
Delaware Register of Regulations

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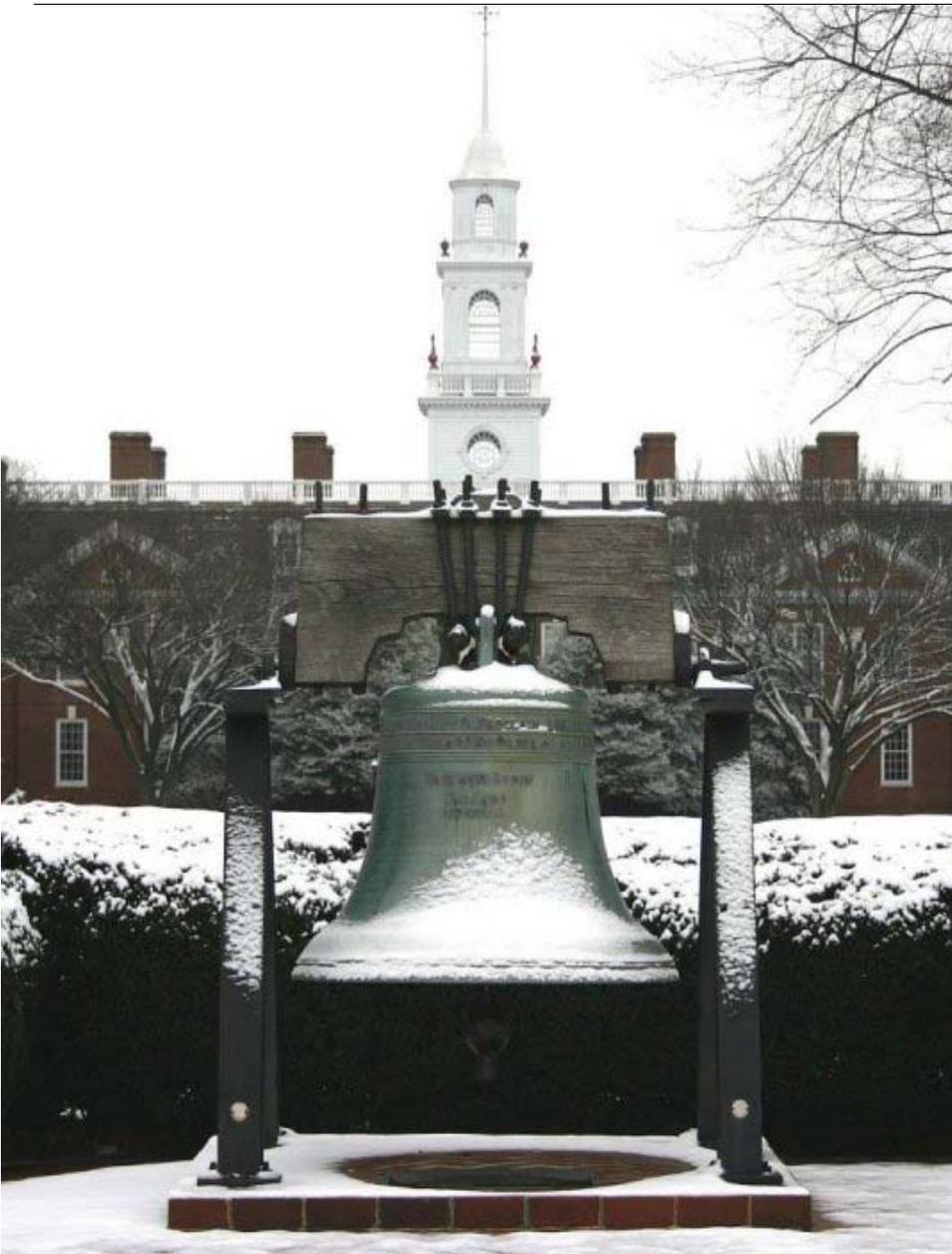
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Emergency
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Hearing Notices



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



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
February 1	January 15	4:30 p.m.
March 1	February 17	4:30 p.m.
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	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. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF AGRICULTURE

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

WHEREAS, the Department of Agriculture (the "Department") has been charged by the Delaware legislature pursuant to 3 **Del.C.** §101(2) & (3) with the power to devise and execute measures necessary for the development of the agricultural interests of the State and to make and adopt rules for the government of the Department of Agriculture; and

WHEREAS, the Department is developing proposed regulations (the "Proposed Regulations") for publication in the *Register of Regulations* to establish appropriate procedures, permitting process, and governing measures for the industrial hemp agricultural program within the State of Delaware; and

WHEREAS, the Secretary finds that adoption of an emergency regulation to govern the industrial hemp program must occur on an emergency basis in order to properly protect the agricultural interests of the State until such time as the Proposed Regulations become effective; and

WHEREAS, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Plant Industries Section, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901; and

WHEREAS, in accordance with the provisions of 29 **Del.C.** §10119(3), this Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the Delaware *Register of Regulations*.

NOW, THEREFORE, IT IS ORDERED this 16th day of December, 2019 that the following "Rules and Regulations for Hemp Program" shall take effect immediately.

SO ORDERED this 16th day of December, 2019.

SECRETARY OF AGRICULTURE

Michael T. Scuse

805 Rules and Regulations for Delaware Domestic Hemp Production Program

1.0 Authority

These regulations are promulgated pursuant to the authority of 3 **Del.C.** §101(3).

2.0 Purpose

- 2.1 The passage of the federal Agriculture Improvement Act of 2018 and legalization of *Cannabis sativa* L. offers an economic opportunity for the State of Delaware and its producers, processors, handlers, and consumers. The purpose of these regulations is to establish appropriate standards, definitions, and requirements for the agricultural production of hemp in the State of Delaware.
- 2.2 To establish a Hemp Production Program in the State of Delaware, the following regulations define how the Department will comply with USDA requirements as indicated in 7 CFR Part 990 Domestic Hemp Program, as the regulatory entity of hemp production in the State of Delaware. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the Delaware Hemp Production Program.

3.0 Definitions

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

“**Acceptable Hemp THC Level**” means decarboxylated delta-9 tetrahydrocannabinol concentration equal to or less than 0.3% on a dry weight basis, as reported by a USDA-approved laboratory. The designated laboratory will also report the Measurement of Uncertainty (MU). 0.3% must fall within the reported MU.

“**Applicant**” means an individual, or an individual authorized to sign for a business entity, who applies for a license.

“**Authorized Representative**” means an individual designated by a licensed producer to act as a point of contact on behalf of the licensed producer. This individual must be indicated on the Delaware Domestic Hemp Production Program application.

“**Cannabis**” means any form the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined or that has been determined to be above the acceptable hemp THC level.

“**Composite Sample**” means a collection of cuttings from an individual lot.

“**Corrective Action Plan**” means a plan set forth by the Department for a licensed producer to correct a negligent violation of, or non-compliance with, a hemp production plan. This term is defined in accordance with the Agriculture Improvement Act of 2018, which mandates certain non-compliance actions to be addressed through corrective action plans.

“**Criminal History Report**” means a report detailing an individual’s conviction status related to a controlled substance within the past 10 years at the state or federal level. The report must be dated within sixty days prior to the date of application submission, and is required to be renewed every three years. A Criminal History Report is required for all key participants.

“**Culpable Mental State Greater Than Negligence**” means to act intentionally, knowingly, willfully, or recklessly or with criminal negligence.

“**Cuttings**” means flowering material of cannabis plant material collected for a sample.

“**Decarboxylated**” means the completion of the chemical reaction that converts THC-acid into delta-9-THC. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and THC-acid. The Department will consider the THC concentration level after this process, which is the post decarboxylated level.

“Delta-9-THC” means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

“Department” means the Delaware Department of Agriculture.

“Destruction Methods” means the use of farm equipment to mechanically manipulate the soil or the plant to render a cannabis crop non-retrievable within an indoor or outdoor growing site.

“Disqualifying Felony” means persons with a state or federal felony related to a controlled substance for the 10 years prior to the date of when a Criminal History Report is completed, are ineligible to participate in the State of Delaware Hemp Production Program for 10 years following the date of conviction.

“Dry Weight Basis” means a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

“Farm Service Agency” or **“FSA”** means an agency of the U.S. Department of Agriculture that provides services to farm operations that will assist in information collection on land being used for hemp production.

“Flower Material” means the complete inflorescence of the cannabis plant.

“Geospatial Location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

“Growing Site” –

“Outdoor Growing Site” means a field location where cannabis seeds or plants are planted in the ground.

“Indoor Growing Site” means an enclosed building in which cannabis plants are grown that can be secured and locked.

“Handler” means an individual transporting or storing hemp or hemp plant parts prior to the delivery of such plant or plant part for processing.

“Hemp” means all parts and varieties of the plant *Cannabis sativa L.* and any part of such plant cultivated or possessed by a licensed producer or handler, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

“Homogenous” and **“Homogeneity”** means a lot of like plant variety.

“Key Participants” means person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including CEO, COO, and CFO. This does **not** include other management positions like farm, field, or shift managers.

“Laboratory” means a USDA-approved laboratory used by the Department to conduct regulatory testing for THC concentration levels in cannabis.

“License Holder” means an individual or business entity authorized by the Department to grow, transport, or store hemp plants or plant parts.

“Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. Lot also refers to the batch or contiguous, homogenous whole of a product being sold to a single buyer at a single time. Lot is defined by the producer in terms of farm location, field acreage, and variety and is to be reported as such to the FSA.

“Measurement of Uncertainty” or **“MU”**, means the parameter associated with the results of a measurements that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement, if a sample measure of 0.3% THC falls within the MU range then the sample meets acceptable hemp THC levels.

“Negligence” means failure to exercise the level of care that a reasonably prudent person would exercise in complying with these regulations. Licensed producers that are found operating negligently will be required to perform a corrective action plan.

“On-site” means a registered growing site as indicated on an Annual Growing Site Registration or Growing Site Modification form.

“Processor” means an individual or business entity that conducts processes that convert hemp in any way, other than a producer or laboratory used for regulatory testing.

“Producer” means an individual or business entity possessing a Producer License issued by the Department under the authority of this chapter to grow, cultivate, harvest, store, transport, or market hemp or hemp products. Including individuals growing transplants, seedlings, or clones. Once licensed the term “licensed producer” shall be used.

“Production” means to grow hemp plants for market or for cultivation for market.

“Program” means the Delaware Domestic Hemp Production Program.

“Sample” means a composite sample collected by the Department.

“Sampling Agent” means an individual employed by the Department to collect, label, and submit cannabis samples to designated testing laboratory.

“USDA” means the United States Department of Agriculture.

4.0 Application, License and Registration

4.1 The Department intends to approve or deny application for producers, handlers, and processors within 30 days of submission. The Department will issue a license number or registration number upon approval. Licenses or registrations issued by the Department are intended to validate growing sites, processing facilities, or storage facilities within the State of Delaware. The Department will deem persons who materially falsify any information in their application ineligible to participate in the Delaware Domestic Hemp Production Program. Any records of the Department that could provide the name or location of a growing site or producer are excluded from the public record under 29 Del.C. §10002(l)(1), (2), and (17)a.

4.2 Producers:

4.2.1 New applications and renewals, using the *Delaware Domestic Hemp Production Program Application*, must be submitted between November 1st and February 1st of the given year. Licenses will be valid until December 31st of the year that is three years after the license is issued, unless otherwise revoked.

4.2.2 An *Annual Growing Site Registration* must be completed annually and submitted to the Department no later than February 1st.

4.2.3 A *Growing Site Modification* form is required to be completed and submitted to the Department if a licensed producer intends to alter the location or size of a growing site as indicated on the *Annual Growing Site Registration*.

4.2.4 The Department requires a licensed producer to oversee individuals conducting, but not limited to, the following actions related to their hemp crop acreage: cleaning seed, in-field consulting, custom planting, weed removal, custom harvesting, and storing.

4.2.5 The Department requires that a licensed producer notifies landowners of the intention to use their land as a hemp growing site, if the licensed producer is not the owner of the land where hemp will be grown.

4.3 Processors:

4.3.1 Processors are required by the Department to complete a *Processor Application* and *Annual Processor Facility Registration*. New applications and renewals must be submitted between August 1st and October 31st. *Processor Registration Certificates* will be valid until December 31st of the year that is three years after the certificate is issued, unless otherwise revoked. *Processor Facility Registrations* must be submitted annually no later than October 31st.

4.3.2 The Department will issue processors a *Processor Registration Certificate*. This document certifies that a processor has submitted to the Department:

4.3.2.1 A completed application:

- 4.3.2.2 A completed State and Federal Criminal History Report;
 - 4.3.2.3 A geospatial identification of the site where hemp will be processed, to include a map; and
 - 4.3.2.4 Other information related to processing procedures and operations as requested by the Department.
- 4.4 Handlers. The Department requires that individuals intending to transport, or store hemp or hemp plant parts complete a *Handler Application* and Criminal History Report. New applications and renewals must be submitted between August 1st and October 31st. Licenses will be valid until December 31st of the year that is three years after the license is issued, unless otherwise revoked.
- 4.5 Criminal History Report. All applications and license renewals must be accompanied by completed State and Federal Criminal History Report. If the application is for a business entity, a completed Criminal History Report must be provided for each key participant. Approved applications are subject to revocation pending results of the State and Federal Criminal History Reports.
- 4.6 Individuals shall submit applications to the Department via a physical collection point identified by the Department, or via email. Any questions related to applications must be submitted via email at DDA_HempProgram@delaware.gov. The Department will mail all licenses and registrations via USPS. The Department will maintain a copy of each license for record.
- 4.7 The Department will determine the status of licenses based on the following:
 - 4.7.1 Active: A license holder that is in good standing with this Program.
 - 4.7.2 Suspended: A license holder that has engaged in conduct violating this Program.
 - 4.7.2.1 A license holder whose license has been suspended shall not produce or handle hemp during the period of suspension.
 - 4.7.2.2 The Department may require that a license holder whose license has been suspended complete a corrective action plan to fully restore the license.
 - 4.7.3 Revoked: A license holder that negligently violates this Program 3 times within a period of 5 years shall have the license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation. The Department may immediately revoke licenses if:
 - 4.7.3.1 A license holder pleads guilty to or is convicted of any felony related to a controlled substance.
 - 4.7.3.2 A license holder makes a materially false statement with regard to this Program to the Department with a culpable mental state greater than negligence.
 - 4.7.3.3 A license holder is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or has negligently violated this Program 3 times within a period of 5 years.

