opiate or alcohol dependence condition) that is clinically appropriate for MAT.

Provider qualifications: Outpatient addiction services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and approved program guidelines and certifications approved by DHSS or its designee. All outpatient substance use disorder (SUD) programs are licensed or certified under state law. Licensed practitioners under Delaware state regulation are licensed by Delaware and include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs), advanced practice nurses (APNs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists.

Residential Addiction Services

MAT may be provided as part of residential services which include individual-centered residential services consistent with the beneficiary's assessed treatment needs, with a rehabilitation and recovery focus designed to promote skills for coping with and managing substance use disorder symptoms and behaviors. These services are designed to help beneficiaries achieve changes in their substance use disorder behaviors. Services should address the beneficiary's major lifestyle, attitudinal, and behavioral problems that have the potential to undermine the goals of treatment. Residential SUD services include medically necessary care according to assessed needs including the four (4) component activities: (1) Assessment and clinical treatment plan development - The purpose of the assessment is to provide sufficient information for problem identification, SUD treatment or referral for the beneficiary to gain access to other needed Medicaid SUD or mental health services. The treatment plan for Medicaid SUD or mental health services must be patient-centered and developed in collaboration with the patient; (2) Skill development for coping with and managing symptoms and behaviors associated with substance use disorders (SUD) such as the participant's perspective and lack of impulse control or signs and symptoms of withdrawal; (3) Counseling to address a beneficiary's major lifestyle, attitudinal, and behavioral problems. Counseling includes highly structured psychosocial therapy to address issues that have the potential to undermine the goals of treatment; (4) Medication Assisted Therapies (MAT) when clinically appropriate and desired by the patient, including the direct administration of medication. Residential services are delivered on an individual or group basis in a wide variety of settings including treatment in residential settings of sixteen (16) beds or less designed to help beneficiaries achieve changes in their substance use disorder behaviors.

Provider qualifications: Services are provided by licensed and unlicensed professional staff, who are at least eighteen (18) years of age with a high school or equivalent diploma, according to their areas of competence as determined by degree, required levels of experience as defined by state law and regulations and departmentally approved program guidelines and certifications. All residential programs are licensed or certified under state law per Delaware Administrative Code Title 16.6001. The licensure applies to all programs providing services to beneficiaries in need of programs and

TN No. SPA	Approval Date	
Supersedes TN No. SPA <u>NEW</u>	Effective Date	

Attachment 3.1-A Page 2C

services for diagnosed substance use and/or mental disorders. The licensure at a minimum requires documentation of all insurance coverage required in regulation; the maximum client capacity requested; and a copy of the agency's Delaware business license and home state license, when applicable. The licensure or certification also requires a description of the services to be provided by the program, including a statement of the program philosophy, goals and objectives, and a description of the methodology for each service element; and organization charts of showing incumbent names, positions, degrees and credentials (e.g., license, certification); all vacant positions; and illustrating direct and indirect reporting and supervisory relationships. Licensed practitioners under Delaware State regulation are licensed by Delaware an include Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), Licensed Marriage and Family Therapists (LMFTs), nurse practitioners (NPs); advanced practice nurses (APNs), medical doctors (MD and DO), Licensed Chemical Dependency Professionals (LCDPs), and psychologists. Any staff who is unlicensed and providing

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addiction services must be credentialed by DHSS or its designee and/or the credentialing board or, if a Recovery Coach or Credentialed Behavioral Health Technician, be under the supervision of a qualified health professional (QHP) or Clinical Supervisor.

TN No. SPA Approval Date
Supersedes
TN No. SPA NEW Effective Date

Attachment 3.1-A Page 2D

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the Categorically Needy (continued)

iv. Utilization Controls

The state has drug utilization controls in place. (Check each of the following that apply)

Generic first policy

X Preferred drug lists

X Clinical criteria

X Quantity limits

The state does not have drug utilization controls in place.

v. Limitations

<u>Describe the state's limitations on amount, duration, and scope of MAT drugs, biologicals, and counseling</u> and behavioral therapies related to MAT.

• BUPRENORPHINE-NALOXONE limited to 2 (tabs or films) per day unless a prior authorization is approved.

TN No. SPA	Approval Date	
Supersedes		
TN No. SPA <u>NEW</u>	Effective Date	

Attachment 4.19-B Page 18

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: **DELAWARE** METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

Payments for Medication Assisted Treatment

Effective October 1, 2020, the Medicaid agency will continue to pay qualified providers for evaluation and management (E/M) or HCPCS Code as applicable when Medication Assisted Treatment (MAT) is part of a visit.

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The reimbursement for the MAT drugs that meet the definition of a covered outpatient drug in section 1927(k) of the Social Security Act will continue to follow the same reimbursement provided in the table on page Attachment 4.19-B Page 14a related to generic and brand drugs.

TN No. SPA Approval Date
Supersedes
TN No. SPA 13-018 Effective Date

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1764A (24 **Del.C.** §§1713(a)(12) & 1764A)
24 **DE Admin. Code** 1700

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 *Del. C.* § 1713(a)(12) and § 1764A, proposes to add a new regulation, clarifying the circumstances under which a prescriber regulated by Title 17 can request a waiver from the Board of the electronic prescribing requirements recently passed by the General Assembly. See HB 115 from the 150th General Assembly (online at https://legis.delaware.gov/SessionLaws/Chapter?id=14937). The Board will hold a public hearing on the proposed regulation change on April 6, 2021 at 3:00 p.m. via Zoom.

Zoom Meeting: https://us02web.zoom.us/j/86730313735

Meeting ID: 867 3031 3735

(646) 558-8656, 86730313735# US (New York) (301) 715-8592, 86730313735# US (Washington DC)

Written comments should be sent to Devashree Singh, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 21, 2021 pursuant to 29 *Del. C.* § 10118(a).

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

http://regulations.delaware.gov/register/march2021/proposed/24 DE Reg 857RFA 03-01-21.pdf

1700 Board of Medical Licensure and Discipline (Break in Continuity of Sections)

20.0 Electronic Prescribing [Authority: 24 Del.C. §1764A]

20.1 A "temporary technological or electrical failure" as that term is used in 24 **Del.C.** §1764A(b)(2) shall mean a technological or electrical failure that occurred through no fault of the licensee and lasts no more than one week.

- <u>20.2</u> <u>Electronic prescriptions are not required for prescriptions that will be dispensed by a pharmacy not under the jurisdiction of the State of Delaware that does not have an electronic prescribing requirement in place via statute or regulation at the time the prescription is issued.</u>
- <u>A licensee may petition the Board for a waiver of the e-prescribing requirement under 24 **Del.C.** §1764A(b)(9). Waiver petitions must be made in writing to the Board and will only be issued for one of the following reasons:</u>
 - 20.3.1 The licensee does not issue more than 50 prescriptions in one calendar year;
 - 20.3.2 The licensee will experience a financial hardship if required to issue prescriptions electronically; or
 - 20.3.3 The licensee is unable to issue electronic prescriptions as a result of technological limitations that are not reasonably within the control of the practitioner, such as limited internet coverage in geographic region of practice.
- 20.4 If the Board grants a waiver, such waiver shall be valid for a specified period of time not to exceed one year and may be renewed upon a demonstration that the basis for the initial waiver still exists.

 Renewal requests must be made in writing to the Board.

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

1700 Board of Medical Licensure and Discipline

DIVISION OF PROFESSIONAL REGULATION 3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1)) 24 **DE Admin. Code** 3500

PUBLIC NOTICE

3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del. C. § 3506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to require licensees to update their contact information with 10 days of any such change; clarify that psychological assistant registrants must complete a Board approved internship, not just a 450 hour practicum; enhance continuing education requirements by clarifying the maximum number of credits which may be earned for preparing and presenting scientific papers and posters; clarify the requirements for supervision of psychological assistants and direct applicants; clarify that "face-to-face" can include videoconferencing; and eliminates outdated or inconsistent telehealth and "appendix" regulations.

The Board will hold a public hearing telephonically on April 5, 2021 at 9:00 a.m. Written comments should be sent to Danielle Cross, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until April 20, 2021.

*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/march2021/proposed/24 DE Reg 858RFA 03-01-21.pdf

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

3500 Board of Examiners of Psychologists

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

DRIVER SERVICES

Statutory Authority: 21 Delaware Code, Section 302; 18 Delaware Code, Section 2503; 29 Delaware Code, Sections 101 and 8404) (21 **Del.C.** §302; 18 **Del.C.** §2503; and 29 **Del.C.** §§101 & 8404)

2 **DE Admin. Code** 2224

PUBLIC NOTICE

2224 Defensive Driving Course, Providers, and Instructors

Pursuant to the authority provided by 21 *Del.C.* §302, 18 *Del.C.* §2503, 29 *Del.C.* §101, and 29 *Del.C.* §8404, the Delaware Division of Motor Vehicles (DMV), adopted the Defensive Driving Course, Providers, and Instructors. The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the Defensive Driving Course, Providers, and Instructors, to address recent legislation, current safety concerns, and allow the provider to present the course in different formats. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through this regulation.