5.0 Fees and Renewal

- 5.1 Producer:
 - 5.1.1 Application and Renewal \$300 every three years
 - 5.1.2 Annual Growing Site Registration \$500 per site annually
 - 5.1.3 Growing Site Modification \$500 per site
- 5.2 Processor:
 - 5.2.1 Application and Renewal \$250 every three years
 - 5.2.2 Processor Facility Registration \$1000 per facility annually
 - 5.2.3 Facility Modification \$1000 per facility
- 5.3 Pre-harvest Sample Collection, Post-harvest Sample Collection, Resample, and Lab Testing \$350
- 5.4 Handler Application \$250 every three years

6.0 Sampling, Testing Requirements and Inspections

- 6.1 Sampling:

- 6.1.1 Sampling of hemp plants as required by the USDA, will be conducted by a sampling agent designated by the Department. Sampling agents will follow USDA and Department protocol for entering hemp growing sites and collecting the minimum number of plant specimens necessary to represent a homogenous composition of the lot that is to be sampled. The sampling agent will conduct one pre-harvest sample for each lot per licensed producer.
- 6.1.2 The Department requires that a licensed producer submit fees associated with sampling and testing, and if applicable re-sampling and re-testing, at a total of \$350 per sample collected. Fees are to be collected by the Department prior to sampling.
- 6.1.3 If a licensed producer fails to complete harvest within 15 days of sample collection, The Department will collect a second pre-harvested sample of the lot to be submitted for testing.
- 6.1.4 A licensed producer or an authorized representative can request that the sampling process be conducted during a time that they are present at the growing site, however, representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all cannabis plants, and all locations listed in the producer license.
- 6.1.5 Within 30-15 days prior to the anticipated harvest of cannabis plants, a licensed producer or an authorized representative of the licensed producer, as documented on the *Delaware Domestic Hemp Production Program Application*, shall notify the Department of the anticipated date of harvest via phone or email.
- 6.1.6 Within 15 days prior to the date of harvest, as indicated by the licensed producer or authorized representative of the licensed producer, as documented in the *Delaware Domestic Hemp Production Program Application*, a sampling agent shall collect representative samples from cannabis plants to submit for testing of THC concentration levels.
- 6.1.7 The sampling agent will not collect samples on lots where cannabis plants have not matured to flowering stage, as the USDA requires that samples consist of flower material.
- 6.1.8 A licensed producer or any other individual shall not harvest cannabis plants prior to samples being collected by the Department. A licensed producer or any other individual shall not remove plants from lots that have been sampled from a growing site without written authorization from the Department.
- 6.1.9 The growing site must be surveilled by the sampling agent. The sampling agent shall:
 - 6.1.9.1 Verify the GPS coordinates of the growing site and lot as compared with the GPS coordinates submitted by the licensee to FSA;
 - 6.1.9.2 Estimate the average height, appearance, approximate density, condition of the hemp plants, and degree of maturity of the flowering material, meaning inflorescences; and
 - 6.1.9.3 Visually estimate the homogeneity of the lot to be sampled to establish that the lot is of like variety.
- 6.1.10 Cuttings from each individual lot, as identified by a licensed producer, and submitted by the producer to the Farm Service Agency (FSA) as per the requirements of the USDA, shall be organized as composite samples. Lots are to be defined by the producer. Producers must utilize guidelines from the Department for identifying lots, identification must be based on farm location, field acreage, and variety. Producers are responsible for reporting lot identification to the FSA.
 - 6.1.10.1 For purposes of determining the number of individual plants to meet sampling protocol as determined by the USDA sampling protocol document, the size of each individual lot shall be considered by the Department and sampling agent. For sampling purposes, samples from separate lots must remain separated and are not to be comingled.
 - 6.1.10.2 For lots of less than four acres, including indoor growing sites, the sampling agent will collect a minimum of five cuttings to form one composite sample. For lots greater than four and fewer than ten acres, including indoor growing sites, the sampling agent will collect a minimum of one cutting per acre to form a composite sample.

- 6.1.10.3 For lots larger than 10 acres, including indoor growing sites, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999, in accordance with USDA.
- 6.1.10.4 A licensed producer may contact the Department to request that a second sample be collected for retesting if it is believed the original THC concentration level test results were in error.
- 6.1.11 When collecting samples from each lot, the sampling agent must:
- 6.1.11.1 Always walk through the lot following a sawtooth pattern, beginning at one point of the lot and walking towards another point located on the opposite side of the lot.
- 6.1.11.2 Walk access roads, drainage ditches, or other accessible paths that allow penetration into the lot (stand), in cases where the lot (stand) is determined too dense and walking through is deemed impossible.
- 6.1.11.3 Cut at least “*n*” flower material at random distances in the lot, while walking a sawtooth pattern.
- 6.1.11.4 Avoid collecting too many cuttings from the borders of the field or indoor growing site, high spots or low spots in the lot, and male plants.
- 6.1.11.5 Make the cut of a cannabis plant just underneath the flower material. Each composite sample will contain cuttings of flower material from the uppermost areas of the plant consistent with a ratio of two-fifths of *n*. The remainder of the composite sample will be collected from the upper one-third of the plant. The sample size must be of adequate volume, as determined by the Department, to accommodate laboratory tests.
- 6.1.11.6 Utilize one paper sample bag, per lot, for collecting cuttings.
- 6.1.11.7 Seal each bag with a laboratory sticker and record the sample identification information and date on the bag.
- 6.1.12 The Department will label samples for submission to the laboratory using the following information:
- 6.1.12.1 Producer license number;
- 6.1.12.2 Date of sample (month, day, year);
- 6.1.12.3 Lot identification as outlined by the Department and reported to FSA.
- 6.2 Testing:
- 6.2.1 The Department will contract with a USDA approved laboratory to perform THC tests and require that the laboratory share test results with the licensed producer, the Delaware Department of Agriculture, and the USDA.
- 6.2.2 Any test conducted for delta-9 tetrahydrocannabinol is required to regulate that hemp plants produced in the state of Delaware by producers licensed by the Department contain acceptable THC levels. Results are intended to measure the THC concentration levels of composite cannabis samples collected from individual lots.
- 6.2.3 The laboratory used for testing regulatory samples of cannabis, collected and submitted by the Department, is a USDA approved laboratory and meets testing protocol and compliance standards as required by USDA. (7 CFR Part 990 Domestic Hemp Production Program).
- 6.2.4 The Department will review the Measurement of Uncertainty to make final determinations regarding acceptable THC levels. (7 CFR Part 990.3a(3) iii (F)).
- 6.3 Inspections:
- 6.3.1 The Department will conduct annual inspections of, at a minimum, a random sample of licensed producers to verify that hemp is not produced in violation of this Program. The Department shall have access, during reasonable business hours, to any premises where hemp plants may be held.
- 6.3.2 The Department requires that the following records be made available to the Department during reasonable business hours:
- 6.3.2.1 Acquisition of hemp plants.
- 6.3.2.2 Production and handling of hemp plants.

6.3.2.3 Storage of hemp plants.

6.3.2.4 Disposal of hemp plants.

6.3.3 If the Department finds that pesticides are being sprayed, the licensed producer is subject to inspections by pesticide inspectors under the authority of Delaware Pesticide Laws (3 Del.C. Ch. 12).

6.3.4 If the Department finds that hemp plants or hemp nursery stock are being sold, the licensed producer is subject to inspection by nursery inspectors under the authority of Delaware Nursery Laws (3 Del.C. Ch. 13).

7.0 Information Sharing and Record Keeping

7.1 Reporting to USDA (as authorized under 7 CFR Part 990 Domestic Hemp Program)

7.1.1 The Department will submit the following reports to the USDA, AMS annually:

7.1.1.1 The Department will submit a report annually to the USDA by December 15th of each year using the *State and Tribal Hemp Annual Report form*. (State and Tribal Hemp Annual Report AMS-25)

7.1.2 The Department will submit the following reports to the USDA, AMS monthly:

7.1.2.1 *State Hemp Producer Report* (State and Tribal Hemp Producer Report, AMS-23)

7.1.2.2 *State Hemp Disposal Report* using the disposal form (State and Tribal Hemp Disposal Report AMS-24)

7.1.2.3 *State Hemp Test Result Report* (Laboratory Test Results Report (AMS-22))

7.1.3 The Department will share information with the USDA on the first day of each month via monthly reports. The Department will gather information related to lots directly from a state of Delaware FSA contact. If the first of the month falls on a weekend or holiday, the Department will submit the report to the USDA on the first business day following the due date.

7.1.4 The Department will submit THC concentration level test results to licensed producers once received from the laboratory. The Department will review test results to make a determination if hemp produced by a licensed producer meets the acceptable hemp TCH concentration level.

7.2 Producer Report

7.2.1 The Department requires that all licensed producers report their hemp crop acreage to the FSA using their state of Delaware license number. Licensed producers shall learn information about how to report using the following link: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/crop-acreage-reporting-19.pdf>

7.2.2 The Department will require all licensed producers to submit the following information to the Department via email, no later than December 1st of each year:

7.2.2.1 Total acreage planted.

7.2.2.2 Total acreage harvested.

7.2.2.3 Total acreage disposed.

7.2.2.4 Plant storage records.

7.2.3 The Department will maintain records for a minimum of three years as required by the USDA.

7.2.4 The Department will incorporate information submitted by licensed producers in an *Annual Report* to be submitted to the USDA.

8.0 Violations

8.1 Destruction. The Department requires the on-site destruction of lots located on outdoor or indoor growing sites that have been determined to have higher than acceptable hemp THC levels. The Department will instruct the licensed producer on acceptable destruction protocol and coordinate with the licensed producer to ensure that lots are destroyed in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce. The Department will require that destruction take place within 72 hours after the Department notifies the licensed producer that destruction is required.

- 8.1.1 It is the responsibility of a licensed producer to destroy lots by using destruction methods that render the lot non-retrievable and unfit to enter the stream of commerce.
- 8.1.2 If the Department determines a lot as having higher than acceptable hemp THC levels, the lot must not be further handled, processed, or enter the stream of commerce.
- 8.1.3 The Department requires that a licensed producer notify the Department if the licensed producer destroys a lot by his or her own determination and independent of a requirement set by the Department.
- 8.2 Disposal. The Delaware Department of Agriculture will require the disposal of a lot that has been determined to have higher than acceptable levels of THC, where on-site destruction is not feasible. The Department will require that disposal take place within 72 hours of notification.
- 8.2.1 The Department will coordinate with the licensed producer to ensure that lots are disposed of in a manner that renders the lot non-retrievable and unfit to enter the stream of commerce.
- 8.3 Harvesting. The Department prohibits any comingling of harvested lots of cannabis plants with other harvested lots or other material without prior written permission from the Department.
- 8.4 Negligent or Culpable Violations.
- 8.4.1 A hemp producer shall be subject to enforcement for negligently:
- 8.4.1.1 Failing to provide annually, an accurate legal description of land where hemp is produced using the *Annual Growing Site Registration* form.
- 8.4.1.2 Producing hemp without a license. A new applicant must submit a *Delaware Domestic Hemp Production Program Application* to the Department no later than February 1st. A licensed producer must submit for renewal prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria, as required in the initial application.
- 8.4.1.3 Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the hemp does not have a delta-9 tetrahydrocannabinol concentration of more than 0.5% on a dry weight basis.
- 8.4.1.4 Failing to have locked entrances on an indoor growing facility.
- 8.4.1.5 Failing to adequately display signage to indicate a hemp growing site.
- 8.4.2 Corrective action for negligent violations. For each negligent violation, the Department will issue a *Notice of Violation* and require a corrective action plan for the licensed producer. The Department shall conduct an inspection to determine if the corrective action plan has been implemented. The licensed producer shall comply with the corrective action plan to cure the negligent violation. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:
- 8.4.2.1 A reasonable date by which the licensed producer shall correct the negligent violation.
- 8.4.2.2 A requirement that the licensed producer shall periodically report to the Department, as applicable, on its compliance with the corrective action plan for a period of not less than the next 2 years from the date of the negligent violation.
- 8.4.2.3 A description of quality control measures, staff training, and quantifiable action measures taken by the Producer. Producers should document this using the *Correction Action Plan Template*.
- 8.4.2.4 If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures as defined by the Department.
- 8.4.3 Negligent violations and criminal enforcement. A licensed producer that negligently violates this part shall not, as a result of that violation be subject to any criminal enforcement action by any Federal, State, or local government.

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- 8.4.4 Negligent violations and license revocation. A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.
- 8.4.5 Culpable mental state greater than negligence. If the Department determines that a license holder has violated the terms of the license or of this part with a culpable mental state greater than negligence:
- 8.4.5.1 The Department shall immediately report the license holder to:
- 8.4.5.1.1 The U.S. Attorney General; and
- 8.4.5.1.2 The chief law enforcement officer of the State, as applicable, where the production is located; and subsections 8.4.1 and 8.4.2 of this section shall not apply to culpable violations.
- 8.5 Licensed producers intending to sell hemp plants or hemp nursery stock must comply with the Delaware Nursery Laws (3 Del.C. Ch. 13).
- 8.6 Licensed producers intending to apply pesticides must comply with the Delaware Pesticide Laws (3 Del.C. Ch. 12).
- 8.7 Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.
- 8.8 In accordance with the provisions of 3 Del.C. §1108 and 3 Del.C. §1110, it shall be unlawful to violate or fail to comply with any provisions of these regulations and the person charged with a violation of these regulations shall be assessed a civil penalty, in accordance with 3 Del.C. §1110.
- 8.9 Revocation of a license or registration. Any license or registration issued by the Department may be canceled orally or in writing by the Department whenever the Department determines that the holder of the license or registration has not complied with a provision of these regulations or requirements in Sections 6.0 and 7.0. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.
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Symbol Key

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

Proposed Regulations

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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 **DE Admin. Code** 710

PUBLIC NOTICE**710 Ambulance Service Regulations**

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** §6604(1), proposes to revise regulation 710 as set forth below, to make many non-substantive and clarifying changes as well as adding provisions regarding bariatric ambulance requirements and updating ambulance compartment requirements to conform with current NFPA standards. The proposed regulations do not affect other existing regulations.

Written comments to the proposed revisions shall be sent to Sherry Lambertson, Executive Assistant for the Delaware State Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments will be accepted until February 1, 2020 pursuant to 29 **Del.C.** §10118(a).

***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/january2020/proposed/23 DE Reg 504RFA 01-01-20.pdf>

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

710 Ambulance Service Regulations

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(22) and 1280(a) (14 **Del.C.**
§§122(b)(22) & 1280(a))
14 **DE Admin. Code** 290

PUBLIC NOTICE**Education Impact Analysis Pursuant To 14 Del.C. §122(d)****290 Approval of Educator Preparation Programs****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)(22) and 1280(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. This regulation is being amended to include information from Regulation 1595 Leadership Certification Programs and Regulation 1507 Alternate Routes to Certification which are no longer under the purview of the Professional Standards Board. The information in these two regulations more clearly aligns with the requirements and approval process outlined in Regulation 290 Approval of Educator Preparation Programs.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 4, 2020 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 address improving 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 helps to ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on local board and school level 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 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:**

(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/january2020/proposed/23 DE Reg 505RFA 01-01-20.pdf>

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

290 Approval of Educator Preparation Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 121(a)(16), 122(b)(8), and 8 Delaware Code, Section 125 (14 **Del.C.** §§121(a)(16) & 122(b)(8) & 8 **Del.C.** §125)
14 **DE Admin. Code** 292

PUBLIC NOTICE

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

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§121(a)(16) and 122(b)(8), and 8 **Del.C.** §125, the Secretary of Education proposes amendments to 14 **DE Admin. Code** 292 Post-Secondary Institutions and Degree Granting Institutions of Higher Education subject to the State Board of Education's approval. This regulation concerns the requirements for post-secondary institutions incorporated in Delaware to obtain and maintain the Delaware Department of Education's approval to confer degrees. In addition, this regulation concerns the requirements for post-secondary institutions that are not incorporated in Delaware or established under Delaware law to obtain and maintain the Department's approval to offer courses, programs, and degrees in Delaware or to Delaware residents. On April 1, 2019, amendments that clarified the requirements for post-secondary institutions to obtain and maintain the Department's approval were published. Thereafter, the Department decided to remove references to application and site visit fees. Such change is substantive under 29 **Del.C.** §10118(c). Therefore, the Secretary repropose amendments to 14 **DE Admin. Code** 292 subject to the State Board of Education's approval. The amendments in this regulation include the amendments that were initially published on April 1, 2019 without references to application and site visit fees. Additional amendments being proposed in this version of the regulation include removing language regarding incorporation that the Department does not oversee and making various changes in order to clarify the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 4, 2020 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 concerns requirements for post-secondary institutions.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to 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 amended regulation will continue to help ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will continue 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 concerns requirements for post-secondary institutions.
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 concerns requirements for post-secondary institutions.
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 amendments.
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 concerns requirements for post-secondary institutions.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

***Please Note:**

(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/january2020/proposed/23 DE Reg 506RFA 01-01-20.pdf](http://regulations.delaware.gov/register/january2020/proposed/23%20DE%20Reg%20506RFA%2001-01-20.pdf)

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(26) (14 Del.C. §122(b)(26))
14 DE Admin. Code 614

PUBLIC NOTICE

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

614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion**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)(26), the Secretary of Education intends to amend 14 DE Admin. Code 614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and updated Delaware Code citations in the regulation that were previously changed in Delaware Code.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or

before February 4, 2020 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 regulation does help to improve student achievement as measured against state achievement standards by providing guidelines for supportive instruction in various settings.
2. Will the regulation help ensure that all students receive an equitable education? The regulation is intended to help ensure all students receive an equitable education.
3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation helps ensure that all students' health and safety are adequately protected.
4. Will the regulation help to ensure that all students' legal rights are respected? The regulation specifically helps to 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 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 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 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 regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the 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 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/january2020/proposed/23 DE Reg 507RFA 01-01-20.pdf>

614 Uniform Definitions for Student Conduct Which May Result in Alternative Placement or Expulsion

1.0 Purpose

Pursuant to 14 Del.C. §122(b) (26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

2.0 Definitions

Since some definitions of Section 2.0 may not be age appropriate, this section shall not be required to be published in a district or charter school's Student Code of Conduct. The district/charter school shall publish an internet link to this entire regulation in the Student Code of Conduct and provide a paper copy of the regulation upon request of a member of the public. In this regulation, the following terms shall have the meanings indicated below:

"Alcohol" shall have the same definition as provided in 4 Del.C. §101(1).

"Alcohol Liquor" shall have the same definition as provided in 4 **Del.C.** §101(2).

"Charter School" means a charter school board established pursuant to Chapter 5 of Title 14 of the **Delaware Code**.

"Commission by a student" means that a student has engaged in behavior equivalent to that which is prohibited by law regardless of whether the student has been criminally convicted of the same.

"Crime" shall have the same meaning as provided in 14 **Del.C.** §4112.

"Dangerous Instrument" shall have the same meaning as provided in 11 **Del.C.** §222(4).

"Deadly Weapon" shall have the same meaning as provided in 11 **Del.C.** §222(5).

"Distribute", "Distributing" or "Distribution" means the transfer or attempted transfer of Alcohol, a Drug, a Look Alike Substance, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"District" means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the **Delaware Code**.

"Drug" means any "controlled substance" or "counterfeit controlled substance" as defined in 16 **Del.C.** §4701 ~~(6)~~ and ~~(7)~~.

"Drug Like Substance" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

"Drug Paraphernalia" shall have the same meaning as provided in 16 **Del.C.** §4701 ~~(47)~~.

"Expulsion" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local District board or Charter School board.

"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"Look Alike Substance" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling.

"Nonprescription Medication" means any over the counter medication; some of these medications may be a "Drug Like Substance."

"Possess", "Possessing", or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control prohibited items or substances.

"Prescription Drugs" means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701~~(34)~~, while acting in the course of his or her professional practice, and which is specifically intended for the student in whose Possession it is found.

"School Environment" means within or on school property, and at school sponsored or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Sexual Act" means (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight; (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person.

"Sexual Intercourse" shall have the same meaning as provided in 11 **Del.C.** §761~~(g)~~.

"Sexual Offense" means any offense defined by 11 **Del.C.** §§763-780 through 780B and §§1108-4442A, through 1112B, 1352(2) and 1353.

"Student Code of Conduct" means the District/Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe school environment, standardizes procedures for consequences, disciplinary action, and defines due process and grievance procedures.

"Theft" means those acts described in 11 Del.C. §§ 841 through ~~846~~847 inclusive.

"Use" means that a student is reasonably known to have voluntarily ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

3.0 Uniform Definitions for Student Conduct

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

"Arson" shall mean a person recklessly or intentionally damages a building by intentionally starting a fire or causing an explosion.

"Assault III" shall mean: (1) A person intentionally or recklessly causes physical injury to another person; or (2) With criminal negligence the person causes physical injury to another person by means of a Deadly Weapon or a Dangerous Instrument.

"Attorney General's Report (Juvenile Arrest Warrant and Complaint)" shall mean the Department of Justice's report of out-of-school criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and Drug offenses.

"Breaking and Entering" shall mean unauthorized entry of any locked area of the school environment during or after school; including, but not limited to, rooms, classrooms, auditorium, gym, shops, offices, lockers, cabinets and vehicles.

"Bullying" shall mean any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

"Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§1442 through ~~4458~~1460 inclusive.

"Criminal Drug Offense, Commission of" shall mean the Commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia.

"Criminal Mischief (Vandalism)" shall mean a student, in the School Environment, intentionally or recklessly: (1) Damages tangible property of another person or entity; or (2) Tamper with tangible property of another person so as to endanger person or property.

"Criminal Sexual Offense, Commission of" shall mean the Commission by a student of an offense prohibited by 11 Del.C. §§763 through ~~780~~780B, inclusive, or §§1108 through ~~4412A~~1112B, inclusive, or §1352(2) or §1353.

"Criminal Violent Felony Offense, Commission of" shall mean the Commission by a student of any violent felony as specified in 11 Del.C. §4201(c).

"Cyberbullying" shall mean the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so

severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

"Dangerous ~~Instrument(s)~~ Instrument Possession/Concealment/Sale" shall mean the unauthorized Possession/concealment/sale by a student in the School Environment of any instrument, article or substance which is readily capable of causing serious physical injury or death.

"Deadly ~~Weapon(s)~~ Weapon Possession/Concealment/Sale" shall mean the Possession, concealment, or sale of a Deadly Weapon in the School Environment.

"Defiance of School Authority" shall mean: (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

"Disorderly Conduct" shall mean conduct in the School Environment which causes public inconvenience, annoyance or alarm or creates a risk thereof by: engaging in fighting or violent tumultuous or threatening behavior or making an unreasonable noise or an offensively coarse utterance or gesture or display or addressing, abusive language to any person present.

"Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia" shall mean the sale, transfer, or ~~Distribution~~ distribution in school, on school property, or on school field trip of ~~Drugs or Alcohol~~ drugs or alcohol.

"Extortion" shall mean to obtain or attempt to obtain money, goods, services, or information from another by force or the threat of force.

"Felony Theft (\$1500 or more)" shall mean: (a) When a person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it; or (b) When a person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of Theft, and fraudulently converts the property to the person's own use. The Theft is considered a felony when the value of the property received, retained, or disposed of is \$1500 or more or the victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12.

"Fighting" shall mean any aggressive physical altercation between two or more individuals.

"Gambling" shall mean participation in games of chance for money or other things of value.

"Gun Free ~~School's~~ Schools Violation" shall mean the prohibited bringing to school, or ~~Possession~~ possession while in school of a ~~Firearm~~ firearm by a student.

"Harassment" shall mean any actions or statements made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.

"Inhalant Abuse" shall mean chemical vapors that are inhaled for their mind-altering effects.

"Medications: Inappropriate Use or Possession" shall mean Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of 14 **DE Admin. Code** 612.

"Misuse of Technology" shall mean:

The use of school technology equipment in:

Soliciting, using, receiving or sending pornographic or obscene material; or

Accessing unauthorized email; or

The unauthorized downloading and/or installing of files; or

Intentionally damaging technology equipment in the School Environment; or

PROPOSED REGULATIONS

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system in the School Environment resulting in the loss or corruption of information or the ability of the system to operate; or

In any way disrupts or degrades the school or District's technology infrastructure.

"Offensive Touching" shall mean intentionally touching another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or Intentionally striking another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

"Pornography" shall mean the ~~Possession~~ possession, sharing, or production of any known obscene material in the School Environment.

"Rape or Attempted Rape" shall respectively mean sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

"Reckless Burning" shall mean when a person intentionally or recklessly starts a fire or causes an explosion and recklessly places a building or property in danger of destruction or damage or places another person in danger of physical injury.

"Repeated Violations of Student Code of Conduct" shall mean five or more violations of the school's Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class.

"Sexual Assault" shall mean any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in §763 of Title 11; sexual contact as defined in §761(f) of Title 11; Sexual Intercourse as defined in §761(g) of Title 11; sexual penetration as defined in §761(h) of Title 11; and child sexual abuse as defined in §901 of Title 10.

"Sexual Misconduct" shall mean a consensual sexual act(s) between two individuals within the School Environment.

"Stealing" means taking, exercising control over or obtaining property of another person intending to deprive that person of it or appropriate it.

"Steroids Possession and/or Use" shall mean the unlawful Use or Possession of steroids.

"Tampering with Public Records" shall mean a person knowingly without valid authorization removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any original record or other written material filed with, deposited in or otherwise constituting a record of a public office or public servant.

"Teen Dating Violence" shall mean assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. §1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

"Terroristic Threatening" shall mean when: (1) A person threatens to commit any Crime likely to result in death or in serious injury to person or property; or (2) A person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

"Terroristic Threatening - Security Threat" shall mean when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation in the School Environment; (2) Knowing that the statement or statements are likely to cause serious inconvenience in the School Environment; or (3) In reckless disregard of the risk of causing terror or serious inconvenience in the School Environment.

"Unlawful Sexual Contact III" shall mean when a student has sexual contact with another person or causes the victim to have sexual contact with the student or a third person and the student knows that the contact is either offensive to the victim or occurs without the victim's consent.

"Use and/or Possession of a Drug and/or Alcohol and/or Drug Paraphernalia" shall mean, that in the School Environment, a student unlawfully ~~Possesses, Uses~~ possesses, uses or is under the influence of ~~Alcohol, a Drug, Drug Paraphernalia,~~ alcohol, a drug, drug paraphernalia, or any substance or paraphernalia consistent with the definitions of these substances or paraphernalia.

"Violation of Behavior Contract" shall mean the failure of a student to comply with the provisions of any behavior contract between the student, ~~his/her~~ the student's legal guardian, and the school.

4.0 Effective Date

This regulation shall become effective for School Codes of Conduct in the 2014-15 school year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 183 & 3402(c) (14 **Del.C.** §§183 & 3402(c))

PUBLIC NOTICE

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

1206 Speech Language Pathologist Incentive Loan Program

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§183 and 3402(c), the Delaware Department of Education, acting in cooperation with the Delaware Higher Education Office ("DHEO"), seeks the consent of the State Board of Education to create 14 **DE Admin. Code** 1206 Speech Language Pathologist Incentive Loan Program. In accordance with 14 **Del.C.** §181(15), the DHEO administers the Speech Language Pathologist Incentive Loan Program set forth in 14 **Del.C.** §3422. The regulation is being created to provide eligibility criteria and to delineate the process for applying for the Speech Language Pathologist Incentive Loan Program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 4, 2020 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 regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

2. Will the regulation help ensure that all students receive an equitable education? The regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

4. Will the regulation help to ensure that all students' legal rights are respected? The regulation will help to 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 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 regulation does not place any unnecessary reporting, administrative requirements, or mandates on decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the 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 regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? As provided in 14 **Del.C.** §3402(t), the General Assembly annually appropriates a "Scholarships and Loans" sum in the Budget Act for the purpose of carrying out the provisions of 14 **Del.C.** Ch. 34. The proposed regulation is consistent with the FY20 Appropriations Act (House Bill No. 225) that went into effect on July 1, 2019.

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

<http://regulations.delaware.gov/register/january2020/proposed/23 DE Reg 513RFA 01-01-20.pdf>

1206 Speech Language Pathologist Incentive Loan Program

1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and application procedures for the Speech Language Pathologist Incentive Loan Program pursuant to 14 **Del.C.** §3422.

2.0 Definitions

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

"Academic Record" means the applicant's unofficial transcript from college or graduate school for the most recent academic year.

"Award" means a loan under the Speech Language Pathologist Incentive Loan Program, the repayment of which is forgiven when the borrower is employed as a licensed speech language pathologist in a Delaware public school or by a provider or its contractors for Delaware programs serving infants and toddlers under Part C of the Individuals with Disabilities Education Act (Birth to Three Early Intervention) for the period of time specified in 14 **Del.C.** §3422(c)(2).

"Delaware Higher Education Office" or **"DHEO"** means the Department of Education's Office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

"Direct Educational Expenses" means tuition, mandatory fees, room, board, books, and supplies.

"Full-Time Student" means a graduate student enrolled in nine (9) or more credit hours.

"Institution" means a post-secondary institution or institution of higher education in Delaware that is accredited, or a candidate for accreditation, by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association.

"Part-Time Student" means a student enrolled in a graduate program that is at least five (5) and less than nine (9) credit hours per term.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship and loan forgiveness opportunities.

3.0 Application Acceptance and Submission Period

3.1 The application acceptance and submission period for the Speech Language Pathologist Incentive Loan Program shall be posted on the DHEO's website by April 1 each calendar year.

3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

3.1.2 Incomplete applications shall not be accepted or processed.

3.2 In order for an application to be considered complete, an applicant must:

3.2.1 Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.

3.2.2 Complete an application through the Student Account Access Site by the last date of the application acceptance period. The application shall include:

3.2.2.1 The applicant's major, name of the applicant's Institution, and the school year in which the applicant was most recently enrolled.

3.2.2.2 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

3.2.2.3 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information required in subsection 3.2.2 of this regulation.

4.0 Eligibility for Awards

4.1 Applicants shall meet the following requirements to be considered for the Speech Language Pathologist Incentive Loan Program:

4.1.1 Be either a Part-Time or a Full-Time Student enrolled in a graduate program in Delaware that will satisfy the educational requirements to become licensed by the Delaware Board of Speech Pathologists, Audiologists, and Hearing Aid Dispensers as a speech/language pathologist; and

4.1.2 Demonstrate strong academic merit.

5.0 Awards

5.1 DHEO determines the number and amount of Awards to be given annually. The number and amount of Awards each year will vary and is based on and subject to the General Assembly appropriating funds for the Speech Language Pathologist Incentive Loan Program.

5.2 An Award shall be used for, and not in excess of, Direct Educational Expenses.

5.3 An Award may be renewed annually for up to two (2) years.

5.3.1 To be eligible to renew an Award, students are required to submit an Academic Record and updated enrollment information by the date required by the DHEO.

5.3.2 An Award may be renewed annually as long as students maintain satisfactory academic progress as defined by the Institution.

5.4 An Award may be pro-rated for Part-Time Students.

6.0 Award Payment

6.1 A signed promissory note, which includes the terms of repayment and loan forgiveness, shall be executed before disbursement of funds.

6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 183 and 3402(c) (14 **Del.C.** §§183 & 3402(c))

PUBLIC NOTICE

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

1207 Delaware Nursing Incentive Program

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§183 and 3402(c), the Delaware Department of Education, acting in cooperation with the Delaware Higher Education Office (“DHEO”), seeks the consent of the State Board of Education to create 14 **DE Admin. Code** 1207 Delaware Nursing Incentive Program. The regulation is being created to provide eligibility criteria and application procedures for the Delaware Nursing Incentive Program as set forth in 14 **Del.C.** §3421.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 4, 2020 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 regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

2. Will the regulation help ensure that all students receive an equitable education? The regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

3. Will the regulation help to ensure that all students’ health and safety are adequately protected? The regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

4. Will the regulation help to ensure that all students’ legal rights are respected? The regulation will help to 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 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 regulation does not place any unnecessary reporting, administrative requirements, or mandates on decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity, DHEO.

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 regulation concerns a Professional Incentive Program under 14 **Del.C.** Ch. 34 (Financial Assistance for Higher Education).

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? As provided in 14 **Del.C.** §3402(t), the General Assembly annually appropriates a “Scholarships and Loans” sum in the Budget Act for the purpose of carrying out the provisions of 14 **Del.C.** Ch. 34. The proposed regulation is consistent with the FY20 Appropriations Act (House Bill No. 225) that went into effect on July 1, 2019.

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

<http://regulations.delaware.gov/register/january2020/proposed/23 DE Reg 516RFA 01-01-20.pdf>

1207 Delaware Nursing Incentive Program

1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and application procedures for the Delaware Nursing Incentive Program pursuant to 14 Del.C. §3421.

2.0 Definitions

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

“Academic Record” means the applicant’s unofficial transcript from high school, college, or graduate school for the most recent academic year.

“Award” means a loan under the Delaware Nursing Award Program, the repayment of which is forgiven when the borrower is employed as a licensed practical nurse or registered nurse at a State-owned hospital or clinic or a nonprofit hospital located in Delaware for the period of time specified in 14 Del.C. §3421(c)(2).

“Delaware Higher Education Office” or **“DHEO”** means the Department of Education’s office which administers specific programs related to higher education, including, but not limited to, scholarship and loan programs.

“Full-Time Student” means an Undergraduate Student enrolled in twelve (12) or more college credit hours or a graduate student enrolled in nine (9) or more credit hours.

“Grade Point Average” or **“GPA”** means the number representing the average value of the accumulated final grades earned in courses over time.