Public Comment Period

The DMV will take written comments on these proposed general revisions to Regulation 2224 of Title 2, Delaware Administrative Code, from March 1, 2021 through March 31, 2021. The public may submit their comments to:

Christie Thomas, Executive Secretary, Division of Motor Vehicles (dmv-defensivedriving@delaware.gov) or in writing to her attention, Delaware Department of Transportation (DelDOT) Division of Motor Vehicles PO BOX 698
Dover, DE 19903

*Please Note:

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

http://regulations.delaware.gov/register/march2021/proposed/24 DE Reg 859RFA 03-01-21.pdf

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

2224 Defensive Driving Course, Providers, and Instructors

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION

Statutory Authority: 3 Delaware Code, Sections 904(b) (3 **Del.C.** §904(b)) 3 **DE Admin. Code** 702

ORDER

702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 9, Section 904(b)(20) and (21), the Agricultural Lands Preservation Foundation (the "Foundation") seeks to amend the regulations governing the Delaware Agricultural Forestlands Preservation Program. These regulations are being amended to create a more efficient and flexible application and appraisal process by eliminating the references to unnecessary form information and review procedures. The amendment also eliminates the bonus for properties located in a State Resource Area (SRA) and replaces it with a bonus for properties located in a Forest Legacy Area (FLA). Other changes are typographical or were made to bring the regulation into compliance with the Delaware Administrative Code Drafting and Style Manual.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2020, in the form hereto attached as *Exhibit "A"*. The proposed regulation was presented at a virtual public hearing on November 24, 2020. No formal comments were received from members of the public at that time. Pursuant to Delaware law, the record remained open for fifteen (15) days subsequent to the date of the public hearing for the purpose of allowing additional public comment to be received regarding this matter. The hearing record closed for comment on December 9, 2020, with no public comment having been received during any phase of this matter.

II. FINDINGS OF FACT

The Foundation finds that the elimination of the references to unnecessary form information and review procedures will create a more efficient and flexible application and appraisal process for landowners seeking to submit their property for consideration under the Delaware Agricultural Forestlands Preservation Program. In addition, the Foundation finds that the proposed amendments correcting typographical errors and stylistic changes to conform to the drafting guidelines are appropriate. Accordingly, the Foundation finds that it is appropriate to amend 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Foundation concludes that it is appropriate to amend 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program. Therefore, pursuant to 3 **Del. C.** §§904(b)(20) and (21), and 29 **Del. C.** §§10113(b)(2) and (b)(4). 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program attached hereto as *Exhibit "A"* is hereby amended.

IV. TEXT AND CITATION

The text of 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program in the *Administrative Code of Regulations* for the Department of Agriculture.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Foundation pursuant to 3 **Del. C.** §§904(b)(20) and (21) on December 16, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of December, 2020.

Delaware Agricultural Lands Preservation Foundation Advisory Board

Mark Collins, Chairman

*Please note that no changes were made to the regulation as originally proposed and published in the November 2020 issue of the *Register* at page 437 (24 DE Reg. 437). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program

PLANT INDUSTRIES SECTION

Statutory Authority: 3 Delaware Code, Section 101(2) and (3) (3 Del.C. §101(2) & (3))

ORDER

805 Rules and Regulations for Delaware Domestic Hemp Production Program

This Order relates to the proposed amendments to the Delaware Domestic Hemp Production Program Regulations ("Regulations"). The Delaware Department of Agriculture, Plant Industries Section ("Department") proposed to amend the Regulations to clearly define the procedures, permitting process, and governing measures for individuals looking to participate in the Delaware Domestic Hemp Production Program as a producer, processor, or

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handler.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, the Department provided public notice and provided an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. The Department did not receive any comments from the public.

The proposed changes to the Regulations were published in the *Delaware Register of Regulations*, Volume 24, Issue 7, on January 1, 2021. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was January 31, 2021.

Summary of the Evidence and Information Submitted

There was no public hearing held and no written comments were received by the Department.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Department with comments in writing on the proposed amendments to the Regulations. There were no public comments provided to the Department in writing.

Pursuant to 3 **Del.C.** §101 (2) & (3), the Department has the statutory authority to promulgate rules and regulations.

Having received no public comments, the Department finds no reason to amend the regulations as proposed.

Decision and Effective Date

The Department hereby adopts the Regulations as proposed, to be effective 10 days following publication of this Order in the *Delaware Register of Regulations*. The new Regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 12th day of February 2021.

Michael T. Scuse Delaware Secretary of Agriculture

*Please note that no changes were made to the regulation as originally proposed and published in the January 2021 issue of the *Register* at page 627 (24 DE Reg. 627). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

805 Rules and Regulations for Delaware Domestic Hemp Production Program

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and 29 Delaware Code 7528 (14 **Del.C.** §122(a) & 29 **Del.C.** §7528)

14 **DE Admin. Code** 401

REGULATORY IMPLEMENTING ORDER

401 Major Capital Improvement Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(a) and 29 **Del.C.** §7528, the Secretary of Education intends to amend 14 **DE Admin.** Code 401 Major Capital Improvement Program. This amendment is needed to comply with a court order that directs the Department of Education to amend 14 **DE Admin.** Code 401 Major Capital Improvement Program to require school districts to provide an Equity Statement in connection with a request for Issuance of a Certificate of Necessity. It is also being amended to make grammatical changes per the *Delaware Administrative Code Drafting and Style Manual.*

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on January 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on January 1, 2021, in the form hereto attached as *Exhibit "A"*. One comment was received which was pertinent to the proposed amendments and suggested the Department consider including language on the newly required Equity Statement (in connection with the Issuance of a Certificate of Necessity) requiring school districts to provide demographic information on all students, including early childhood students and students age 18-21 years who are not given a graded designation. The Department is unable to include such language as this regulation only covers grades K-12 within public schools as outlined in 14 **Delaware Code** and 29 **Delaware Code**.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Program to comply with a court order that directs the Department of Education to amend 14 **DE Admin. Code** 401 Major Capital Improvement Program to require school districts to provide an Equity Statement in connection with a request for Issuance of a Certificate of Necessity. It is also being amended to make grammatical changes per the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Program. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 401 Major Capital Improvement Program attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 401 Major Capital Improvement Program hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 401 Major Capital Improvement Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 401 Major Capital Improvement Program in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on February 10,

2021. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of February 2021.

Department of Education

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

Approved this 10th day of February 2021

401 Major Capital Improvement Program

1.0 Purpose and Definitions

- 1.1 The Major Capital Improvement Program consists of one or more construction projects having a cost of \$750,000 or more.
 - 1.1.1 The Secretary of Education may annually review the current cost per square foot for construction and make necessary adjustments as required.
 - 1.1.2 Multiple projects may be considered together to form a single Major Capital Improvement Program project. The consolidation of Major Capital Improvement Program projects should be for one location.
 - 1.1.3 All Major Capital Improvement Program projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.
 - 1.1.3.1 Local school districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.
 - 1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a local school district may use or enhance the modified documents.

1.2 Definitions

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

"Certificate of Necessity" means a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the local school district to hold a referendum for the Major Capital Improvement Program identified, if required.

"Certificate of Occupancy" means a document issued by a local code enforcement official or office attesting that a Facility meets building codes and is fit for human occupancy.

"Change Orders" means documents that change the construction contract and are negotiated between the owner and contractor to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

"Completion of Construction" means the local school district, with the concurrence of the architect, accepts the facility as complete, meaning that all punch list items are resolved, release of liens has been received, and funds held in retainage have been released.

"Design Development Plans" means documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. Design Development Plans are at a 40% to 60% completion stage.

"Educational Specifications" means documents which explain how the educational spaces relate to the educational programs as well as the requirements of an educational Facility to house and implement the educational philosophy and institutional program.

"Facility" means a long-lived capital asset including, but not limited to, school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a local school district or school system.

"Final Construction Plans" means documents that show the complete Facility design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

"Schematic Design Plans" means documents that present a proposed Facility in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

"Signed and Sealed Plans" means design documents that have the architect's or engineer's professional seal and signature affixed.

2.0 Certificates of Necessity

- 2.1 Local school districts shall submit local school board approved projects to the Department of Education by August 31 of each fiscal year to be considered for a Certificate of Necessity and capital funding in the following fiscal year.
- 2.2 Local school district submissions for a Certificate of Necessity shall provide an equity statement that identifies the demographic information (e.g. race, Low Income, English Learner) of the students who are expected to attend the new school, use a new facility, or benefit from an approved Major Capital Project and how the Major Capital Project impacts equitable distributions of new and renovated buildings throughout the school district.
- 2.22.3 The Certificate of Necessity shall be quoted in the advertisement for the referendum.
- 2.32.4 Projects proposing the construction of a new Facility or for an addition to an existing Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new Facility or for an addition to an existing Facility shall not be transferred to projects in a separate Certificate of Necessity.
- 2.42.5 Additions and renovations to existing Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when such a multiple project Certificate of Necessity is issued, it shall identify each Facility in the program and describe the work to be done at that Facility including the state and local share of the total cost for that work. Funds may be transferred between projects issued under the same Certificate of Necessity in accordance with Section 8.0 of this regulation.
- 2.52.6 The Department of Education will complete and forward the Certificate of Necessity to the local school district superintendent for that superintendent's signature.
- 2.62.7 A copy of the final Certificate of Necessity will be returned to the local school district within ten (10) working days following final approval by the Department of Education.