“Institution” means a post-secondary college, university, or institution of higher education that is accredited by a nationally recognized regional accrediting agency.

“Part-Time Student” means a student enrolled in an Undergraduate program that is more than six (6) and less than eleven (11) college credit hours per term or a student enrolled in a graduate program that is at least five (5) and less than nine (9) credit hours per term.

“Resident of the State” means an applicant who meets the definition of residency as defined in 14 Del.C. §3402(f).

“Semester” means a half-year term in a school or college, typically lasting fifteen (15) to eighteen (18) weeks.

“Student Account Access Site” means the webpage on the DHEO’s website where students can access scholarship and loan forgiveness opportunities.

“Undergraduate Student” means a Full-Time or Part-Time Student at a regionally accredited college or university or accredited hospital school of nursing who has not yet earned a bachelor’s or equivalent degree.

3.0 Application Acceptance and Submission Period

3.1 The application acceptance and submission period for the Delaware Nursing Incentive Program shall be posted on the DHEO’s website by April 1 each calendar year.

3.2 In order for an application to be considered complete, an applicant must:

3.2.1 Submit the applicant’s Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.

3.2.2 Complete an application through the Student Account Access Site by the last date of the application acceptance period.

3.2.2.1 An application must include:

PROPOSED REGULATIONS

- 3.2.2.1.1 The applicant's major, name of the applicant's Institution, and the school year in which the applicant was most recently enrolled.
- 3.2.2.1.2 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
- 3.2.2.1.3 A first time applicant must establish an account and provide his or her valid email address and permanent mailing address before being permitted to submit the information as required in subsection 3.2.2.1 of this regulation.
- 3.3 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
- 3.4 Incomplete applications shall not be accepted or processed.

4.0 Eligibility for Awards

- 4.1 Applicants must meet the following requirements to be eligible for the Delaware Nursing Incentive Program:
 - 4.1.1 Be a Resident of the State; and
 - 4.1.2 Be enrolled as a Full-Time Undergraduate Student at a regionally accredited Institution or an accredited hospital school of nursing in a course of study leading to either:
 - 4.1.2.1 A Bachelor of Science in Nursing degree if the applicant is a registered nurse with an aggregate of five (5) years or more employment with the State or with a non-profit hospital in Delaware regardless of residency; or
 - 4.1.2.2 Certification as a registered nurse or practical nurse; and
 - 4.1.3 Have at least a 2.5 unweighted cumulative GPA.
- 4.2 Notwithstanding subsection 4.1.1, an applicant who is a current State employee with five (5) or more years of State service and who is enrolled as a Part-Time Student may submit an application regardless of whether the applicant is a Delaware resident.

5.0 Awards

- 5.1 DHEO determines the number and amount of Awards to be given annually.
- 5.2 The number and amount of Awards each year will vary and is based on and subject to the General Assembly appropriating funds for the Delaware Nursing Incentive Program.
- 5.3 An Award shall be used for, and not in excess of, Direct Educational Expenses.
- 5.4 An Award may be renewed annually for up to three (3) years.
 - 5.4.1 To be eligible to renew an Award, students are required to submit an Academic Record and updated enrollment information by the date required by the DHEO.
 - 5.4.2 An Award may be renewed annually as long as students maintain a cumulative GPA of 2.5 as defined by the Institution.

6.0 Award Payment

- 6.1 DHEO shall contact the Institution where the recipient is enrolled to verify the recipient's enrollment each Semester, fall and spring, before dispersing funds.
- 6.2 A signed promissory note, which includes the terms of repayment and loan forgiveness, must be executed before disbursement of funds.
- 6.3 All payments shall be disbursed directly to the eligible recipient's Institution only.
- 6.4 An Award may be pro-rated for Part-Time Students.

7.0 Repayment and Forgiveness

- 7.1 For purposes of this program, qualifying employment shall be employment as a nurse in a state-operated hospital or clinic or non-profit hospital located in Delaware.
- 7.2 Loans will be forgiven at the rate of one year of employment for one year of loan.

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

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

PUBLIC NOTICE

Non-Emergency Medical Transportation (NEMT)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding transportation specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services.

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 January 31, 2020. Please identify in the subject line: Non-emergency Medical Transportation (NEMT).

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 transportation specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services.

Statutory Authority

- 42 U.S.C. §1902(a)(70)
- 42 CFR section 440.170(a)

Background

The Medicaid non-emergency medical transportation (NEMT) benefit is authorized under the Social Security Act under section 1902(a)(70) and 42 CFR section 440.170. It ensures necessary transportation to and from providers and includes coverage for transportation and related travel expenses necessary to secure medical examinations and treatment.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services for all Medicaid eligible individuals.

Summary of Proposed Changes

Effective for services provided on and after January 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 9a and Attachment 4.19-B Page 3 of Title XIX Medicaid State Plan regarding transportation specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services.

Public Notice

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

PROPOSED REGULATIONS

Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2020.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

The anticipated fiscal impact is below:

	Federal Fiscal Year 2020	Federal Fiscal Year 2021
Federal funds	\$5,657	\$5,721
General (State) funds	\$4368	\$4,394

***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/january2020/proposed/23 DE Reg 519RFA 01-01-20.pdf>

Revision: CMS

Attachment 3.1-A

Page 9a

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

SECTION 3 – SERVICES: GENERAL PROVISIONS

3.1 Amount, Duration, and Scope of Services

Medicaid is provided in accordance with the requirements of section 1902(a), 1902(e), 1903(i), 1905(a), 1905(p), 1905(r), 1905(s), 1906, 1915, 1916, 1920, 1925, 1929 and 1933 of the Act; section 245A(h) of the Immigration and Nationality Act; and 42 CFR Parts 431, 440, 441, 442 and 483.

A. Categorically Needy

24. Any other medical care, and other type of remedial care recognized under State law, specified by law Secretary (in accordance with section 1905(a)(28) of the Social Security Act and 42 CFR 440.170).

a. Transportation (provided in accordance with 42 CFR 440.170 as an optional medical service) excluding “school-based” transportation.

- Not Provided
- Provided without a broker as an optional medical services: Payment may be made for the following non-emergency medical transportation services when:
 - It is medically necessary for the member to travel to receive treatment and/or medical evaluation;
 - The location of the medical service provided is greater than 25 miles from the member’s place of residence; and
 - The member is required to remain on the premises of the medical service provider overnight; or
 - The medical service provided results in displacement of the member for a consecutive 24-hour period.
- i. Lodging Service – Transportation-related services authorized by the single state agency to provide overnight lodging for eligible recipients and, with prior authorization, one authorized escort.

Provider Requirements:

- a. Lodging service providers must enroll with the state Medicaid program directly into the Delaware Medicaid claims processing system; and
 - b. Providers must submit for reimbursement directly into the Delaware Medicaid claims processing system.
- ii. Lodging and Meals Service – Transportation-related services authorized by the single state agency to provide overnight lodging, which includes meals (such as Ronald McDonald Houses), for eligible recipients and, with prior authorization, one authorized escort.

Provider Requirements –

- a. Lodging and Meals providers must enroll with the state Medicaid program; and
- b. Providers must submit for reimbursement directly into the Delaware Medicaid claims processing system.
- c. Limitations – In the event that the member is admitted as inpatient, and provided meals via that inpatient admission, meals for the member will not be covered.

~~(If state attests “Provided without a broker as an optional medical service” then insert supplemental information.)~~

~~Describe below how the transportation program operates including types of transportation and transportation related services provided and any limitations. Describe emergency and non-emergency transportation services separately. Include and interagency or cooperative agreements with other Agencies or programs.~~

- Non-emergency transportation is provided through a brokerage program as an optimal ~~medial~~ medical service in accordance with 1902(a)(70) of the Social Security Act and 42 CFR 440.170(a)(4).

No. SPA# _____	Approval Date _____
TN Supersedes _____	
TN No. SPA# <u>10-002</u>	Effective Date <u>January 1, 2020</u>

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

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

PROPOSED REGULATIONS

- Transportation Services are reimbursed as follows:
 1. Emergency Transportation: Effective for dates of service on or after January 1, 2012, emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:
 - Ground Mileage, per Statute Mile will be 22%
 - Advanced Life Support. Emergency Transport will be 13%
 - Basic Life Support, Emergency Transport will be 17%
 - Conventional Air Services. Transport One Way (Rotary Wing) will be 39%
 - Rotary Wing Air Mileage, per Statute Mile will be 38%
 2. Non-emergency Transportation without a broker: Effective for dates of service on or after January 1, 2020, non-emergency transportation services provided by transportation service providers enrolled with the state Medicaid program who submit for reimbursement directly are reimbursed as follows:
 - Lodging – Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers of Lodging services. The agency’s Lodging fee schedule is effective for services provided on and after January 1, 2020. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.
 - Lodging and Meals – Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both government and private providers of Lodging and Meals services. The agency’s Lodging and Meals fee schedule is effective for services provided on and after January 1, 2020. The fee schedule and any annual/periodic adjustments to the fee schedule are available on the DMAP website at: <http://www.dmap.state.de.us/downloads>.
 3. Non-emergency Transportation with a broker: The broker is reimbursed a monthly capitated rate for each Medicaid client residing in the State.
- Optometrist and Opticians are reimbursed for examinations as physicians are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services. Except as otherwise noted in the Plan, State-developed fee schedule rates are the same for both governmental and private individual practitioners. The fee schedule and any annual/periodic adjustments to the fee schedule are published and found at: <https://www.dmap.state.de.us/downloads/hcpcs.html>. Spectacle frames and lenses and contact lenses ~~and~~ are reimbursed based on Level II HCPCS procedure codes. The agency’s fee schedule rate for these procedure codes was set on July 1, 2002 and is available on the DMAP website.
- Out-of-State Services, for which Delaware has established a universal rate or cap, will be reimbursed at the provider’s usual and customary charge or Delaware’s rate/cap, whichever is lower. Where there is no universal rate/cap (i.e. providers are paid a provider-specific rate), Delaware Medicaid will establish a rate or cap that is consistent with the reimbursement methodology defined in other sections of Attachment 4.19-B for that specific service and pay the provider the lower of that rate/cap or their usual and customary charge.

TN No. SPA	Approval Date
Supersedes	
TN No. SPA <u>#11-009</u>	Effective Date <u>January 1, 2020</u>

Attachment 4.19-B
Page 3b

- Extended Services to Pregnant Women - Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMAP Nursing Wage Survey. The agency’s fee schedule rate was set as of June 1, 2002 and is effective for services on or

after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Adult Dental

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Dental Services, specifically, to add dental services for adults.

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 January 31, 2020. Please identify in the subject line: Adult Dental.

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 and the Alternative Benefit Plan regarding Dental Services, specifically, to add adult dental services and to maintain the State's assurance that the ABP matches regular Medicaid.

Statutory Authority

- 42 CFR 440.100, Dental Services
- Section 1902 of the Social Security Act

Background

Senate Substitute No. 1 for Senate Bill No. 92 was signed by the Governor of Delaware on August 6, 2019 and provides dental services for adult Medicaid Recipients. The effective date of this Act will be April 1, 2020. The adult dental benefit will offer basic dental services to eligible adults 21 and over. While state Medicaid programs are required by federal rules to cover comprehensive dental services for children, coverage for adult dental services is optional. Delaware will join many of the other states that currently offer this benefit.

Providing dental care is health care, as improving oral health can impact overall physical health. According to the American Dental Association "Evidence clearly shows that providing adult dental benefits through Medicaid has a significant impact on access to and utilization of dental care among low-income adults. Expanding dental benefits to adults also significantly reduces costly emergency department visits for dental conditions."

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add adult dental services and to maintain the State's assurance that the ABP matches regular Medicaid.

Summary of Proposed Changes

Effective for services provided on and after April 1, 2020 Delaware Health and Social Services/Division of

PROPOSED REGULATIONS

Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Title XIX Medicaid State Plan and the Alternative Benefit Plan regarding Dental Services, specifically, to add adult dental services and to maintain the State's assurance that the ABP matches regular Medicaid.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2020.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

The anticipated fiscal impact is below:

	Federal Fiscal Year 2020	Federal Fiscal Year 2021
Federal funds	\$1,823,500	\$7,559,702
General (State) funds	\$1,277,000	\$5,140,798

***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/january2020/proposed/23 DE Reg 523RFA 01-01-20.pdf>

***Please Note: Due to the formatting requirements of Attachment 3.1-A, Page 4 of the regulation, it is being attached here as a PDF document:**

<http://regulations.delaware.gov/register/january2020/proposed/3.1-A Page 4 Adult Dental.pdf>

Attachment 3.1-A
Page 4b Addendum

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

Health care professionals that provide the above services at the SBWCs include: physicians, nurse practitioners, licensed clinical social workers, certified and licensed drug and alcohol counselors, certified sexual assault

counselors and registered dietitians. Licensure requirements for each practitioner type are specified in the Title 24 of the Delaware Code, Professions and Occupations and in the Delaware Administrative Code.

10. Dental Clinic Services for individuals younger than age 21 are only available as ESPDT services, ~~to children under age 21.~~

Dental services for individuals 21 and older are limited to:

- Diagnostics
- Preventive
- Restorative (Basic)
- Periodontics
- Prosthodontics Repairs
- Oral and maxillofacial Surgery

Limitations on dental services for individuals 21 and older:

- Payments for dental care treatments are subject to a \$3 recipient copay
- Annual maximum Adult Dental benefit may not exceed \$1,000 per year; except that an additional \$1,500 may be authorized on an emergency basis

TN No. SPA #14-001	Approval Date <u>June 06, 2014</u>
Supersedes	
TN No. SPA <u>N/A</u>	Effective Date <u>January 01, 2014</u>

Attachment 4.19-B
Page 19

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

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

~~Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Dental~~ Services

~~Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Dental~~ Services are reimbursed as follows. Except as otherwise noted in the plan, State developed fee schedule rates are the same for both government and private providers.

Dental Services -Effective for dates of service on or after July 1, 2017, Delaware pays for dental services at the lower of:

- the provider's billed amount that represents their usual and customary charge; or
- the Delaware Medicaid maximum allowed amount per unit per covered dental procedure code according to a published fee schedule.

The Delaware Medicaid dental fee schedule will be developed based on the National Dental Advisory Service (NDAS) annual Comprehensive Fee Report. For each covered dental procedure code, Delaware's maximum allowable amount will be computed as a percentage of the NDAS published national fee. Delaware will rebase its dental fee schedule rates each time the NDAS publishes a new survey.

Preventive General Dental Services shall be paid at ~~50.00%~~ 61.00% of the NDAS 70th percentile amounts
Restorative General Dental Services shall be paid at ~~97.00%~~ 84.60% of the NDAS 70th percentile amounts
Adjunctive General Dental Services shall be paid at 72.24% of the NDAS 70th percentile amounts

PROPOSED REGULATIONS

Specialty Dental Services shall be paid at 68.80% of the NDAS 80th percentile amounts

Access-Based Fees for certain specialty procedure codes may be established to account for deficiencies in rates that are based on the NDAS fee schedule percentages above relating to the adequacy of access to health care services for Medicaid clients.

The maximum allowed amounts for procedure codes not included in the NDAS fee schedule or for new procedure codes established after the annual NDAS fee schedule is published will be based on the existing rates for similar existing services. If there are no similar services the maximum allowed amount is set at 80% of the estimated average charge until a rate can be established based on the NDAS fee schedule.

The dental fee schedule is available on the Delaware Medical Assistance Portal <https://medicaid.dhss.delaware.gov>

TN No. SPA # _____	Approval Date _____
Supersedes _____	
TN No. SPA #17-009	Effective Date <u>October 1, 2019</u>

***Please Note: Due to the size and formatting of the Alternative Benefit Plan, it is being attached here as a PDF document:**

<http://regulations.delaware.gov/register/january2020/proposed/Alternative Benefit Plan.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 20910

PUBLIC NOTICE

Medicaid Long Term Care Program – Community Spouse

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 Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program, specifically, to determine eligibility for medical assistance.

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 January 31, 2020. Please identify in the subject line: Medicaid Long Term Care Program – Community Spouse.

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 Medicaid Long Term Care Program – Community Spouse.

Statutory Authority

- Social Security Act §1924
- The State Medicaid Manual §3710, Special Post-Eligibility Process for Institutionalized Persons with Community Spouses

Background

DMMA currently applies Spousal Impoverishment regulations to a Community Spouse receiving Home and Community Based Services. The agency implemented this change as published in the Delaware *Register of Regulations* **10 DE Reg. 1619** (April 2007). Section 20910.2 Community Spouse, was not amended, in error.

Summary of Proposal

Purpose

This proposal is to align policy to reflect current practice.

Summary of Proposed Changes

Effective for services provided on and after March 11, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 20910.2 of Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program, specifically, *to determine eligibility for medical assistance*.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2020.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

The policy amendment will have no 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/january2020/proposed/23 DE Reg 526RFA 01-01-20.pdf>

20910.2 Community Spouse

An individual who is married to an institutionalized spouse ~~and does not receive HCBS.~~

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Title XXI Delaware Healthy Children's Program State Plan – Health Services Initiatives – Vision Services – School-Based Initiative

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XXI Delaware Healthy Children's Program State Plan regarding Health Services Initiatives, specifically, *to revise language for Delaware's CHIP State Plan Health Service Initiative to align with the Delaware Department of Education's (DDOE's) definition of low-income in its Vision Services - School-Based Initiative, and to revise the data collection process to aid in identification of uninsured children.*

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 January 31, 2020. Please identify in the subject line: Health Services Initiatives - Vision Services - School-Based Initiative.

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 is to revise language for Delaware's CHIP State Plan Health Service Initiative to align with the Delaware Department of Education's (DDOE's) definition of low-income in its Vision Services - School-Based Initiative, and to revise the data collection process to aid in identification of uninsured children.

Statutory Authority

Healthy, Hunger Free Kids Act of 2010 (HHFKA)

Background

Changes in USDA programs have affected how schools determine which students are eligible for free or reduced price lunches. With these changes, the ability to determine individual student status is no longer possible in all districts and schools. Section 104(a) of the Healthy, Hunger Free Kids Act of 2010 (HHFKA) amended section 11(a)(1) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1759a(a)(1)) to provide an alternative to household applications for free and reduced price meals in high poverty local educational agencies (LEAs) and schools. This alternative is called the Community Eligibility Provision (CEP). CEP permits eligible schools to provide meal service to all students at no charge, regardless of economic status, while reducing burden at the household and local levels by eliminating the need to obtain eligibility data from families through a separate collection; schools can use only "direct certification" data, such as data from the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) program to determine the Federal cash reimbursement for school lunches provided by USDA. A school is eligible for CEP if at least 40% of its students are "directly certified" and the school provides free breakfast and lunch to all of its students.

As a result, the Delaware Department of Education (DDOE) has changed the methodology used to calculate the low income measure for Delaware schools. Whereas DDOE previously determined low income by identifying students that received TANF, SNAP, Medicaid, or free or reduced price lunch, low income is now determined by students who receive any one of the following benefits: TANF, SNAP (Direct Certification).

Summary of Proposal

Summary of Proposed Changes

Effective for services provided on and after January 1, 2020 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend section 2.2 of Title XXI Delaware Healthy Children's Program State Plan regarding Health Services Initiatives, specifically, to revise language for Delaware's CHIP State Plan Health Service Initiative to align with the Delaware Department of Education's (DDOE's) definition of low-income in its Vision Services - School-Based Initiative, and to revise the data collection process to aid in identification of uninsured children.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2020.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

These changes are revisions in how the program is run and low-income children are identified for services. These are not new or expanded services, thus no fiscal impact is expected.

***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/january2020/proposed/23 DE Reg 528RFA 01-01-20.pdf>

- 2.2. Health Services Initiatives-** Describe if the State will use the health services initiative option as allowed at 42 CFR 457.10. If so, describe what services or programs the State is proposing to cover with administrative funds, including the cost of each program, and how it is currently funded (if applicable), also update the budget accordingly. (Section 2105(a)(1)(D)(ii)); (42 CFR 457.10)

Pursuant to Section 2105(a)(1)(D)(ii) of the Social Security Act, Delaware ~~with~~ will use administrative funds to offer health services initiatives under this plan with the goal of improving the health of children, defined as "individual(s) under the age of 19 including the period from conception to birth," per 42 CFR 457.10. Delaware assures that it will use no more than 10% of the total expenditures under this Plan, as specified in 42 CFR 457.618, to fund the State's health service initiatives.

Vision to Learn Services – School-Based Initiative

Access to vision exams and glasses is critical for students' educational achievements and health outcomes, as 80% of all learning during a child's first 12 years is vital. It comes as no surprise that students with vision problems tend to have lower academic performance, as measured by test scores and grades, and that students' performance in school impacts future employment earnings, health behaviors, and life expectancy. As such, Delaware seeks to use the health services initiative option to improve the health of low-income children by increasing their access to needed vision services and

PROPOSED REGULATIONS

glasses through a targeted, school-based initiative. Delaware intends to contract with a non-profit Medicaid participating provider to offer these services on-site at certain Delaware schools. ~~(Delaware is currently engaged with Vision to Learn (VTL), which has been serving Delaware children since 2014 and is a certified Medicaid participating provider. VTL is a non-profit, philanthropically funded entity that provides free eye exams and glasses to students at schools in low income communities.)~~

The following describes how the CHIP HSI will be operationalized:

- ~~The qualified provider will target Delaware's low-income children by identifying Title I schools in which at least 51% of the student body receives free or reduced price meals Community Eligibility (CEP) Schools. A school is eligible for CEP if at least 40% of its students are "directly certified" through the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) and the school provides free breakfast and lunch to all of its students.~~
- ~~These schools will provide the qualified provider with a list of children who have failed the school-supplied vision screening. The qualified provider will give these children parental consent forms to take home.~~
- ~~The qualified provider will send a notice home with these children informing the parent/guardian that their child will receive a vision screening, eye exam, and, if necessary, corrective lenses and frames. The parent/guardian has the opportunity to return the form and refuse these services.~~
- ~~For children whose return with parental consent, The qualified provider will give one vision screening and eye exam and, if needed, corrective lenses and frames (including replacements, as needed) on-site in a mobile eye clinic.~~
- ~~If the vision screening and eye exam results determine that corrective lenses and frames are needed, the qualified provider will send a notice home to the child's parent/guardian informing them of the results and requesting insurance information.~~
- ~~The qualified provider will collect identifying information from all children it serves (for example, name and date of birth) or and submit this information to the Delaware Division of Medicaid and Medical Assistance (DMMA). Based on this data, DMMA will identify children who are enrolled in Medicaid or CHIP and their managed care organization (MCO) and return this information to the qualified provider, who will then submit bills for Medicaid and CHIP enrollees directly to the MCOs. The MCOs will pay based on negotiated, standard fees.~~
- ~~The qualified provider will collect the following information, at a minimum, from all children it serves, and submit it to the Delaware Division of Medicaid and Medical Assistance (DMMA):~~
 - ~~Child's first and last name;~~
 - ~~Child's date of birth;~~
 - ~~Name of the parent or guardian;~~
 - ~~Name of the school the services were provided at and its CEP status;~~
 - ~~Indication that the insurance information form was or was not returned; and if it was returned,~~
 - ~~The insurance information that was provided.~~
- ~~Based on this data, DMMA will identify children on this list who are enrolled in Medicaid or CHIP and their managed care organization (MCO) and return this information to the qualified provider, who will then submit bills for Medicaid and CHIP enrollees directly to the MCOs. The MCOs will pay based on negotiated, standard fees.~~
- ~~The qualified provider will submit information about services provided to DMMA for the children ages 18 or younger who DMMA has not identified as enrolled in Medicaid or CHIP. DMMA will remit payment for these services through CHIP HSI funding.~~
- ~~The qualified provider will use this data and submit a second report to DMMA to include only those children that are 18 years of age or under, returned the insurance information form, did not indicate a private insurance carrier, and were not identified by DMMA as enrolled in Medicaid or CHIP on the previous submission.~~
- ~~DMMA will remit payment for these services through CHIP HIS funding.~~
- ~~DMMA will perform outreach by supplying the provider with brochures and information about the CHIP and Medicaid Programs to provide to children that are not currently enrolled in Medicaid or CHIP.~~

Delaware provides the following assurances regarding this Health Service Initiative (HSI), ~~Vision to Learn (VTL) — Delaware Vision Services – School-Based Initiative:~~

- This HSI will only target children under the age of 19;
 - This HSI will not supplant or match CHIP Federal funds with other Federal funds nor allow other Federal funds to supplant or match CHIP Federal funds; and
 - HSI funds will not be used for children with private coverage and will only be used to cover ~~VTL~~ services provided to uninsured children.
-

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11003

PUBLIC NOTICE

Determining Special Needs and Income Eligibility for Child Care

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

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 January 31, 2020. Please identify in the subject line: Determining Special Needs and Income Eligibility for Child Care.

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/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

Statutory Authority

- 45 CFR 98.20(a)
- 45 CFR 98.21(c)

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policies so that the policies are easier for DSS staff, stakeholders, and the public to understand.

DSS is proposing to remove DSSM 11003.6 "Determining Income Eligibility" as it is a redundant policy and the information can be found in DSSM 11003.9.1 "Determining Income Eligibility for Child Care" and DSSM 11003.7.8 "Determining Special Needs for Child Care".

DSS is proposing to remove DSSM 11003.7.7 "Income Waiver" as it is a redundant policy and the information can be found in DSSM 11003.7.8 "Determining Special Needs for Child Care".

DSS is proposing to amend DSSM 11003.7.8 "Determining Special Needs for Child Care" to include the current process that DSS staff are to follow when determining eligibility for Special Needs Child Care. The policy

explains the requirements and documentation needed in order to qualify for Special Needs Child Care. DSS added a section to the policy to provide direction to DSS eligibility workers on coding within the DSS eligibility system.

DSS is proposing to amend DSSM 11003.9.1 “Determining Income Eligibility for Child Care” to include the current process that DSS staff are to follow when determining financial eligibility for the Child Care Subsidy Program. DSS updated the countable and excluded income sections to include current income requirements for the program, and a section on the net income test for parent copayments was added.

Summary of Proposal

Purpose

The proposed rules explain technical and financial eligibility requirements for the Child Care Subsidy Program.

Summary of Proposed Changes

Effective for services provided on and after March 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend sections 11003.6, 11003.7.7, 11003.7.8 and 11003.9.1 of the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2020.

Fiscal Impact

DSS amended the eligibility policies to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. These policies are currently in place and there are no new financial responsibilities associated with the amended eligibility policies.

***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/january2020/proposed/23 DE Reg 531RFA 01-01-20.pdf>

POLICY – AMENDMENT

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

~~11003.6 Determining Income Eligibility~~

~~45 CFR 98.20~~

~~This policy applies to applicants for and recipients of child care assistance.~~

~~1. Gross Income Is Capped~~

~~Gross monthly income must be equal to or less than 200% of the Federal Poverty Limit for the family size.~~

~~2. Income Requirement~~

~~The income requirement applies to all income eligible child care programs.~~

~~Exception: Families referred by and active with the Division of Family Services do not have to meet the income limit.~~

POLICY – AMENDMENT

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

~~11003.7.7 Income Waiver~~

~~DSS will waive the 200 percent income eligibility limitation for families when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.~~

POLICY – AMENDMENT

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

11003.7.8 Determining Special Needs for Child Care

45 CFR 98.20(a)

Eligibility

~~Families requesting Special Needs Child Care must be technically and financially eligible.~~

~~**EXCEPTION:** DFS referrals do not have to meet financial criteria.~~

~~The parent/caretaker must meet the need criteria as listed in 11003.8.~~

~~To be eligible for Special Needs care the parent/caretaker must meet the definition of need as explained below.~~

~~This policy applies to parents and caretakers requesting Special Needs Child Care for themselves or for their children.~~

1. Families requesting Special Needs Child Care must meet the Special Needs eligibility requirements.

~~**Adults with Special Needs:**~~

~~A parent/caretaker may be eligible for Special Needs Child Care services if the parent/caretaker has a condition which makes him/her unable to care for his/her child for some portion of the day.~~

~~Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.~~

- ~~A. DSS will determine a parent or caretaker to be eligible for Special Needs Child Care if:~~
 - ~~i. The parent or caretaker has a condition that causes the parent or caretaker to be unable to care for his or her child for some portion of the day; and~~
 - ~~ii. The parent or caretaker is financially eligible for child care assistance.~~

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Children with Special Needs:

~~A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's parent/caretaker has a need and is financially eligible. The child's physical, medical or emotional condition must be such that the child is unable to care for himself or herself.~~

~~A child that is younger than 13 years of age who has a special need may be eligible for care if the child's parent/caretaker has a need and is financially eligible.~~

~~Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.~~

B. DSS will determine a child to be eligible for Special Needs Child Care if:

- i. The child is under 19 years of age;
- ii. The child is physically or mentally incapable of self-care; and
- iii. The parent or caretaker has a need per DSSM 11003.8 and is financially eligible for child care assistance.

C. DSS requires documentation of the special need.

- i. The family can verify the special need by submitting:
 - : DSS Form 611 "Child Care Medical Certification Form"; or
 - : Written correspondence completed by a physician or medical professional that details the special need and the required care.

Families with Protective Child Care Needs:

~~Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.~~

~~A child that is active with and referred by DFS for child care:~~

- ~~1. is considered to have met the need criteria;~~
- ~~2. does not have to meet the financial criteria;~~
- ~~3. may receive child care regardless of citizenship status.~~

D. DSS considers children who are active with and referred by the Division of Family Services (DFS) to have met the need criteria for Special Needs Child Care.

- i. Children referred by DFS:
 - : Are not required to meet the financial criteria for child care assistance; and
 - : May receive child care services regardless of their citizenship status.

Families with Transitional Work Program Needs:

~~Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.~~

~~A parent/caretaker that is active with and referred by TWP for child care:~~

- ~~1. is considered to have met the need criteria;~~
- ~~2. must have gross household income at or below 200% FPL;~~
- ~~3. is not required to provide a Medical Certification Form or a Special Needs Form.~~

~~DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 11004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.~~

E. DSS considers parents and caretakers who are active with the Transitional Work Program (TWP)

to have met the need criteria for Special Needs Child Care.

- i. Parents and caretakers participating with TWP:

- Must be financially eligible for child care assistance; and
- Are not required to submit documentation of a special need to DSS.
- ii. TWP staff will request child care for clients who are participating with the program and will determine the amount of care needed.

<p>Note: DSS case workers must select the individual approved for the Special Needs Child Care in the "Child Care Additional Demographics" screen in the eligibility system. Selection of the incorrect individual will result in an improper payment error.</p>
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POLICY – AMENDMENT

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

11003.9.1 Determining Income Eligibility for Child Care

~~45 CFR 98.11(b)(2) 45 CFR 98.21(c)~~

~~A. Countable income. All sources of income, earned (such as wages) and unearned (such as child support, Social Security income, etc.) are countable income when determining a family's monthly gross income. Monthly gross income includes the following:~~

~~1. Money earned from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses. Count the amount earned before deductions are made for taxes, bonds, pensions, union dues, etc. This is gross income. Wages need to be equal to the federal minimum wage or an equivalent.~~

~~Earnings from self-employment are counted after applying a standard deduction for self-employment expenses. To get the self-employment deduction, self-employed households must verify at least one business cost to produce income.~~

~~Self-Employment Standard Deduction for Producing Income~~

~~The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October. The standard deduction is considered the cost to produce income.~~

~~2. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.~~

~~B. Disregarded Income~~

~~Monies received from the following sources are not counted:~~

~~1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims;~~

~~2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;~~

~~3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);~~

~~4. withdrawal of bank deposits;~~

PROPOSED REGULATIONS

5. ~~money borrowed or given as gifts;~~
6. ~~capital gains;~~
7. ~~the value of USDA donated foods;~~
8. ~~the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;~~
9. ~~any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~
10. ~~loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;~~
11. ~~any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;~~
12. ~~home produce used for household consumption;~~
13. ~~all of the earned income of a child under age 18 who is a student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);~~
14. ~~all payments derived from participation in projects under the Food-Benefit Employment & Training (FB E&T) program or other job training programs;~~
15. ~~all Vista income; and~~
16. ~~all income derived as a Census taker.~~

~~Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.~~

This policy outlines how DSS determines income eligibility for applicants and recipients of the Child Care Subsidy Program.