3.0 Procedures for Approval of a Site for School Construction

- 3.1 The local school board shall forward all prospective sites to the Office of State Planning Coordination for consideration and comment through the Planning Land Use Service (PLUS) review process.
- 3.2 Local school districts shall notify the Department of Education in writing to schedule a site review when they propose to purchase a site for school purposes; when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation. Depending on the outcome of the PLUS review process, the Department of Education may conduct a site review.
- 3.3 The acquisition of lands for school construction shall comply with 29 **Del.C.** §7525.

4.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings

- 4.1 Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department of Education may provide comments on Educational Specifications at its discretion.
- 4.2 All Schematic Design Plans, Design Development Plans and Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one (1) set of each, including a signed and sealed Final Construction Drawings and specifications.
- 4.3 The local school district must involve all applicable state, local and municipal regulatory agencies in reviewing Final Construction Drawings before the start of construction. Copies of all applicable state, local and municipal agency approvals shall be maintained in the local school district construction files. Required state agency approvals are noted in the State of Delaware School Construction Technical Assistance Manual, which is available on the Department of Education's website.
- 4.4 Major <u>Capital</u> Improvement Program projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission of construction specifications or plans to the Department of Education.

5.0 Notification, Start and Completion of Construction, and Certificate of Occupancy

- 5.1 The local school district shall submit to the Department of Education and the Office of Management and Budget a construction schedule, showing start dates, intermediate stages stages, and final completion dates.
- 5.2 The local school district shall notify the Department of Education, Office of Management and Budget and Insurance Coverage Office at the completion of construction.
- 5.3 The local school district shall record capital assets in accordance with the *State of Delaware Budget and Accounting Manual*.
- The local school district shall notify the Department of Education, Division of Accounting, State Auditor, and Office of Management and Budget upon approval of occupancy.
- Local school districts shall submit to the Department of Education a copy of the electronic files in a format approved by the Department of Education. Electronic files shall be submitted no later than thirty (30) calendar days after the completion of any major renovation, addition to an existing Facility, new school or replacement school.

6.0 Purchase Orders

All purchase orders for Major Capital Improvement Program projects shall be approved by the Department of Education and Office of Management and Budget before submission to the Division of Accounting.

7.0 Change Orders

- 7.1 All Change Orders must be agreed upon by the architect, local school district and contractor, and shall be forwarded to the Department of Education.
 - 7.1.1 Submission of a Change Order must include the following documents:
 - 7.1.1.1 A completed purchase order as applicable and following the local school board approved change order approval and authorization process and procedure;
 - 7.1.1.2 Local school board of education minutes identifying and approving the changes;
 - 7.1.1.3 American Institute of Architects (AIA) document G701-Change Order Form; and
 - 7.1.1.4 Correspondence which gives a breakdown in materials, mark-up, and other expenses.

8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity

- 8.1 Local school districts may request the transfer of funds between projects during the bidding and construction process in writing to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:
 - 8.1.1 No project may have any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
 - 8.1.2 No project may have any funding added to its initial funding without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
 - 8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.

9.0 Educational Technology

All school facilities being constructed or renovated under the Major Capital Improvement Program shall include wiring for technology that meets the current Department of Technology and Information Wiring Standards, and is appropriate to the grade level and educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

10.0 Playground Construction

All playgrounds constructed or renovated pursuant to a Major Capital Improvement Program project shall comply with the most current editions of the American Society of Testing Materials (ASTM) Designation F-1487 and the Consumer Products Safety Commission (CPSC) Publication Number 325.

11.0 Administration of the New School

An administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The state portion of salary and benefits may be paid from Major Capital Improvement Program funding.

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1501

REGULATORY IMPLEMENTING ORDER

1501 Salary Supplements for Educators

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1305(o), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1501 Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 **Del.C.** §1305(k), national certification salary supplements pursuant to 14 **Del.C.** §1305(n). In accordance with 14 **Del.C.** §1305(o), the Board is required to annually review the supplements and promulgate recommendations as necessary. The proposed amendments to this regulation concern the previously approved additional responsibility assignment salary supplement for mentors. The Board proposes to add "Administrator

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Mentor" as a defined term and clarify the definitions of "Teacher or Specialist Lead Mentor" and "Teacher or Specialist Mentor" in Section 2.0. Additionally, in subsection 5.4.1, the Board proposes to clarify who qualifies for the additional responsibility assignment salary supplement for mentors. The Board is not proposing any amendments regarding knowledge and skills salary supplements or national certification salary supplements.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On January 7, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1501 Salary Supplements for Educators, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1501 Salary Supplements for Educators.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1501 Salary Supplements for Educators subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1305(o), 14 **DE Admin. Code** 1501 Salary Supplements for Educators, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1501 Salary Supplements for Educators adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1501 Salary Supplements for Educators in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 21st day of January, 2021.

Department of Education

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

Approved this 21st day of January, 2021.

State Board of Education

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

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

1501 Salary Supplements for Educators

1.0 Content

- 1.1 The following requirements shall be met in order to receive the salary supplements established by 14 **Del.C.** §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the State portion of an Educator's annual salary paid in accordance with the provisions of 14 **Del.C.** §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving national certification from the National Board for Professional Teaching Standards or from an equivalent program, and for accepting Additional Responsibility Assignments that impact student achievement.
- 1.2 Supplements are available subject to an annual appropriation from the General Assembly.

2.0 Definitions

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

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

"Administrator Mentor" means a certified administrator who holds a Continuing License, is currently employed as an administrator, performs the duties and responsibilities in the State's administrator mentor program, and is rated as satisfactory on the State's current evaluation system or the equivalent thereof on a state-approved alternative educator evaluation system. A certified administrator is an Educator who holds at least one of the following Standard Certificates: School Principal and Assistant School Principal Standard Certificate (14 **DE Admin. Code** 1591), Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592), Superintendent and Assistant Superintendent Standard Certificate (14 **DE Admin. Code** 1593), and Special Education Director Standard Certificate (14 **DE Admin. Code** 1594).

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

"<u>Teacher or Specialist</u> Lead Mentor" means an Educator a teacher or specialist who holds a Continuing or Advanced License, has participated in the training approved by the Department for <u>Teacher or Specialist</u> Lead Mentors, is employed by an employing authority as a <u>Teacher or Specialist</u> Lead Mentor, and performs the duties and responsibilities assigned to that position. Educators serving as <u>Teacher or Specialist</u> Lead Mentors must be rated as highly effective or effective on Delaware Performance Appraisal System II (DPAS II) evaluations, have all satisfactory evaluations on the <u>State's current evaluation system</u>, or the equivalent thereof on a state-approved alternative educator

evaluation system, <u>during the school year in which they are mentors</u> and may not be on a <u>DPAS II an</u> improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. <u>Teacher or Specialist Lead Mentors oversee the comprehensive induction program at the building level, train Teacher or Specialist Mentors, and provide support to teachers or specialists in <u>years three and four of the program.</u> <u>Teacher or Specialist Lead Mentors may mentor an Educator in years one and two of the program.</u></u>

"Teacher or Specialist Mentor" means an Educator who holds a Continuing or Advanced License and has participated in the training for Mentors mentors of teachers and specialists specified by the Department and the employing authority. Educators serving as Teacher or Specialist Mentors must be rated as highly effective or effective on DPAS II evaluations, have satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on a Delaware Performance Appraisal System II (DPAS II) an improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Mentors provide one to one support for Educators in years one and two of the program.

3.0 Knowledge and Skills Salary Supplements

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

4.0 National Certification

- 4.1 An Educator may receive a Salary Supplement for achieving and currently maintaining the following certifications as provided in 14 **Del.C.** §1305(I):
 - 4.1.1 National Board Certification from the National Board for Professional Teaching Standards;
 - 4.1.2 Certificate of Clinical Competence in Audiology (CCC-A) or Certificate of Clinical Competence Speech-Language Pathology (CCC-SLP) from the American Speech-Language-Hearing Association;
 - 4.1.3 National Certified School Counselor from the National Board for Certified Counselors;
 - 4.1.4 Music Therapist Board Certified (MT-BC) from the Certification Board for Music Therapists;
 - 4.1.5 Nationally Certified School Psychologist (NCSP) from the National Association of School Psychologists; or
 - 4.1.6 Nationally Certified School Nurse (NCSN) from the National Board for Certification of School Nurses.
- 4.2 In order to be eligible for a National Certification Salary Supplement, the Educator shall maintain current certification through the applicable national organization.
- 4.3 An Educator who is employed as a superintendent, assistant superintendent, or director or in a non-instructional area of transportation, finance/business management, human resources/personnel management, purchasing, community/public relations, administrative services, pupil services, audiology, occupational therapist, physical therapist, psychologist, speech language pathologist, human relations, nurse, social work/services, information technology, or a specialized assignment comparable to these non-instructional areas shall not be eligible for a Salary Supplement for National Certification from the National Board for Professional Teaching Standards.
- 4.4 An Educator who achieves and maintains National Certification shall receive an annual Salary Supplement equal to 12 percent of the Educator's Base Salary for the certification in subsection 4.1.1 or 6 percent of the Educator's Base Salary for the certifications in subsections 4.1.2 through 4.1.6.