1. **DSS will determine income eligibility for the Child Care Subsidy Program when a family submits a completed and signed application and completes an interview for child care assistance.**
2. **Case workers must verify the past 30 days of income received by the family.**
3. **If a family's income fluctuates, DSS will average the last three months of the family's income for eligibility determination.**
4. **DSS considers all gross earned and unearned income received by the family when determining child care eligibility.**
 - A. Gross income is the amount of earned and unearned income before deductions such as taxes, bonds, pensions, and union dues.
 - B. To be eligible for child care assistance, a family's gross monthly income must be equal to or less than 185% of the Federal Poverty Level (FPL) for the family size.
5. **DSS counts the following income when determining child care eligibility.**
 - A. Earned income, including, but not limited to:
 - i. Wages and salary;

- ii. Armed forces pay;
- iii. Commissions, tips, and piece-rate payments;
- iv. Self-employment earnings.
 - a. Self-employment earnings are counted after applying a standard deduction for self-employment expenses.
 - b. Self-employed clients must verify at least one business cost to receive the self-employment deduction.
 - c. Self-employment earnings must be equal to the federal minimum wage.

B. Unearned income, including, but not limited to:

- i. Social Security benefits, including Social Security Disability Income (SSDI), Supplemental Security Income (SSI), and Retirement, Survivors, and Disability Insurance (RSDI);
- ii. Veteran's benefits and military allotments;
- iii. Public assistance payments, including Temporary Assistance for Needy Families (TANF);
- iv. Net rental income;
- v. Unemployment compensation;
- vi. Workers' compensation;
- vii. Pensions;
- viii. Railroad retirement;
- ix. Annuities;
- x. Alimony and child support.

6. **DSS excludes the following income when determining child care eligibility.**

- A. The value of U.S. Department of Agriculture (USDA) donated foods.
- B. The value of Supplement Nutrition Assistance Program (SNAP) food benefits.
- C. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the National School Lunch Act, as amended.
- D. The value of homegrown produce used for household consumption.
- E. The earned income of a child under the age of 18 years old who is a student.
- F. All AmeriCorps VISTA income.
- G. Temporary U.S. Census Bureau employment income received during the census period.
- H. Temporary income received by a family that may determine the family to be over 85% of the State Median Income (SMI).
 - i. The family must submit documentation of when the income will end.
 - ii. The temporary work period cannot exceed 90 days.
- I. The money received from the sale of property such as stocks, bonds, a house, or a car.
 - i. If the client is in the business of selling such property, the net proceeds are counted as

PROPOSED REGULATIONS

income from self-employment.

- J. Withdrawals from bank accounts.
 - K. Money borrowed or received as a gift.
 - L. Capital gains.
 - M. Federal income tax returns.
 - N. Non-recurring lump sum payments (e.g. a lump sum child support payment).
 - O. Any payments derived from participation in activities under the Food Benefit Employment & Training program or other job training programs.
 - P. Loans or grants, such as scholarships obtained and used under conditions that preclude their use for current living costs.
 - Q. Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act.
 - R. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims.
 - S. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act.
 - T. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- 7. DSS does not consider resources such as cars, homes, savings accounts, or life insurance when determining income eligibility for child care assistance.**
- 8. Once eligibility has been established, DSS will complete a net income test to determine if the family will have a copayment for child care assistance.**
- A. Net income is the total income counted in the child care budget after shelter and utility deductions have been applied.
 - B. The net income test determines if the family has an excessive financial burden. DSS will waive the copayment if the family's income falls below 40% of the FPL per DSSM 11004.7.1.
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DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11002

PUBLIC NOTICE

Child Care Subsidy Program Terms

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to update term definitions.

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 January 31, 2020. Please identify in the subject line: Child Care Subsidy Program Terms.

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/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to update term definitions.

Statutory Authority

- 45 CFR 98.2
- 45 CFR 98.40

Background

DSS is revising the terms and definitions for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant (CCDBG) Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policy so that the policy is clear, concise, and easy to understand.

Summary of Proposal

Purpose

The proposed rule defines Child Care Subsidy Program terms.

Summary of Proposed Changes

Effective for services provided on and after March 11, 2020 Delaware Health and Social Services/Division of Social Services proposes to amend section 11002.9 of the Division of Social Services Manual regarding Child Care, specifically, to update term definitions.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2020.

PROPOSED REGULATIONS

Fiscal Impact

DSS amended DSSM 11002.9 to clarify the text and formatting of the existing policy, including adding new program terms and removing program terms that are no longer applicable. This policy is currently in place and there are no financial responsibilities associated with the Child Care Subsidy Program Terms policy.

*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/january2020/proposed/23 DE Reg 539RFA 01-01-20.pdf>

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

[Child Care Subsidy Program Terms](#)

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION INVESTOR PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 73-102(b) (6 Del.C. §73-102(b))

PUBLIC NOTICE

Rules Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 73-102(b) of Title 6 of the Delaware Code, the Investor Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed revision to the Rules Pursuant to the Delaware Securities Act.

SUMMARY OF THE PROPOSED REVISION

The proposed revision amends existing Rules as follows:

- The proposed amendments include an amendment of Rule 102 relating to requests for interpretive opinion. It will increase the requisite fee for interpretive opinions and clarifies that the fee will be charged for each question asked, even if posited as one request, in recognition of the amount of time it can take to draft the requested opinion.
- The proposed amendments also include an amendment to Rule 502 relating to limited offering exemptions. The amendment will delete reference to Rule 505 of SEC Regulation D (17 C.F.R. §§230.505), which was repealed in 2016.
- The proposed amendments also include an amendment to Rule 505(a) relating to the definition of the word offer in the Act. The amendment will change the citation to eliminate an outdated code reference and instead refer to the general definition section of that code provision.
- The proposed amendments also include an amendment to Rule 700(d) to require investment adviser sole proprietorships to register at least one investment adviser representative with IPU.
- The proposed amendments also include revisions to Rules 611 and 712 relating to the requirement that Broker-Dealers (Rule 611) and Investment Advisers (Rule 712) with a place of business in Delaware display a sign bearing certain language in the public area of their place of business. The amendment modifies the requisite language to reflect that registration by IPU does not mean that IPU is endorsing a firm.

POSSIBLE TERMS OF THE AGENCY ACTION

None.

OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL

The agency does not believe that other regulations will be impacted.

NOTICE OF PUBLIC COMMENT

Persons wishing to comment on the proposed revision may submit their comments in writing no later than January 31, 2020, to:

Jillian Lazar
Investor Protection Director
Department of Justice, Investor Protection Unit
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

***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/january2020/proposed/23 DE Reg 540RFA 01-01-20.pdf>

Rules Pursuant to the Delaware Securities Act

Part A. General Provisions (Break in Continuity of Sections)

102 Interpretive Opinions

The Unit provides written interpretative opinions under the Act in response to written requests. Requests for interpretative opinions should be addressed to the Director and accompanied by a fee of ~~\$300.00~~ \$500.00 payable to the State of Delaware. Interpretations may be requested regarding any section of the Act or the Rules. When one request contains multiple novel questions or inquiries that require separate or additional research, each such question or inquiry may be treated as a separate request for purposes of calculating the applicable fee.

(Break in Continuity of Sections)

Part E. Exemptions from Registration (Break in Continuity of Sections)

502 Limited Offering Exemption

(Break in Continuity Within Section)

- (b) Except as provided otherwise in these Rules, an offer of securities in the State of Delaware that qualifies for exemption under any limited or private offering exemption in or promulgated pursuant to the Securities Act of 1933 or the Securities and Exchange Act of 1934, including Rules 504 ~~and 505~~ of SEC Regulation D (17 C.F.R. §§230.504 ~~and 230.505~~), shall be exempt from the requirements of Sections 73-202, 73-208 and 73-211 of the Act, so long as the issuer has filed with the Director a notice on Form LOE ("Notice of Limited Offering Exemption") no later than 15 days after the first sale of such security in this state.

(Break in Continuity of Sections)

505 Offers of Securities Through the Internet

- (a) A communication that is placed on the internet by or on behalf of an issuer that is designed to raise capital and/or to distribute information on securities, products or services and that is directed generally to anyone having access to the internet, whether through postings on "Bulletin Boards," displays on

PROPOSED REGULATIONS

webpages, the placement of internet advertisements, postings on or through application or social media websites, or otherwise (an "Internet Communication"), shall not constitute an offer within the meaning of Section 73-103(a)(17) of the Act, and shall therefore not be required to be registered under the Act, provided that:

(Break in Continuity of Sections)

Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents

(Break in Continuity of Sections)

611 Public Notice of Delaware Registration for Broker-Dealers

- (a) Broker-dealers registered under the Act with a place of business in Delaware shall prominently display in the public area of each such place of business in 20 point font or greater in a location visible to all customers and potential customers, a notice stating:

"NOTICE REQUIRED BY LAW

Investment firms and professionals in Delaware must be registered with the Investor Protection Unit of the Delaware Department of Justice. This firm has been so registered. Registration does not mean this business ~~has been approved or reviewed~~ is being endorsed by the Investor Protection Unit.

To check the registration status of any investment firm or professional in Delaware, or to file a complaint with the Investor Protection Unit, please call (302) 577-8424 or e-mail Investor.Protection@state.de.usdelaware.gov."

(Break in Continuity of Sections)

Part G. Investment Advisers and Investment Adviser Representatives

700 Registration of Investment Advisers

(Break in Continuity Within Section)

- (d) ~~Except for an investment adviser that is a sole proprietorship or the substantial equivalent, an~~ An investment adviser registered with the Director shall register with the Director at least one investment adviser representative.

(Break in Continuity of Sections)

712 Public Notice of Delaware Registration for Investment Advisers

- (a) Investment Advisers registered under the Act with a place of business in Delaware shall prominently display in the public area of each such place of business in 20 point font or greater in a location visible to all customers and potential customers, a notice stating:

"NOTICE REQUIRED BY LAW

Investment firms and professionals in Delaware must be registered with the Investor Protection Unit of the Delaware Department of Justice. This firm has been so registered. Registration does not mean this business ~~has been approved or reviewed~~ is being endorsed by the Investor Protection Unit.

To check the registration status of any investment firm or professional in Delaware, or to file a complaint with the Investor Protection Unit, please call (302)577-8424 or e-mail Investor.Protection@state.de.usdelaware.gov."

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

Rules Pursuant to the Delaware Securities Act

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 103(a) & (b) (7 **Del.C.** §103(a) & (b))
7 **DE Admin. Code** 3301

REGISTER NOTICE**SAN# 2019-09****Hearing Docket No.: 2019 -R-F-0031****3300 Non-Tidal Finfish****3301 Definitions****1. TITLE OF THE REGULATIONS:**

Amend 7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions.

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

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County. Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights and population growth have reduced public access on some of Delaware's Designated Trout Streams, while freshwater trout angling has remained a seasonally popular activity. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access to Pike Creek's freshwater trout fishery.

The amendment proposed by this action will extend the defined Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway). This will accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the trout season's opening day to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult / \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years. Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed action.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §103 (a & b)

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3300 Non-Tidal Finfish - 3301 Definitions opens January 1, 2020 (Hearing Docket No.: 2019 -R-F-0031). A public hearing on the proposed amendment will be held on Wednesday, January 29, 2020 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, February 13, 2020.

7. PREPARED BY:

Stewart Michels
 Email: Stewart.Michels@delaware.gov
 Ph: (302) 739-9914

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

<http://regulations.delaware.gov/register/january2020/proposed/23 DE Reg 543RFA 01-01-20.pdf>

3300 Non-Tidal Finfish

3301 Definitions

1.0 For purposes of Regulations 3301 through 3311, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

“Administered by the Division” means owned, leased or licensed by the Division.

“Bait” means any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

“Baited Field” means include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

“Designated Trout Pond” means:

Newton Pond in Sussex county (near Greenwood);

Tidbury Pond in Kent County.

“Designated Trout Stream” means:

“Beaver Run”, from the boundary line between this State and the Commonwealth of Pennsylvania to the Brandywine River;

“Christina Creek”, from the boundary line between this State and the State of Maryland through Rittenhouse Park;

“Mill Creek”, from Brackenville Road to Route 7;

“Pike Creek”, from Route 72 to the bridge at ~~Pike Creek Road~~ Route 2 (Kirkwood Highway);

“Red Clay Creek”, from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road;

“White Clay Creek”, from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road; and

“Wilson Run”, from Route 92 through Brandywine Creek State Park; ~~and~~

“Director” means the Director or Acting Director of the Division.

“Division” means the Division of Fish and Wildlife of the Department.

“Established road” means a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“Fishing” or **“to fish”** means to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.

“Game fish” means smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

“Possession” means either actual or constructive possession of or any control over the object referred to.

“Refuge” means an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

“**Restricted Trout Stream**” means the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania.

“**Roadway**” means any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

“**Season**” means that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

“**Vehicle**” means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 4001

PUBLIC NOTICE

4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019

PSC REGULATION DOCKET
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S RULES FOR TELECOMMUNICATIONS SERVICE PROVIDERS

**TO: ALL TELECOMMUNICATIONS CARRIERS, ALL
CONSUMERS, AND OTHER INTERESTED PERSONS**

In April 2019, the role of the Delaware Public Service Commission (“Commission”) with respect to landline telecommunications regulation changed with the passage of Senate Bill No. 18 (“SB 18”). (The Commission does not regulate wireless or voice over internet services.) Among other things, SB 18 amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act (“TTIA”) (See 26 **Del.C.** §§215, 704-707).

Generally, telecommunications services provided over landlines fall into two categories: (1) “Basic Services,”

which the Commission regulates for price and quality of service; and (2) "Competitive Services," which the Commission does not regulate, other than to certify new carriers who seek to offer such services in Delaware. The SB 18 amendments maintained certification requirements for telecommunications carriers but revised the TTIA (§§704-707) to narrow the definition of "Basic Services" and to allow carriers to change the rates for Basic Services without Commission approval.

By Order No. 9506 dated December 5, 2019 (the "Order"), the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its "Rules for the Provision of Telecommunications Services," codified at 26 **Del. Admin. C.** §4001 ("§4001") (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 **Del. Admin. C.** §4005 ("§4005") to §4001; and (3) repealing its "Regulations for the Implementation of the Telecommunications Technology Investment Act," codified at §4005 (Regulation Docket No. 41).

The text of the Amendments are attached to the Order. The Order and related exhibits are reproduced in the January 2020 edition of the Delaware *Register of Regulations* and may also be reviewed online at the Commission's website at www.depsc.delaware.gov. You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material (10 copies) may be submitted to the Commission on or before March 13, 2020, by email to lisa.driggins@delaware.gov or at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Bldg., Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckts. Nos. 10 & 45

The Commission will conduct a public hearing on the Amendments on Wednesday, February 26, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Internet e-mail addressed to psc@delaware.gov.

ORDER NO. 9506

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019)

PSC REGULATION DOCKET
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

AND NOW, this 5th day of December, 2019, the Delaware Public Service Commission ("Commission")

determines and orders the following:

WHEREAS, on April 17, 2019, the Governor of the State of Delaware signed into law Senate Bill No. 18 (82 Del. Laws ch. 11) ("SB 18"), which, among other things, amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act ("TTIA") (See 26 **Del.C.** §§215, 704-707); and

WHEREAS, in part, SB 18 amends: (1) § 215(h) to permit telecommunications carriers to undergo transfers of control and to issue securities without Commission approval; and (2) the TTIA to narrow the definition of "Basic Services" to only switched access services and to allow carriers to change their rates for Basic Services without Commission approval; and

WHEREAS, the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its "Rules for the Provision of Telecommunications Services," codified at 26 **Del. Admin. C.** §4001 ("§4001") (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 **Del. Admin. C.** §4005 ("§4005") to §4001; and (3) repealing its "Regulations for the Implementation of the Telecommunications Technology Investment Act," codified at §4005 (Regulation Docket No. 41);

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, for the reasons set forth above, and pursuant to 26 **Del.C.** §§209 and 703(3) and 29 **Del.C.** §10114, the Commission proposes to revise its "Rules for the Provision of Telecommunications Services," which were last revised by PSC Order No. 8695 (January 6, 2015) and published at 18 DE Reg. 653 ("Telecom Rules") and to repeal its "Regulations for the Implementation of the Telecommunications Technology Investment Act," which were established by PSC Order No. 4821 (June 9, 1998) and published at 2 DE Reg. 280 ("TTIA Rules"). The proposed revised Telecom Rules are attached to this Order as Exhibit "A." Redlined versions of the existing Telecom Rules and the existing TTIA Rules are attached as Exhibit "B."

2. That, pursuant to 29 **Del.C.** §10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the January 1, 2020 edition of the Delaware *Register of Regulations*.

3. That, pursuant to 29 **Del.C.** §10115(b), the Secretary shall cause the form of public notice attached as Exhibit "C" to be published in two-column format, outlined in black, in the following two newspapers on the following dates:

<i>The News Journal</i>	December 19, 2019
<i>Delaware State News</i>	December 19, 2019

In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advanced notice of this Commission's rule-making proceedings. The Secretary shall file a certification of the completion of these tasks by December 31, 2019.

4. Pursuant to 26 **Del.C.** §209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, February 26, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before March 13, 2020.

5. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman
Joann T. Conaway, Commissioner
Harold B. Gray, Commissioner
Manubhai C. Karia, Commissioner
K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

PROPOSED REGULATIONS

*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/january2020/proposed/23 DE Reg 545RFA 01-01-20.pdf>

4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)

Docket 10 The Sale, Resale and Other Provisions of Intrastate
Telecommunications Services

Docket 45 Regulations For The Facilitation of Competitive Entry into the
Telecommunications Local Exchange Service Market

Effective: [TBD]December 10, 2001

~~PART A~~

CERTIFICATION AND REGULATION OF CARRIERS

1.0 Definitions

"Basic Service" shall mean switched access service.

"Carrier" shall mean any person or entity offering to the public Telecommunications service that originates or terminates within the State of Delaware. The term "Carrier" does not include:

- Any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;
- A company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;
- Providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 Del.C. §202(c);
- Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12; and
- Providers of Voice over Internet Protocol or other IP-enabled service as defined in 26 Del.C. §202(i).

"Competitive Service" shall mean any service that is not classified as a Basic Service.

"CPCN" shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

"Commission" shall mean the Public Service Commission of Delaware.

"Local Telecommunications Exchange Service" shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.

"Rules" shall mean these Rules, ~~including PARTS A and B,~~ governing the provision of telecommunications services in Delaware.

"Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

"Telecommunications Service" shall mean the offering of telecommunications for a fee directly to the public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used. "Telecommunications Service" does not include:

- The rent, sale, lease, or exchange for other value received, of customer premises

equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);

- Telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;
- The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and
- Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

2.0 Applicability

These Rules shall apply to all ~~new~~ Carriers, as defined by these Rules, and shall be construed consistently with Rule 3 of these Rules.

3.0 Application With Other Rules or Regulations

3.1 Rules of Practice and Procedure

The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended. See 1001 General Regulations.

4.0 Certification

4.1 Certification Requirement.

No person or entity shall offer public intrastate or local exchange telecommunications service within the State of Delaware without first obtaining from the Commission a Certificate of Public Convenience and Necessity authorizing such service. A Carrier offering telecommunications service within the State of Delaware without a CPCN duly issued by this Commission is acting unlawfully and shall immediately cease offering such service until a CPCN is granted.

4.2 Application.

An applicant for a CPCN shall file with the Commission in the format described in 26 **DE Admin. Code** §1001-1.6.3, together with the statutory filing fee set forth in 26 **Del.C.** §114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately serve the public and that the public convenience and necessity requires or will require the operation of such business. If the applicant fails to provide the required information and exhibits within six months of the application, the Commission may take action to close this docket and the applicant will forfeit its application fee.

4.3 Notice.

The applicant shall serve a notice of the filing of such an application upon the Public Advocate, and to such other entities as may be required by the Commission. The applicant shall provide public notice of the filing of the application in one (1) newspaper having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

4.4 Business License and Registered Agent.

An applicant shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has received authorization to do business issued by the Secretary of State. An applicant shall provide the name, address, and telephone number of its Delaware Resident Agent. Following certification, all Carriers shall promptly notify the Commission in writing of changes of Resident Agent or the name, address, or telephone number thereof.

4.5 Initial Tariffs or Price Lists.

PROPOSED REGULATIONS

4.5.1 An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service for switched access services. Any revisions to this tariff must be filed with the Commission. An applicant ~~may need not~~ file tariffs or price lists for other services ~~or provide a website link to its tariff or price list which the Commission will post on its website.~~

4.6 Demonstration of Fitness.

4.6.1 An applicant shall be required to demonstrate to the Commission its financial, operational, and technical ability to render service within the State of Delaware. Such demonstration shall include, but is not limited to, the following:

4.6.1.1 The applicant's certified financial statements current within twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

4.6.1.2 A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;

4.6.1.3 A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

5.0 Abandonment or Discontinuation of Service

A Carrier may abandon or discontinue ~~service~~ Competitive Services, in whole or in part, at any time; provided, however that such Carrier shall provide the Commission with contemporaneous notice of abandonment or discontinuance of all of its Competitive Services in the State. A Carrier may abandon or discontinue Basic Services in accordance with the terms of 26 Del.C. § 706(d) for carriers electing to be governed under subchapter VIIA of Title 26 or § 203(A)(c), for non-electing carriers 26 Del.C. §203A(d).

6.0 Services to be Provided By Carriers Providing Local Telecommunications Exchange Service

6.1 Any Carrier providing local telecommunications exchange service shall provide to its customers:

6.1.1 Access to 911 enhanced emergency system;

6.1.2 Access to telecommunications relay service.

7.0 Regulation

7.1 Except for the determination of rate changes, the offering of Basic Services is subject to the provisions of subchapters I and V of chapter I of Title 26, §§201, 202, 203A(c), 204, 206, 212, 217, 218, and 222 of Title 26, and all Commission procedures, rules, and regulations except to the extent inconsistent with subchapter VII of chapter I of Title 26.

7.2 Rate changes for Basic Services do not require Commission approval.

7.3 Rates for switched access service must be established according to prevailing federal jurisdiction.

7.4 Competitive Services are not subject to tariff or other filing requirements and Carriers are not required to provide notice to the Commission for any new competitive service.

7.5 Commission approval is not required for any reorganization or merger, mortgage or transfer of property, issuance of securities, assumption of obligation of another, or transfer of control of a Carrier.

~~7.0-12.08.0-12.0~~ Reserved

PART B

CUSTOMER ELECTION OF PREFERRED CARRIER

13.0 Additional Definitions

For purposes of this Part B, in addition to the Definitions set forth by Part A, the following definitions shall apply:

-
- 13.1 Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.
- 13.2 Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

14.0 Applicability

Any Carrier offering intrastate and/or local exchange service for public use within the State of Delaware, including the ILEC, Bell Atlantic-Delaware, Inc., shall be subject to the provisions of these Part B Rules.

15.0 Verification of Orders for Telecommunications Service

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the procedures set forth in *47 C.F.R. § 64-1120*.

16.0 Letter of Agency Form and Content

A Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of agency that does not conform with the requirements set forth in *47 C.F.R. § 64.1130* is invalid.

17.0 Submission and Execution of Changes in Customer Carrier Selections

Submission and execution of changes in customer carrier selection shall comply with *47 C.F.R. § 64.1120*.

18.0 Preferred Carrier Freezes

A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of *47 C.F.R. § 64.1190*.

19.0 Customer Protection**19.1 Procedures To Be Followed By The Customer.**

19.1.1 A customer who believes his or her Carrier or Carriers have been changed, without the customer's authorization, and/or that the customer has been billed for charges not authorized by the customer, should first attempt to resolve the matter with the Carrier or Carriers responsible for the unauthorized changes and/or charges. If the customer is not satisfied with the resolution offered by the Carrier, the customer may file a complaint with the Commission.

19.2 Procedures To Be Followed By Carriers.

19.2.1 A Carrier who is informed by a customer that the customer believes the Carrier has caused or allowed a change in the customer's Carrier without the customer's authorization, or that the Carrier has caused or allowed the customer to be billed for charges not authorized by the customer shall attempt to resolve the complaint promptly and in good faith. If the customer and Carrier are not able to resolve the complaint, then the Carrier shall inform the customer orally or in writing of the right to file a complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

19.3 Carriers to Maintain Record of Complaints.

19.3.1 Each Carrier shall maintain a record of the complaints received by it alleging that the Carrier has caused or allowed a customer's Carrier to be changed without the customer's authorization or has caused or allowed the customer to be billed for charges not authorized by the customer. The Carrier shall maintain the record of each complaint for a period of two years following initial notification of the complaint. Upon request by the Commission or its staff, a Carrier shall furnish a copy of its complaint records and such other information as the Commission Staff may require. A Carrier's complaint records shall include at least the following information:

PROPOSED REGULATIONS

- 19.3.1.1 name, address, and telephone number of complainant and the date and manner received by the Carrier; and
- 19.3.1.2 a chronological summary of the dispute and its current status, including any resolution and date of resolution.
- 19.4 Refund and Penalties.
- 19.4.1 In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission shall require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law. 26 **Del.C.** §924(c). The Commission's remedies are in addition to those required under 47 *C.F.R.* § 64.1170 to the extent the FCC's remedies have not provided a refund or credit to the subscriber in the amount of 100% of all charges the Carrier caused to be billed as a result of the unauthorized change or charge.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 4005

PUBLIC NOTICE

4005 Regulations for the Implementation of the Telecommunications Technology Investment Act (Docket 41)

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019)

PSC REGULATION DOCKET
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE PUBLIC SERVICE COMMISSION'S RULES FOR TELECOMMUNICATIONS SERVICE PROVIDERS

**TO: ALL TELECOMMUNICATIONS CARRIERS, ALL
CONSUMERS, AND OTHER INTERESTED PERSONS**

In April 2019, the role of the Delaware Public Service Commission ("Commission") with respect to landline telecommunications regulation changed with the passage of Senate Bill No. 18 ("SB 18"). (The Commission does

not regulate wireless or voice over internet services.) Among other things, SB 18 amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act ("TTIA") (See 26 **Del.C.** §§215, 704-707).

Generally, telecommunications services provided over landlines fall into two categories: (1) "Basic Services," which the Commission regulates for price and quality of service; and (2) "Competitive Services," which the Commission does not regulate, other than to certify new carriers who seek to offer such services in Delaware. The SB 18 amendments maintained certification requirements for telecommunications carriers but revised the TTIA (§§704-707) to narrow the definition of "Basic Services" and to allow carriers to change the rates for Basic Services without Commission approval.

By Order No. 9506 dated December 5, 2019 (the "Order"), the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its "Rules for the Provision of Telecommunications Services," codified at 26 **Del. Admin. Code** §4001 ("§4001") (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 **Del. Admin. Code** §4005 ("§4005") to §4001; and (3) repealing its "Regulations for the Implementation of the Telecommunications Technology Investment Act," codified at §4005 (Regulation Docket No. 41).

The text of the Amendments are attached to the Order. The Order and related exhibits are reproduced in the January 2020 edition of the Delaware *Register of Regulations* and may also be reviewed online at the Commission's website at www.depsc.delaware.gov. You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material (10 copies) may be submitted to the Commission on or before March 13, 2020, by email to lisa.driggins@delaware.gov or at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Bldg., Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckts. Nos. 10 & 45

The Commission will conduct a public hearing on the Amendments on Wednesday, February 26, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Internet e-mail addressed to psc@delaware.gov.

ORDER NO. 9506

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019)

PSC REGULATION DOCKET
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

AND NOW, this 5th day of December, 2019, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on April 17, 2019, the Governor of the State of Delaware signed into law Senate Bill No. 18 (82 Del. Laws ch. 11) ("SB 18"), which, among other things, amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act ("TTIA") (See 26 **Del.C.** §§215, 704-707); and

WHEREAS, in part, SB 18 amends: (1) §215(h) to permit telecommunications carriers to undergo transfers of control and to issue securities without Commission approval; and (2) the TTIA to narrow the definition of "Basic Services" to only switched access services and to allow carriers to change their rates for Basic Services without Commission approval; and

WHEREAS, the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its "Rules for the Provision of Telecommunications Services," codified at 26 **Del. Admin. Code** §4001 ("§4001") (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 **Del. Admin. Code** §4005 ("§4005") to §4001; and (3) repealing its "Regulations for the Implementation of the Telecommunications Technology Investment Act," codified at §4005 (Regulation Docket No. 41);

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, for the reasons set forth above, and pursuant to 26 **Del.C.** §§209 and 703(3) and 29 **Del.C.** §10114, the Commission proposes to revise its "Rules for the Provision of Telecommunications Services," which were last revised by PSC Order No. 8695 (January 6, 2015) and published at 18 DE Reg. 653 ("Telecom Rules") and to repeal its "Regulations for the Implementation of the Telecommunications Technology Investment Act," which were established by PSC Order No. 4821 (June 9, 1998) and published at 2 DE Reg. 280 ("TTIA Rules"). The proposed revised Telecom Rules are attached to this Order as Exhibit "A." Redlined versions of the existing Telecom Rules and the existing TTIA Rules are attached as Exhibit "B."

2. That, pursuant to 29 **Del.C.** §10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the January 1, 2020 edition of the Delaware *Register of Regulations*.

3. That, pursuant to 29 **Del.C.** §10115(b), the Secretary shall cause the form of public notice attached as Exhibit "C" to be published in two-column format, outlined in black, in the following two newspapers on the following dates:

The News Journal
Delaware State News

December 19, 2019
December 19, 2020

In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advanced notice of this Commission's rule-making proceedings. The Secretary shall file a certification of the completion of these tasks by December 31, 2019.

4. Pursuant to 26 Del.C. §209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, February 26, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before March 13, 2020.

5. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman
Joann T. Conaway, Commissioner
Harold B. Gray, Commissioner
Manubhai C. Karia, Commissioner
K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

***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/january2020/proposed/23 DE Reg 552RFA 01-01-20.pdf>

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

[4005 Regulations for the Implementation of the Telecommunications Technology Investment Act](#)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

HARNES RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)
3 DE Admin. Code 501

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and Del.C. §10005 Title 3, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice in November 2019 *Register of Regulations*, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 7.5.3, 7.6.5.4, 7.6.6.6, 7.6.6.6.8, 7.6.8.4, 7.6.13.1.9, 7.6.13.1.18, 7.6.13.1.19, 10.2.9.2 and new definitions for "Extended Break" and "Kicking" in the November 2019 *Register of Regulations*.
2. The Commission received no written comments. The Commission held the public comment period open until close of business on December 2, 2019. The Delaware Harness Racing Commission will finalize the regulations at its regularly scheduled monthly meeting on December 10, 2019. Monthly meetings are noticed public meetings.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as

proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations*, on January 11, 2020.

IT IS SO ORDERED this 10th day of December 2019.

Beverly H. Steele, Chairman

Jack Berberian, Commissioner

Patt Wagner, Vice-Chairman

Stephanie Liguori, Commissioner

George P. Staats, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the November 2019 issue of the *Register* at page 340 (23 DE Reg. 340). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/january2020/final/23 DE Reg 556 01-01-20.htm>

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 258

REGULATORY IMPLEMENTING ORDER

258 Federal Programs General Complaint Procedures*

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** 122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures*. This regulation is being amended to update the name of the Title IV Part A Safe and Drug Free Schools and Communities Program, to renumber sections for clarification of information, to standardize terms, and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures* in order to update the name of the Title IV Part A Safe and Drug Free Schools and Communities Program, to renumber sections for clarification of information, to standardize terms, and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures*. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures* attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures* 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** 258 Federal Programs General Complaint Procedures* amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures* 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 December 16, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of December 2019.