5.0 Additional Responsibility Assignments

- 5.1 Additional Responsibility Assignments shall be:
 - 5.1.1 Focused on school improvement issues that impact student achievement;
 - 5.1.2 Supported by high quality, targeted professional development; and
 - 5.1.3 Academic in nature.

- In order to qualify for an Additional Responsibility Assignment Salary Supplement, an Educator shall have completed the State approved training program for the position or, in the absence of a training program, shall meet the criteria set forth for the position by the State, school district, charter school, or other employing authority and shall provide State, school district, charter school, or other employing authority approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified assignment.
- 5.3 Additional Responsibility Assignment Salary Supplements may be renewed.
- 5.4 The following assignment is assignments are currently an approved Additional Responsibility Assignment:
 - 5.4.1 <u>Lead Mentor and Mentor Administrator Mentor, Teacher or Specialist Lead Mentor, and Teacher</u> or Specialist Mentor as provided in Section 10.0 of 14 **DE Admin. Code** 1503 Educator Mentoring.

6.0 Educators' Eligibility for Salary Supplements

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

7.0 Payment of Salary Supplements

- 7.1 Salary Supplements for Additional Responsibility Assignments
 - 7.1.1 Salary supplements earned by Educators who are paid in accordance with the provisions of 14 **Del.C.** §1305 as a result of fulfilling Additional Responsibility Assignments shall be effective following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the Additional Responsibility Assignment and shall be paid annually.

8.0 Limits on Salary Supplements

Salary supplements shall be paid to an Educator in accordance with the provisions of 14 Del.C. §1305.

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1584

REGULATORY IMPLEMENTING ORDER

1584 School Social Worker

I.SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1584 School Social Worker. The regulation concerns the requirements for a School Social Worker Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a School Social Worker Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a School Social Worker Standard Certificate in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the application requirements in Section 6.0; adding Section 7.0, which concerns the validity of a School Social Worker Standard Certificate; adding the requirements for retaining a School Social Worker Standard Certificate to Section 8.0; adding Section 9.0, which concerns disciplinary actions; adding Section 10.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 11.0, which concerns recognizing past certificates

that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2020. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On January 7, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1584 School Social Worker, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1584 School Social Worker.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1584 School Social Worker subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1584 School Social Worker, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1584 School Social Worker adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1584 School Social Worker in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 21st day of January, 2021.

Department of Education

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

Approved this 21st day of January, 2021.

State Board of Education

/s/ Whitney Sweeney, President /s/ Vincent Lofink

/s/ Wali W. Rushdan, II, Vice President /s/ Audrey J. Noble, Ph.D.

Candice Fifer (Absent) /s/ Provey Powell, Jr.

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

1584 School Social Worker

Effective July 1, 1994

1.0 Content

- This regulation shall apply to the issuance of a <u>School Social Work</u> Standard Certificate, Certificate pursuant to 14 **Del.C.** §1220(a), for School Social Worker. This certification The School Social Worker <u>Standard Certificate</u> is required for grades K to 12 in <u>Delaware public schools</u>.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Gode** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

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

- "Department" means the Delaware Department of Education.
- <u>"Educator"</u> means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.
- <u>"Employing Authority"</u> means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.
- "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.
- "LCSW" means a person who is licensed as a clinical social worker.
- "License" means a credential which authorizes the holder to engage in the practice for which the license is issued.
- "LMSW" means a person who is licensed as a masters social worker.
- <u>"Passing Score"</u> means a minimum score as established by the Standards Board in consultation with the Department and with the approval of the State Board of Education.
- "Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.
- "Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.
- "Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.
- "Valid and Current License or Certificate" means a current full or permanent certificate or license issued by another state or jurisdiction. This means the educator is fully credentialed by having met all of the requirements for full licensure or certification in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 <u>Issuance of a Standard Certificate</u>

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a <u>School Social Worker</u> Standard Certificate as a <u>School Social Worker</u> to an <u>educator applicant</u> who <u>has met the following</u>:

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

4.0 Additional Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An educator shall also meet the following:
 - 4.1.2 Master's degree in Social Work (MSW) from a regionally accredited college or university; and
 - 4.1.2 Two years successful full time work experience as a social worker; and
 - 4.1.3 One year of supervised experience in a school setting, or a one year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.
- 4.1 An applicant for a School Social Worker Standard Certificate shall have satisfied the requirements in subsections 4.1.1 through 4.1.3.
 - 4.1.1 The applicant shall have earned a master's degree in social work (MSW) from a Regionally Accredited college or university.
 - 4.1.2 The applicant shall hold a license to practice as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners that is in good standing.
 - 4.1.3 The applicant shall have completed two years of full-time work experience as a social worker as approved by the Department. Post-degree supervised clinical social work experience completed in order to obtain an LCSW license shall count as work experience.

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a school social worker in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 and 5.1.2 in order for the Department to issue a School Social Worker Standard Certificate.
 - 5.1.1 The applicant shall have earned a master's degree in social work (MSW) from a Regionally Accredited college or university.
 - 5.1.2 The applicant shall hold a license to practice as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners that is in good standing.

6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the School Social Worker Standard Certificate under subsection 3.1.1, the following documentation is required:
 - 6.2.1 Official transcript from the applicant's Regionally Accredited college or university.

- 6.2.1.1 <u>Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or</u>
- 6.2.1.2 Sealed paper transcripts may be submitted.
- 6.2.1.3 The Department will not accept copies of transcripts; and
- 6.2.2 Documentation that the applicant is licensed to practice and is in good standing as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners; and
- 6.2.3 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3; and
- 6.2.4 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the School Social Worker Standard Certificate under subsection 3.1.2, the following documentation is required:
 - 6.3.1 An official copy of the Valid and Current License or Certificate; and
 - 6.3.2 Documentation that the applicant is licensed to practice and is in good standing as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners; and
 - 6.3.3 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Social Worker Standard Certificate under subsection 3.1.3, the following documentation is required:
 - 6.4.1 An official copy of the Valid and Current License or Certificate; and
 - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
 - 6.4.2.1 <u>Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or</u>
 - 6.4.2.2 Sealed paper transcripts may be submitted.
 - 6.4.2.3 The Department will not accept copies of transcripts; and
 - 6.4.3 Documentation that the applicant is licensed to practice and is in good standing as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners; and
 - 6.4.4 Additional documentation as required by the Department.

7.0 Validity of a Standard Certificate

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

8.0 Requirements Related to the Retention of a School Social Worker Standard Certificate

- 8.1 In order to retain a School Social Worker Standard Certificate, the Educator shall:
 - 8.1.1 Hold a license to practice as a LCSW or LMSW issued by the Delaware Board of Social Work Examiners that is in good standing; and
 - 8.1.2 Annually affirm and document to the Department that the Educator satisfies the requirement in subsection 8.1.1.
- 8.2 If an Educator fails to meet any of the requirements related to retaining a School Social Worker Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsection 8.1 apply to all Educators regardless of the date the School Social Worker Standard Certificate was issued to them.

9.0 Disciplinary Action

9.1 An Educator's School Social Worker Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a School Social Worker Standard Certificate as provided in Section 8.0.

- 9.2 An Educator's School Social Worker Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

10.0 Secretary of Education Review

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

11.0 Past Certificate Recognized

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6001(c) and 6010; (7 **Del.C.** §§6001(c) and 6010)

SECRETARY'S ORDER NO.: 2021-A-0005

RE: Approving Final New Regulation: 7 DE Admin. Code 1151: Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses ("HFC Regulations")

Date of Issuance: February 15, 2021

Effective Date of the Amendment: March 11, 2021

1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed new regulation to be codified in the Delaware Administrative Code as follows: 7 DE Admin. Code 1151: *Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses*

("HFC Regulation"). The Department's objective of this proposed action is to regulate the use and manufacturing of hydrofluorocarbons ("HFCs") through this promulgation. This regulatory development process was initiated pursuant to the *Governor's Directive on Delaware to Eliminate HFCs to Confront Climate Change* (June 30, 2019), and House Concurrent Resolution 60 (Passed June 30, 2019), requiring the Department to regulate the manufacturing and use of HFCs in Delaware.

The proposed HFC Regulation establishes the prohibitions and requirements for the use and manufacture of HFCs in the State of Delaware, according to their specific end usage, which includes air conditioning and refrigeration equipment, aerosol propellants, and foam-end uses, and adopts specific United States Environmental Protection Agency ("EPA") Significant New Alternatives Policy Program ("SNAP") prohibitions. The proposed new HFC Regulation is also designed to support Greenhouse Gas ("GHG") emission reductions in the State of Delaware, and to offer Delawareans an increasing quality of life through the reduction of air pollution, increased economic opportunities, and mitigation of the detrimental effects of climate change. Currently, through Governor Carney's commitment to participate in achieving the goals of the United States Climate Alliance, Delaware has committed to reduce its GHG emissions by 26 to 28% by 2025, compared to 2005 levels.

As HFC emissions are growing at a rapid rate in Delaware, the proposed new HFC Regulation is an important part of achieving Delaware's GHG reduction goals, as well as mitigating the environmental, social, and health risks related to climate change. Climate change poses a significant threat especially to Delaware as a coastal state, which has the lowest average elevation in the country. Many of Delaware's industries and infrastructure are vulnerable to the effects of climate change, including, but certainly not limited to, tourism, real estate, agriculture, wastewater, and transportation. Further, human health, air and water quality, and ecosystems are all at increasing risk with the strengthening consequences of climate change.

To serve as background, HFCs are gaseous compounds used across various economic sectors in applications for air conditioning, refrigeration, foam-blowing, solvents, and aerosols. HFCs were identified in the 2009 GHG Endangerment Finding by EPA as one of six GHGs in the atmosphere that "threaten the public health and welfare of current and future generations." As noted above, HFC emissions are GHGs that can have a warming effect that is hundreds to thousands times that of carbon dioxide ("CO₂").

HFCs were originally introduced as substitution ozone-depleting substances ("ODS"), within the same applications, as part of the phase-out established in accordance with the Montreal Protocol, a landmark multilateral environmental agreement adopted by the United Nations on September 15, 1987 that regulates the production and consumption of nearly 100 man-made chemicals (referred to therein as ODS). When released to the atmosphere, the ODS damage the stratospheric ozone layer, Earth's protective shield that protects humans and the environment from harmful levels of ultraviolet radiation from the sun.

The Montreal Protocol phases down the consumption and production of the different ODS in a stepwise manner, with different timetables for developed and developing countries. Under this treaty, all parties have specific responsibilities related to the phase out of the different groups of ODS, control of ODS trade, annual reporting of data, national licensing systems to control ODS imports and exports, and other related matters. The treaty evolves over time, in light of new scientific, technical and economic developments, and it continues to be amended and adjusted. Under the Montreal Protocol, chlorofluorocarbons ("CFCs") were recognized as ODS, and the EPA defined a phase-out schedule for the different classes of ODS (Class I and Class II). The phase-out targets the ODS that are produced or imported in the country, and the original schedule was amended over time.

HFCs were developed to address the phase-out of HCFCs¹ (same applications), however, they were recognized as GHGs with high Global Warming Potentials ("GWPs). Because of the increasing urgency of climate action, the Kigali Amendment to the Montreal Protocol requires the participating countries to cut their production and consumption of HFCs by more than 80% by 2050.

Hydrofluorocarbons ("HFCs") is defined in Section 3.0 as "a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon." Hydrochlorofluorocarbons ("HCFCs") are not covered under this regulation, and thus were not formally defined within the HFC Regulation. For clarification, however, the EPA defines HCFCs as "a compound consisting of hydrogen, chlorine, fluorine, and carbon. HCFCs contain chlorine, and thus deplete stratospheric ozone, with ozone depletion potentials ranging from 0.01 to 0.1. HCFCs were used in a wide variety of applications, including refrigeration, air conditioning, foam blowing, solvents, and more, and are subject to a phase-out schedule.

While the United States did not ratify the Kigali Amendment, references to the same are contained within both the Department's Technical Support Document and its Regulatory Impact Statement. The reference was made to emphasize the international interest in the phase-down of high GWP HFCs, and to express the need for industry in the United States to adopt similar restrictions to remain competitive while assuring emissions reductions in a critical segment of GHGs.

The EPA sought to phase-down the use and manufacturing of these high GWP pollutants through its SNAP program. On August 8, 2017, the United States Court of Appeals for the District of Columbia Circuit limited EPA's ability to require replacement of HFCs (*Mexichem v. EPA*, No.15-1328, Aug. 8, 2017). The Court subsequently clarified its previous ruling with regard to EPA's authority to require a second substitution in place of HFCs (*Nat.Res.Def. Council v. Wheeler, et al.*, No. 18-1172, April 7, 2020). Although legal actions remain ongoing at the federal level to defend the SNAP rules, state action is required at this time to maintain HFCs' prohibitions schedule, in line with the vacated SNAP rules.

With regard to applicability, the proposed HFC Regulations will establish prohibitions for any person who sells, offers for sale, leases, rents, installs, uses or manufactures in the State of Delaware, any product or equipment that uses a substance in any of the end-uses listed under the list of prohibited substances covered by the proposed regulation. As a flexibility mechanism, the Department has proposed language to allow the use of product or equipment containing a prohibited substance if the product or equipment was acquired prior to the applicable effective date of prohibition, unless an existing system is retrofit. Additionally, the Department has proposed regulatory language to clarify that, unless an operation constitutes a retrofit or reclassifies a system as "new," the proposed HFC Regulations do not prevent the use of a prohibited substance in the servicing, maintenance and repair operations of existing equipment, in any end-use covered by the proposed new regulation. The Department has also proposed language to allow the importation, exportation, installation, and use of product or equipment containing a prohibited substance after the specified date of prohibition, only if the product or equipment was manufactured prior to the applicable date of prohibition.

The Department has listed each prohibited substance and the effective date of its prohibition, according to its specific end-use, in its Technical Support Document dated April 2020 (see p.9, Part III, Section B, Table 2), that was entered into the hearing record ("Record") as one of the Department's Exhibits at the time of the public hearing held on April 23, 2020. The prohibitions and effective dates detailed in the proposed new regulation were informed by the EPA SNAP Rules 20 and 21 (intended phase-down schedule for the different substances), which took into consideration many economic constraints for the industry, along with the availability of viable and cost-effective low GWP alternatives. It should be noted that the prohibition dates were subsequently revised under the proposed new regulation, to accommodate for the time necessitated for the Department's regulatory development process.

Additionally, the Department has allowed a one-year extension (revised to January 1, 2022) for the new vending machine end-use category, before the effective date of prohibition for all substances covered under this end-use. This extension resulted from industry stakeholders informing the Department that the current preferred low GWP refrigerant alternative (R-290) for the vending machine industry is currently designated as a flammable chemical (A-3) by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. ("ASHRAE"), Guideline 34. UL² 541 and ASHRAE 15 have authority over products containing this chemical and their placement within buildings, and pursuant to these requirements, in the United States, vending machines with any refrigerant other than A1 (non-flammable) classification may not be placed in locations of ingress, egress, hallways, or lobby areas of any buildings, at the risk of severe liabilities in case of incident³. During the course of the Department's regulatory development process for this promulgation, the industry informed the Department of the current work with UL and ASHRAE that may allow R-290 to work within the safety standards, by modifying UL541 and ASHRAE 15. For these reasons, the Department is proposing to allow the industry a one-year extension to establish their compliance pathway.

² UL (Underwriters Laboratories) is a standards-setting organization that develops and publishes consensus standards that guide the safety, performance and sustainability for industries from household appliances to batteries to environment, to cybersecurity to building materials.

³ UL 541 and ASHRAE 15 refer to specific standards set by external standard-setting organizations (i.e., UL, ASHRAE) that some manufacturers, covered in this regulation, already comply with and that include considerations that informed the rulemaking development (i.e., safety, flammability, and labeling standards).

The proposed HFC Regulations also establish disclosure requirements for manufacturers of the products and equipment covered under the new regulation. By requiring a disclosure statement or label to be available to the buyer of products and/or equipment covered under this proposed new regulation, the Department aims to ensure that the buyer can verify that their purchase follows State regulations. Furthermore, in setting the disclosure statement requirements, the Department is proposing language to allow flexibility for managers to comply, while offering customers transparent and easily accessible information regarding their purchase.

The Department has the statutory basis and legal authority to promulgate new regulations, specifically, to regulate the use of HFCs in Delaware with the proposed 7 DE Admin. Code 1151: *Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses*, pursuant to 7 *Del.C.* §§6001(c) and 6010, which authorize the Department to adopt rules to control air pollution as necessary to protect the public health, safety, and welfare. As previously noted, this new regulation was developed by the Department, pursuant to the *Governor's Directive on Delaware to Eliminate HFCs to Confront Climate Change* (June 30, 2019), and House Concurrent Resolution 60 (Passed June 30, 2019), which requires the Department to regulate the manufacturing and use of HFCs in Delaware.

The Department published the initial proposed new HFC Regulations in the April 1, 2020 *Delaware Register of Regulations*. Thereafter, the virtual public hearing regarding this matter was held on April 23, 2020. Members of the public attended the April 23, 2020 virtual public hearing. Due to the level of public interest in this matter, the Record remained open for receipt of public comment subsequent to the hearing through May 31, 2020. 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.

Written comment was received by the Department concerning this proposed new regulation, during both the pre- and post-hearing phases of this promulgation. Subsequent to the close of the Record, the Department's Division of Air Quality ("DAQ") prepared a Technical Response Memorandum ("TRM"), at the request of Hearing Officer Lisa A. Vest. This TRM, dated June 25, 2020, provides a summary of the comments received by the Department, and responses to the written comments received from the public concerning the proposed new HFC Regulations.

Subsequent to the close of the public comment period, the Polyisocyanurate Insulation Manufacturers Association ("PIMA") provided the DAQ with its comments that were submitted to the EPA regarding the EPA SNAP Proposed Rule 23 (for which a Notice of Proposed Rulemaking was released by EPA on June 12, 2020). These supplemental comments were provided to DAQ by PIMA as a courtesy, so that the Department would be aware of this submission, and to provide DAQ with additional information on not only the proposed EPA SNAP Rule 23, but also PIMA's concerns as to the availability of commercialized products with low GWP formulations for covered end-uses in the global markets. The DAQ provided Hearing Officer Vest with a Supplemental TRM, dated August 5, 2020, for the benefit of the Record generated in this matter, and to specifically acknowledge receipt of PIMA's additional submission regarding this promulgation.

Hearing Officer Vest prepared her Hearing Officer's Report, dated February 8, 2021 ("Report"), which expressly incorporated into the Record the following documents: (a) the Department's revised proposed new HFC Regulation; (b) the Department's Technical Support Memorandum (April 2020); (c) DAQ's initial TRM (June 25, 2020); (d) DAQ's Supplemental TRM (August 5, 2020); and (e) Summary Sheet of all proposed revisions to the HFC Regulations, and attached the same to her Report as Appendices "A" through "E," respectively. The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's *revised* proposed new HFC Regulation, as attached to the Report as Appendix "A."

Reasons and Conclusions

The new HFC Regulation proposed by the Department is to establish the prohibitions and requirements for the use and manufacture of HFCs in the State of Delaware, according to their specific end usage, which includes air conditioning and refrigeration equipment, aerosol propellants, and foam-end uses, and to adopt specific EPA SNAP prohibitions. The proposed HFC Regulation is also designed to support GHG emission reductions in the State of Delaware, and to offer Delawareans an increasing quality of life through the reduction of air pollution, increased economic opportunities, and mitigation of the detrimental effects of climate change.

With regard to the comments received by the Department that suggest the proposed new regulation will only add financial burden to Delawareans, DAQ notes in its TRM of June 25, 2020 that many flexible mechanisms have

been included in the language of the proposed new regulation to minimize the burden on Delaware's residents and small businesses. First, this regulation does not include recordkeeping requirements, nor does it cover motor vehicle air conditioning end-uses or household equipment. Most of the compliance burdens are expected to rest on manufacturers of the regulated products and equipment, which are, in majority, large enterprises.

Additionally, the proposed new regulation does not require users to cease the use of their equipment or product(s) acquired prior to its effective date of prohibition, unless said equipment is retrofit or classified (or reclassified) as new. The proposed regulation also allows for any covered equipment or product manufactured prior to the applicable effective date of prohibition to be sold, imported, exported, distributed, installed and used after its effective date of prohibition.

Additionally, DAQ's aforementioned TRM notes that the variable difference in capital expenses, when replacing conventional equipment with equipment that is in compliance with the proposed new regulation, is projected to decrease as the economies of scale set in (as the demand for low GWP alternatives grows at the global scale). Thus, most small businesses that will change their equipment as part of the regular life cycle of their operations are likely to pay lower or smaller incremental costs over time. To encourage and accelerate the transition to low GWP, the Department has also designed an incentives program, the *Cool Switch Low Impact Refrigerant Program*, that will help pay the upfront cost of the new or retrofitted equipment using low GWP refrigerants.

Moreover, the aforementioned TRM notes that, according to the EPA SNAP Rules 20 and 21 screening analyses, the probability of having one small business in Delaware incurring costs in excess of 1% or 3% of their revenues, on a population basis, is less than 0.0003%. Based on this estimate, and DAQ's strong stakeholder engagement process which prompted the inclusion of the flexibility mechanisms detailed above, the Department believes that the proposed new HFC Regulation is unlikely to add substantive financial burden to Delawareans.

The written comments received from the regulated community concerning this proposed promulgation are fully responded to, in detail, within DAQ's initial TRM referenced above. It should be noted that the Department will be developing a guidance document to assist the regulated community with regard to compliance issues associated with this new regulation. This guidance document will include, but will certainly not be limited to, the acceptable formats for disclosure statements for the covered end-uses; considerations for the easily recognizable date code formats; and considerations for how to treat the exemptions listed under Section 7.0 (in terms of disclosure statement requirements).

In comments submitted to the Department by the American Chemistry Council ("ACC") Center for the Polyurethanes Industry ("CPI"), suggestions were made for modifications of eleven stated definitions, as contained within the initially proposed HFC Regulations, plus the addition of one new definition. Honeywell Fluorine Products, another commenter that congratulated Delaware's initiative to regulate HFCs in a consistent manner with other States and agreed with the necessity to transition away from high GWP HFCs (and further commented that technologies using environmentally preferable HFC alternatives are often also more energy efficient than traditional systems, thus offering lower customer costs and increased competitiveness), also supported changes to the polyurethane and foam end-uses definitions as suggested by ACC CPI.

Subsequent to the close of the public comment period in this matter, the Department received input from Paul Ashford, an expert from the United Nations Environment Programe's ("UNEP") Foams Technical Options Committee ("FTOC"). Mr. Ashford is also listed as one of the co-authors of the latest 2018 FTOC reports from UNEP. Mr. Ashford has provided DAQ with suggestions that clarify the proposed definitions as set forth in the HFC Regulations. The DAQ's TRM notes that the Department believes other states are in the process of adopting similar regulations that will include these definition clarifications. The TRM further notes that the USCA model rule has also been amended to include these definitions.

In light of the above, the DAQ is recommending revisions be made to the Department's initial proposed HFC Regulation, specifically, to incorporate technical clarifications to the following terms, as requested by the Center for the Polyurethanes Industry, and as verified by the above referenced industry expert: Polyurethane; Flexible Polyurethane; Foam Blowing Agent; Integral Skin Polyurethane; Rigid Polyurethane Appliance Foam; Rigid Polyurethane Commercial Refrigeration and Sandwich Panels; Rigid Polyurethane High-Pressure Two-Component Spray Foam; Rigid Polyurethane Low-Pressure Two-Component Spray Foam; Rigid Polyurethane Marine Flotation Foam; Rigid Polyurethane One-Component Foam Sealants; and Rigid Polyurethane Slabstock and Other

In addition to requesting the aforementioned definition modifications, ACC CPI further noted that, although they support the "sell-through" provision proposed in subsection 4.1.4 of the proposed regulation, the term "on site" may be too limiting and may not include factory uses of polyurethane systems. The Department agrees with the

removal of this term from the above referenced subsection.

As previously noted, a Summary Sheet of all revisions being proposed by DAQ during the post-hearing phase of this promulgation (the revisions to eleven definitions in Section 3.0, the revision of "on site" considerations as set forth in Subsection 4.1.4, and the revisions to the effective dates of prohibition in Section 6.0) is attached hereto as Attachment "E," for ease of reference. I concur with the recommended, non-substantive revisions, as they provide further clarification and a greater understanding of the proposed HFC Regulation for the benefit of the regulated community, for the reasons noted above.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the *revised* proposed new regulation to be codified in the Delaware Administrative Code as follows: 7 DE Admin. Code 1151: *Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses*, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the *revised* proposed HFC Regulation, which establishes the prohibitions and requirements for the use and manufacture of HFCs in the State of Delaware, according to their specific end usage, which includes air conditioning and refrigeration equipment, aerosol propellants, and foam-end uses, and adopts specific EPA SNAP prohibitions. Moreover, the *revised* proposed new HFC Regulation is also designed to support GHG emission reductions in the State of Delaware and offers Delawareans an increasing quality of life through the reduction of air pollution, increased economic opportunities, and mitigation of the detrimental effects of climate change, as noted above.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that the revised proposed HFC Regulation be promulgated as final.

In conclusion, the following reasons and conclusions are hereby entered:

- 1. The Department has the statutory basis and legal authority to act with regard to the **revised** proposed 7 DE Admin. Code 1151: *Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses*, pursuant to 7 *Del.C.* §§6001(c) and 6010, which authorize the Department to adopt rules to control air pollution as necessary to protect the public health, safety, and welfare;
- 2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting the *revised* proposed new HFC Regulation as final;
- 3. The Department provided adequate public notice of the proposed new HFC Regulation and all proceedings in a manner required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the proposed new HFC Regulation subsequent to the time of the public hearing (through May 31, 2020), in order to consider all public comment on the same before making any final decision:
- 4. Promulgation of the **revised** proposed new HFC Regulation, as set forth herein, will enable the Department to establish the prohibitions and requirements for the use and manufacture of HFCs in the State of Delaware, according to their specific end usage. Furthermore, the **revised** proposed new HFC Regulation supports GHG emission reductions in the State of Delaware and offers Delawareans an increasing quality of life through the reduction of air pollution, increased economic opportunities, and mitigation of the detrimental effects of climate change;
- 5. The Department has reviewed the **revised** proposed new HFC Regulation in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
- 6. The Department's proposed new HFC Regulation, as initially published in the April 1, 2020 *Delaware Register of Regulations*, and then subsequently *revised* as set forth in Appendix "A" hereto, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, the same should be approved as a final new regulation, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;
- 7. The Hearing Officer's Report, including its established Record and the recommended *revised* proposed new HFC Regulation, as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
- 8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
 - 9. The Department shall submit this Order approving as final the *revised* proposed new HFC Regulation to

the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.

Shawn M. Garvin Secretary

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

1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Sections 6006 and 6010 (7 **Del.C.** §§6006 & 6010) 7 **DE Admin. Code** 7201

Secretary's Order No.: 2021-WSS-0004

RE: Approving Final Regulatory Amendments to 7 DE Admin. Code 7201:
Regulations Governing the Control of Water Pollution, Part 2 Special Conditions for Stormwater Discharges from
Construction Activities

Date of Issuance: February 15, 2021 Effective Date of the Amendment: March 11, 2021

7201 Regulations Governing the Control of Water Pollution

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 7201: Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Stormwater Discharges from Construction Activities ("Amendments" or "Water Pollution Regulations"). This action is being taken by the Department at this time in order to support the development of a National Pollutant Discharge Elimination System ("NPDES") Construction General Permit ("CGP") by (1) removing existing conflicting regulatory language; (2) adding "effective" and "expiration" dates; (3) eliminating the post-rain event inspection requirement; (4) removing the "transfer of authorization" option; and (5) correcting existing clerical errors.

Areas that engage in construction activities that result in land disturbance equal to or greater than one (1.0) acre and that discharge stormwater to waters of the state are to be covered under the NPDES CGP. The CGP will provide permit coverage for a broad range of construction projects that meet the minimum land disturbance threshold, as defined by the federal CGP.

The NPDES CGP is being converted from a permit by regulation (that currently falls under the above noted Water Pollution Regulations), to a stand-alone general permit authorizing discharges from construction. Without the aforementioned proposed Amendments, there will be conflicts between the regulatory language currently existent in the Water Pollution Regulations and the newly effective CGP. The proposed Amendments will enable Delaware to maintain the enabling language for the CGP and eliminate conflicts for this and future CGPs in Delaware.

The purpose of the federal NPDES stormwater program is to control pollution generated from runoff associated with industrial activity, including construction, and municipal separate storm sewer systems. As noted above, an individual or general permit is required for all construction activity in the state of Delaware with a planned total disturbance of one (1.0) acre or greater, as well as activities that are less than one acre, but part of a larger common plan of development or sale where the total disturbance is greater than one acre.

Conditions of the CGP include compliance with the requirements of the approved sediment and stormwater management plan, as well as visual monitoring/inspections, recordkeeping, and reporting requirements. Sediment is the primary pollutant to be controlled from construction sites. The volume of stormwater discharge from construction sites varies and will depend on the size of the site, weather conditions, as well as other factors.

The Department has the statutory basis and legal authority to act with regard to the proposed Amendments and has the statutory authority for permit issuance of Delaware's CGP, through Section 402 of the federal *Clean Water Act*, as amended, 7 *Del.C.* Chapter 60, Section 6003, and the Memorandum of Agreement ("MOA") authorizing Delaware to implement the NPDES program.

The CGP is a state permit that is subject to both federal and state regulations. The *Clean Water Act* and federal regulations provide the federal permit requirements. The CGP shall be administered in accordance with the following state requirements:

- 7 Del.C. Ch. 60, Environmental Control;
- 7 Del.C. Ch. 40, Erosion and Sedimentation Control;
- 7 DE Admin. Code 7201, Section 9.2;
- 7 DE Admin. Code 5101, Sediment and Stormwater Regulations; and
- Delaware Erosion & Sediment Control (ESC) Handbook, as amended.

Currently, Delaware's existing Water Pollution Regulations are not consistent with 40 CFR 122.46(a), as it has no issuance, effective, or expiration dates, and does not ensure that it is effective for a term not to exceed more than five (5) years. To address these deficiencies, the Department's Division of Watershed Stewardship, Sediment and Stormwater Program ("WSS-SSP"), has developed the Delaware CGP as a true general permit, rather than a permit by regulation.

The Department's proposed Amendments minimize duplication with the CGP and update administrative processes. The proposed CGP allows for closer alignment of construction stormwater discharge requirements with the United States Environmental Protection Agency ("EPA") and states such as Delaware that are located within EPA Region 3. The alignment of requirements is an important benefit to permittees who work in multiple jurisdictions, as it helps maintain understanding and compliance.

The CGP will expire after five (5) years, thus requiring a new permit to be reissued at that time. This is a benefit to the regulated community, as there is an opportunity to comment on changes to the CGP once every five years.

Insofar as anticipated impacts to Delegated Agencies, including DelDOT, the Department notes that there will be no anticipated impacts on the Delegated Agencies' abilities to implement the state's Sediment and Stormwater Program. When in the role of project owner, Delegated Agencies will see the same effects indicated above (i.e., improved alignment with federal and regional entities, reduced reporting requirement, and regular opportunities to provide comments during review and reissuance periods).

The Department published its proposed Amendments, along with the draft CGP, in the November 1, 2020 *Delaware Register of Regulations*. Public notice of the Department's proposed actions in this matter, as referenced above, were also published in both the *News Journal* and the *Delaware State News* on November 8, 2020. Interested persons were invited to submit their written comment on the draft permit and the proposed Amendments. Thereafter, the virtual public hearing regarding this matter was held on December 1, 2020.

Members of public attended the December 1, 2020 virtual public hearing, and verbal comment was received at that time. It should be noted that the verbal comments received during the public hearing pertained solely to the

Delaware CGP. No members of the public offered comment on the Department's proposed Amendments at the time of the hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on December 16, 2020, with additional written comments being received from the public by the Department during the post-hearing phase of this promulgation. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the close of the Record, the Department's Division of WSS-SSP staff prepared a Technical Response Memorandum ("TRM"), which responded to the comments received from the public concerning the Department's proposed Amendments. The TRM also incorporated a CGP Fact Sheet that provides a very detailed description of the CGP permit development performed by the Department and offers the requisite reasoning as to why a general permit for constructive activities is the appropriate approach for the Department to take in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 8, 2021 ("Report"), which expressly incorporated the Department's proposed Amendments, along with the aforementioned TRM (with attachment) and draft CGP, into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the Department's proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

The Department is proposing the aforementioned Amendments to Delaware's existing Water Pollution Regulations to support the development of the NPDES CGP by removing existing conflicting regulatory language, adding "effective" and "expiration" dates, eliminating the post-rain event inspection requirement, removing the "transfer of authorization" option, and correcting existing clerical errors. As noted above, the Amendments support the development of a stand-alone CGP, which will be required for all construction activity in Delaware with a planned total disturbance of one (1.0) acre or greater, as well as activities that are less than one acre but part of a larger common plan of development or sale where the total disturbance is greater than one acre. The CGP will provide permit coverage for a broad range of construction projects that meet the minimum land disturbance threshold, as defined by the federal CGP.

All comments received by the Department in this matter were fully responded to in the aforementioned TRM of January 20, 2021. It should be noted that no changes were made to the proposed Amendments subsequent to the public hearing held on December 1, 2020. Revisions were made to the draft CGP prior to its finalization, in response to the public comments received in this matter, in order to correct prior error, and to provide greater clarity to the regulated community within that document.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 7201: Regulations Governing the Control of Water Pollution, Part 2 - Special Conditions for Stormwater Discharges from Construction Activities, are well-supported. I further find that the Department's experts fully developed the Record to support adoption of these proposed Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

In conclusion, the following reasons and conclusions are hereby entered:

- 1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 7201: Regulations Governing the Control of Water Pollution, Part 2 Special Conditions for Stormwater Discharges from Construction Activities;
- 2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed Amendments as final;

- 3. The Department provided adequate public notice of the proposed Amendments, and all proceedings in a manner required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the virtual public hearing held on December 1, 2020, and during the 15 days subsequent to the hearing (through December 16, 2020), in order to consider all public comment on the same before making any final decision;
- 4. Promulgation of the proposed Amendments to 7 DE Admin. Code 7201: Regulations Governing the Control of Water Pollution, Part 2 Special Conditions for Stormwater Discharges from Construction Activities, will enable Delaware to control pollution generated from runoff associated with construction activity that is considered a subset of industrial activity. Furthermore, the aforementioned Amendments will support the Department's development of the NPDES CGP by (1) removing existing conflicting regulatory language; (2) adding "effective" and "expiration" dates; (3) eliminating the post-rain event inspection requirement; (4) removing the "transfer of authorization" option; and (5) correcting existing clerical errors;
- 5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
- 6. The Department's Hearing Officer's Report, including its established Record and the recommended proposed Amendments as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
- 7. The Department's proposed Amendments, as published in the November 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, and shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;
- 8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
- 9. The Department shall submit this Order approving as final the proposed Amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.

Shawn M. Garvin Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the November 2020 issue of the *Register* at page 468 (24 DE Reg. 468). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

7201 Regulations Governing the Control of Water Pollution

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION 1900 BOARD OF NURSING

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

FINAL ORDER ADOPTING REGULATION CHANGES

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 *Del. C.* § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to add failing to practice nursing without discrimination to the list of examples of unprofessional conduct.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on October 1, 2020 a public hearing was held on November 18, 2020. 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 Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. On December 2, 2020, Nemours Children's Health System (Nemours) submitted written public comment.

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

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

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

Board Exhibit 3 – December 2, 2020 letter from Nemours Children's Health System offering support for the regulation in general but requesting the Board add "gender identity and expression" to the proposed regulation.

There was no verbal testimony given at the public hearing on November 18, 2020, and no written comments were received by the Board during the initial thirty-day public comment period. Following the hearing, Nemours Children's Health System submitted written public comment requesting the Board add "gender identity and expression" to the language of proposed regulation.

FINDINGS OF FACT AND CONCLUSIONS

- 1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
- 2. There were no public comments provided to the Board during the initial 30 day written public comment period, or the public hearing.
- 3. On December 2, 2020, Nemours Children's Health System submitted written public comment requesting the Board add "gender identity and expression" to the language of proposed regulation.
- 4. On February 10, 2021, the Board deliberated on the proposed regulation, including the written public comment submitted by Nemours. The Board acknowledged the importance of recognizing all patient populations, including those most vulnerable to discrimination, and agreed with the suggestion from Nemours to include "gender identity and expression" in the proposed regulation. The Board noted that the same language pertaining to discrimination is included in Regulation 7.3.1.7, so it would be appropriate to add "gender identity and expression" there as well. Insofar as adding the proposed language would be a substantive change, the Board voted to move forward with the regulation as proposed but add the language suggested by Nemours immediately thereafter. The Board currently has additional regulation changes it intends to propose so will include "gender identity and expression" in those.
- 5. Pursuant to 24 *Del. C.* § 1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
- 6. The proposed amendments seek to add failing to practice nursing without discrimination to the list of examples of unprofessional conduct.
 - 7. The public was given notice and an opportunity to provide the Board with comments in writing and by

testimony at the public hearing on the proposed changes to the Board's rules and regulations.

8. For the reasons stated above, the Board will move forward with the regulation as proposed but include the language suggested by Nemours in the next proposed regulatory change.

DECISION AND ORDER CONCERNING THE REGULATIONS

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

IT IS SO ORDERED this 10th day of February 2021 by the Delaware Board of Nursing.

Ronald R. Castaldo, PhD, CRNA, APRN, President

Megan Williams, DNP, FNP-C, RN (absent)

/S/ Pamela James, RN

Kenyette Walters, LPN (absent)

/S/ Gayle Melvin, Public Member

/S/ Sandra Glenn-Vernon, RN

/S/ Michael Brothers, Public Member

/S/ Kimberly Hopkins, RN, Vice President

/S/ Tiarra Davis, Public Member

/S/ Carol Abdill, RN

/S/ William Hare, Public Member

/S/ Marlo Silverio. RN

/S/ Prameela Kaza, Public Member

1900 Board of Nursing

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

^{*}Please note that no changes were made to the regulation as originally proposed and published in the October 2020 issue of the *Register* at page 334 (24 DE Reg. 334). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

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

GENERAL NOTICE

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

1. TITLE OF PERMIT:

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

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

The Delaware Construction General Permit (CGP) under the National Pollutant Discharge Elimination System (NPDES) program is being converted from a permit by regulation, which currently falls under 7 **DE Admin. Code** 7201 subsection 9.2 to a stand-alone general permit authorizing discharges from construction. The Delaware CGP and revisions to 7 **DE Admin. Code** 7201 subsection 9.2 were public noticed concurrently on November 1, 2020 and a concurrent public hearing conducted on December 1, 2020, with comments received until December 16, 2020. All comments received have been considered in the Delaware CGP and 7 **DE Admin. Code** 7201 subsection 9.2. The effective date of the Delaware CGP will be concurrent with the effective date of proposed revisions to 7 **DE Admin. Code** 7201 subsection 9.2, March 11, 2021. A CGP fact sheet to assist permittees in their understanding of the permit and provide a synopsis of comments received and responses is provided as well.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

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

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §6010 40 CFR §123.1

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None

NPDES Construction General Permit

http://regulations.delaware.gov/register/march2021/general/NPDES Construction General Permit.pdf

NPDES Construction General Permit (CGP) Fact Sheet

http://regulations.delaware.gov/register/march2021/general/NPDES Construction General Permit Fact Sheet.pdf

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE

The Delaware River Basin Commission held its quarterly public hearing on **Wednesday**, **February 10**, **2021**. In light of COVID-19 mitigation measures in effect for DRBC member states, the hearing was held remotely. Please check the Commission's website, <u>www.drbc.gov</u>, for details regarding the draft docket decisions that were the subjects of the public hearing.

The Commission's quarterly business meeting will be held remotely on **Wednesday, March 10, 2021**, beginning at **10:30 a.m.** Please check the Commission's website, <u>www.drbc.gov</u>, for details about the meeting format and how to attend.

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

DEPARTMENT OF AGRICULTURE

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 proposed regulations is to amend Rules 2.3, 2.5.1.17.1, 2.5.1.22, 2.10, 3.4.1.15, 6.1.7, 7.3.4, 11.4, 11.14, 15.6.3, and 15.32. 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, 2021 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, 2021. Written materials submitted will be available for inspection at the above address.

On or after April 1, 2021, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

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

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

CALENDAR OF EVENTS/HEARING NOTICES

of the public can join the meeting via the web or telephone.

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DELAWARE HEALTH CARE COMMISSION

PUBLIC NOTICE

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund

Pursuant to 16 *Del. C.* § 9903, the Delaware Health Care Commission, Department of Health and Social Services, is proposing revisions to the regulations governing the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund. On March 1, 2021, the Delaware Health Care Commission plans to publish as "proposed" revisions to the Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund. The regulations revise some of the administrative procedures for the reinsurance program.

Copies of the proposed regulations are available for review in the March 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: http://regulations.delaware.gov or by calling the Delaware Health Care Commission at (302) 255-4750.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Elisabeth Massa by Thursday, April 1, 2021, at:

Elisabeth Massa

Delaware Health Care Commission 1901 North DuPont Highway New Castle, DE 19720

Email: elisabeth.massa@delaware.gov

Phone: (302) 255-4750

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE PUBLIC NOTICE MAGI Methodology

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Modified Adjusted Gross Income (MAGI) Methodology, specifically, to align with recently issued federal guidance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2021. Please identify in the subject line: MAGI Methodology.

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

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE PUBLIC NOTICE

Streamline Application

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Delaware Title XIX Medicaid State Plan regarding the Streamline Application, specifically, *to include questions for the justice-involved population and retroactive eligibility.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2021. Please identify in the subject line: Streamline Application.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE PUBLIC NOTICE

Medication-Assisted Treatment (MAT)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of 31 *Del. C.* § 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Medication-Assisted Treatment (MAT) to move coverage of the MAT benefit from the optional services sections of the Medicaid State Plan to the mandatory services section of the Medicaid State Plan for categorically needy populations, per federal requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on March 31, 2021. Please identify in the subject line: Medication-Assisted Treatment (MAT).

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

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE PUBLIC NOTICE

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 *Del. C.* § 1713(a)(12) and § 1764A, proposes to add a new regulation, clarifying the circumstances under which a prescriber regulated by Title 17 can request a waiver from the Board of the electronic prescribing requirements recently passed by the General Assembly. See HB 115 from the 150th General Assembly (online at https://legis.delaware.gov/SessionLaws/Chapter?id=14937). The Board will hold a public hearing on the proposed regulation change on April 6, 2021 at 3:00 p.m. via Zoom.

Zoom Meeting: https://us02web.zoom.us/j/86730313735

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CALENDAR OF EVENTS/HEARING NOTICES

Meeting ID: 867 3031 3735 (646) 558-8656, 86730313735# US (New York) (301) 715-8592, 86730313735# US (Washington DC)

Written comments should be sent to Devashree Singh, Executive Director of the Delaware Board of Medical Licensure and Discipline, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 21, 2021 pursuant to 29 *Del. C.* § 10118(a).

DIVISION OF PROFESSIONAL REGULATION 3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del. C. § 3506(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to require licensees to update their contact information with 10 days of any such change; clarify that psychological assistant registrants must complete a Board approved internship, not just a 450 hour practicum; enhance continuing education requirements by clarifying the maximum number of credits which may be earned for preparing and presenting scientific papers and posters; clarify the requirements for supervision of psychological assistants and direct applicants; clarify that "face-to-face" can include videoconferencing; and eliminates outdated or inconsistent telehealth and "appendix" regulations.

The Board will hold a public hearing telephonically on April 5, 2021 at 9:00 a.m. Written comments should be sent to Danielle Cross, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until April 20, 2021.

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES
DRIVER SERVICES
PUBLIC NOTICE

2224 Defensive Driving Course, Providers, and Instructors

Pursuant to the authority provided by 21 *Del.C.* §302, 18 *Del.C.* §2503, 29 *Del.C.* §101, and 29 *Del.C.* §8404, the Delaware Division of Motor Vehicles (DMV), adopted the Defensive Driving Course, Providers, and Instructors.

The Division of Motor Vehicles seeks to adopt general revisions to its existing regulation, the Defensive Driving Course, Providers, and Instructors, to address recent legislation, current safety concerns, and allow the provider to present the course in different formats. These collective changes are administrative in nature and serve in part to clarify the intent of the Division as enacted through this regulation.

The DMV will take written comments on these proposed general revisions to Regulation 2224 of Title 2, Delaware Administrative Code, from March 1, 2021 through March 31, 2021. The public may submit their comments to:

Christie Thomas, Executive Secretary, Division of Motor Vehicles (dmv-defensivedriving@delaware.gov) or in writing to her attention, Delaware Department of Transportation (DelDOT) Division of Motor Vehicles PO BOX 698
Dover, DE 19903