Department of Education

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

Approved this 16th day of December 2019

258 Federal Programs General Complaint Procedures***1.0 Programs Covered by the Complaint Process**

This complaint process shall apply to the following programs: Title I Part A Improving Basic Programs Operated by Local Education Agencies; Title I Part B-1 Reading First; Title I Part B-2 Early Reading First; Title I Part B-3 William F. Goodling Even Start Family Literacy Program; Title I Part C Education of Migratory Children; Title I Part D Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or at Risk; Title I Part F Comprehensive School Reform; Title I Part G Advanced Placement; Title II Part A Teacher and Principal Training and Recruiting Fund, Grants to States; Title II Part A-5-2151(B) School Leadership; Title II Part D 1 and 2 Enhancing Education Through Technology; Title III Language Instruction for Limited English Proficient and Immigrant Students; Title IV Part A ~~Safe and Drug-Free Schools and Communities~~ The Student Support and Academic Enrichment (SSAE); Title IV Part B 21st Century Community Learning Centers; Title V Part A Innovative Programs and Title V Part B-1 Public Charter Schools.

2.0 Right to File a Complaint

- 2.1 An organization or an individual may file a complaint regarding an alleged violation of ~~Federal Program Statutes~~ federal program statutes or regulations by the Delaware Department of Education or the ~~Local Education Agency~~ local education agency. For purposes of this regulation, a ~~Local Education Agency~~ local education agency shall also include charter schools. A written and signed complaint shall be filed with the Delaware Department of Education.
- ~~2.1.2.2~~ The complaint shall include a statement specifying the alleged violation by the ~~State Education Agency~~ state education agency or a ~~Local Education Agency~~. ~~Such statement~~ local education agency and shall include facts and documentation of the alleged violation.
- ~~2.2.2.3~~ The Delaware Department of Education shall investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.
- ~~2.3.2.4~~ The Delaware Department of Education may conduct an independent onsite investigation of the complaint, if it is determined that an ~~on-site~~ onsite investigation is necessary.
- ~~2.4.2.5~~ The complaint shall allege a violation that occurred not more than one (1) year prior to the date that the complaint is received.

3.0 Complaint Made to the Local Education Agency

- 3.1 An organization or an individual is encouraged to file a written, signed complaint with the ~~Local Education Agency~~ local education agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the ~~Local Education Agency~~ local education agency of a Federal statute or regulation that applies to the ~~Local Education Agency's~~ local education agency's program.
- 3-13.2 The complaint shall include a statement specifying the alleged violation by the ~~Local Education Agency~~ local education agency. Such statement shall include facts and documentation of the alleged violation.
- 3-23.3 The superintendent or the agency head of the ~~Local Education Agency~~ local education agency shall investigate the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within sixty (60) working days of the receipt of the complaint.
- 3-33.4 An appeal of the ~~Local Education Agency~~ local education agency decision may be made by the complainant to the Delaware Department of Education. The appeal shall be in writing and signed by the individual or by an individual representative of the organization making the appeal. The Delaware Department of Education shall resolve the appeal in the same manner as a complaint, as indicated in Section 2.0.

4.0 Review of Final Decision by the U.S. Department of Education

Any party to the complaint has the right to request that the Secretary, U. S. Department of Education, review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary, U. S. Department of Education, shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

5.0 Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Secretary of Education
Delaware Department of Education
401 Federal Street
Suite 2
Dover, Delaware 19901-3639

*IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect students with disabilities. See 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d)(2) (14 **Del.C.** §122(d)(2))
14 **DE Admin. Code** 605

REGULATORY IMPLEMENTING ORDER

605 Student Rights and Responsibilities

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(d)(2), the Secretary of Education intends to reauthorize 14 **DE Admin. Code** 605 Student Rights and Responsibilities. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be readopted without any changes.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on November

1, 2019, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 605 Student Rights and Responsibilities in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring bases every four years and concluded that the regulation should be readopted without any changes.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 605 Student Rights and Responsibilities. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 605 Student Rights and Responsibilities attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 605 Student Rights and Responsibilities hereby reauthorize 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** 605 Student Rights and Responsibilities reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 605 Student Rights and Responsibilities 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 December 16, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of December 2019.

Department of Education

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

Approved this 16th day of December 2019

605 Student Rights and Responsibilities

1.0 Required Policy

4-4 All local school districts and charter schools shall have their own policies on student rights and responsibilities. These policies shall be based on the most current version or reauthorization of **Delaware Code**, **Delaware Administrative Code**, federal legislation such as, but not limited to, Individuals with Disabilities Education Act (IDEA), Civil Rights Act, Elementary and Secondary Education Act (ESEA), Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA), and the Patsy T. Mink Equal Opportunity in Education Act (Title IX).

2.0 Distribution of Student Rights and Responsibilities Policy

- 2.1 Each local school district and charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2.2 Each district and charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.
- 2.3 Each district and charter school shall post the policies on student rights and responsibilities on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this

policy(s) can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request.

3.0 Reporting Requirements and Timelines

- 3.1 Each local school district and charter school shall have an electronic copy of its current student rights and responsibilities policy(s) on file with the Department of Education.
- 3.2 Each local school district and charter school shall provide an electronic copy of any student rights and responsibilities policy(s) to the Department within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 4164(d) (14 Del.C. §4164(d))
14 DE Admin. Code 624

REGULATORY IMPLEMENTING ORDER

624 School District/Charter School Policy Prohibiting Cyberbullying

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§4161 and 4164(d), the Secretary of Education intends to amend 14 DE Admin. Code 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is being amended to remove an outdated school year reference, update a statutory reference and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) regarding: (1) the Delaware Code citation being incorrectly cited regarding to the bullying statute, and (2) a recommendation to change Section 2.4 to have the Department include a specific enumerated list of social media technology where posting of speech would be commonly accessible within the community. The Department corrected the Delaware Code citation that provides statutory authority for bullying, including cyberbullying, and added language clarifying social media platforms.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 624 School District/Charter School Policy Prohibiting Cyberbullying in order to remove an outdated school year reference, update a statutory reference and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 624 School District/Charter School Policy Prohibiting Cyberbullying. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 624 School District/Charter School Policy Prohibiting Cyberbullying attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 624 School District/Charter School Policy Prohibiting Cyberbullying 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** 624 School District/Charter School Policy Prohibiting Cyberbullying amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying 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 December 13, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 13th day of December 2019.

Department of Education

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

Approved this 13th day of December 2019

624 School District/Charter School Policy Prohibiting Cyberbullying**1.0 Cyberbullying Forbidden**

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 **Del.C.** ~~§4112D(b)(2)~~ ~~§4164(d)~~ **§§4161 and 4164**, each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

2.0 Definition of Cyberbullying

- 2.1 Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or **[group, group]** or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.
- 2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.
- 2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.
- 2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where **[the]** posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. ~~From implementation of this policy through the end of the 2013-2014 school year, postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's and charter school's list of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.~~ **[Postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's and charter school's list of mediums where posting of speech will be presumed to be available to a broad audience within the school**

community, regardless of privacy settings or other limitations on those postings. Postings on social media sites or forums similar to the enumerated examples above will also be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.]

- 2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(11) (14 Del.C. §122(b)(11))
14 DE Admin. Code 735

REGULATORY IMPLEMENTING ORDER

735 Standardized Financial Reporting and Transparency

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b)(11), the Secretary of Education intends to amend 14 DE Admin. Code 735 Standardized Financial Reporting and Transparency. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and updated the regulation to align with current practice and to further clarify and update terminology.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 735 Standardized Financial Reporting and Transparency in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years and updated the regulation to align with current practice and to further clarify and update terminology.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 735 Standardized Financial Reporting and Transparency. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 735 Standardized Financial Reporting and Transparency attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 735 Standardized Financial Reporting and Transparency 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 735 Standardized Financial Reporting and Transparency amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 735 Standardized Financial Reporting and Transparency 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 December 16, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of December 2019.

Department of Education

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

Approved this 16th day of December 2019

735 Standardized Financial Reporting and Transparency

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for the required standardized financial reporting pursuant to 14 **Del.C.** §122(b)(11); and the uniformity and transparency in the financial recording and bookkeeping practices of the school districts and charter schools pursuant to 14 **Del.C.**, §§1508 and 1509.

2.0 Definitions

~~"Charter School" shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code~~ means a non-home based full-time public school that is operated in an approved physical plant under a charter granted by, or transferred to, the Department of Education or other authorizing body for the personal physical attendance of all students.

~~"Delaware Educational Statistics Report" shall mean the annual reports maintained by the Delaware Department of Education related to financial and pupil information.~~

~~"Delaware Financial Management System or (DFMS)" shall mean the State of Delaware's system for managing financial transactions.~~

~~"District" shall mean~~ means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the **Delaware Code** 14 Del.C. Ch. 10.

~~"First State Financials" or "FSF" means the State of Delaware's system for managing financial transactions.~~

~~"Open Checkbook" means the State of Delaware's official online checkbook that provides the ability to view payment information by state agency, expenditure category, or vendor and includes information on credit card transactions of state employees.~~

~~"PHRST" shall mean~~ means the State of Delaware's payroll and human resources system.

~~"State of Delaware Online Checkbook" shall mean the State of Delaware's official online checkbook. The online checkbook provides the ability to view payment information by state agency, expenditure category, or vendor. The data are updated on a quarterly basis.~~

3.0 Standardized Financial Report

~~Standardized Financial Report~~ financial reports shall ~~mean the provide~~ a summary of the District's or Charter School's financial ~~documentation data~~ provided in a format approved by the Department of Education that includes, but is not limited to, the District's or Charter School's most current expenditure and revenue budgets. This documentation shall include encumbrances, expenditures, and remaining balances by category as prescribed in the approved format. Districts and Charter Schools shall indicate on the ~~Standardized Financial Report reports~~ whether the most current expenditure and revenue budgets are preliminary, amended or have been finalized by its approving entity.

4.0 Uniformity and Transparency in Financial Recording and Bookkeeping Practices

4.1 Each District and Charter School shall be required to use the following:

- 4.1.1 ~~Delaware Financial Management System~~ FSF or successor thereof for all financial transaction maintained in that system;
- 4.1.2 PHRST for payroll purposes; and
- 4.1.3 All other financial reporting formats or templates as provided by the Department of Education.

5.0 Reporting Requirements and Timelines

- 5.1 Each District and Charter ~~school~~ School, no later than fifteen (15) working days after the most recent District or Charter School board meeting, shall post the most current ~~Standardized Financial Report~~ standardized financial report on its website. Provided further, the District or Charter School shall ~~provide~~ post the final Standardized Financial Report for the past school year, no later than September 1st of each year.
- 5.2 Each District and Charter ~~school~~ School shall provide a link on its website to the ~~State of Delaware Online-Open~~ Checkbook, which includes state employee credit card transactions.
- 5.3 Each District and Charter ~~school~~ School shall provide a link on its website to the Delaware ~~Educational Statistics Report Card, which includes additional financial reporting data.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 742

REGULATORY IMPLEMENTING ORDER

742 Compensation of School District and Charter School Personnel Under Federal Projects

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Delaware Code**, Section 122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and found that federal and Delaware code citations needed to be updated

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and found that federal and Delaware code citations needed to be updated.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects 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** 742 Compensation of School District and Charter School Personnel Under Federal Projects amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal

Projects 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 December 16, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of December 2019.

Department of Education

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

Approved this 16th day of December 2019

742 Compensation of School District and Charter School Personnel Under Federal Projects

1.0 Use of Federal Funds

- 1.1 A school district or charter school may use federal funds, if allowable per grant guidance or regulation to:
 - 1.1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in ~~Delaware Code, Title 14~~ Title 14 of the Delaware Code, in order to implement a federally supported project.
 - 1.1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally supported program. Part time assignments shall be paid a pro rata share.
 - 1.1.3 Employ teachers of the school district or charter school during the school year for additional hours each week to support such federally supported programs.
 - 1.1.4 Employ full time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities of a federally supported program beyond the regular school day or school week.
 - 1.1.5 Pay a salary equal to the combined state and local salary of other persons in similar assignments at the same rank.
 - 1.1.6 Pay an hourly rate for a part time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.

2.0 A School District or Charter School Shall Not

- 2.1 Supplant funds for a local or state position by substituting federal funds for payment of that position.
- 2.2 Pay a salary to cover paid vacation days during intended federal employment when that federal employment is an extension of a ten or eleven month school year as assigned and paid by the state.

3.0 For Federal Project Proposals that Require the Approval of the Department of Education, the Applicant Shall

- 3.1 Describe any new or additional position, align it with a recognized rank as described in ~~Delaware Code Title 14~~ Title 14 of the Delaware Code or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.
- 3.2 Include in the benefits of the employee all of those benefits that accrue to an employee of the state or the local school district or charter school except that the benefit of the provisions of 14 **Del.C.** Ch. 14 shall not apply to any person whose salary is paid from federal funds in whole or in part.

- 3.3 Seek and obtain approval of the project through the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.

4.0 Local School Districts Shall Comply with the Maximum Hourly Compensation Rates as Published by the Department of Education.

5.0 Additional Requirement

All local school districts and charter schools shall be required to follow the U.S. Office of Management and Budget's ~~OMB Circular A-87, specifically attachment B, Section 14~~ 2 CFR Parts 220 and 225, or any subsequent change thereto.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 881

REGULATORY IMPLEMENTING ORDER

881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver. The Department has reviewed the regulation in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and notes that only minor grammatical changes have been made in order to clarify the regulation.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and notes that only minor grammatical changes have been made in order to clarify the regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver 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** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver 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 December 16, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 16th day of December 2019.

Department of Education

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

Approved this 16th day of December 2019

881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver**1.0 Required Policy**

- 1.1 Each local school district shall have a policy which outlines the procedures for releasing students from schools to persons other than their parent, guardian or ~~Relative Caregiver~~ relative caregiver.
- 1.2 The policy shall, at a minimum, include a procedure for allowing the release of a student to a person other than their parent, guardian or ~~Relative Caregiver~~ relative caregiver in the event of an emergency care situation.
- 1.3 The policy shall, at a minimum, include the procedures and instances in which a student who has reached his/her 18th birthday may release him/herself from school.

2.0 Distribution of Student Release Policy

- 2.1 Each district shall post the student release policy on its website and notify a parent, guardian or ~~Relative Caregiver~~ 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~~ relative caregiver upon request.

3.0 Reporting Requirements and Timelines

- 3.1 Each public school district shall have an electronic copy of its current student release policy on file with the Department of Education.
- 3.2 Each public school district shall provide the Department of Education with an electronic copy of any revised student release policy within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3126 (14 **Del.C.** §3126)
14 **DE Admin. Code** 902

REGULATORY IMPLEMENTING ORDER**902 Gifted or Talented Education Plan****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** § 3126, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. This regulation is being amended to clarify the implementation process, make minor clarifications and to comply with 29 **Del.C.** §10407 which requires regulations

to be reviewed on a recurring basis every four years.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan in order to clarify the implementation process, make minor clarifications and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 902 Gifted or Talented Education Plan attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 902 Gifted or Talented Education Plan 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** 902 Gifted or Talented Education Plan amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 902 Gifted or Talented Education Plan 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 November 19, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of November 2019.

Department of Education

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

Approved this 19th day of November 2019

State Board of Education

Whitney Townsend Sweeney, President (absent)	Nina Lou Bunting
Audrey J. Noble, Ph.D., Vice President	Wali W. Rushdan, II
Candace Fifer	Provey Powell, Jr.
Vincent Lofink	

902 Gifted or Talented Education Plan

1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by a professionally qualified ~~person(s)~~ person or persons, may require differentiated educational ~~program(s) or service(s)~~ programs or services beyond those normally provided by the regular school program in order to address the individual's capabilities.

2.0 Definitions

"**Gifted or Talented Education Plan (Plan)**" or "**Plan**" means a Delaware Department of Education approved document developed created by a school district for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

"**Gifted or Talented Student**" means a ~~student in the chronological age group four (4) through the end of the school year in which the child attains the age of 21 or until receipt of a regular high school diploma, whichever occurs first,~~ child enrolled in a Delaware public school who has been identified by a professionally qualified ~~person(s)~~ person or persons as meeting the following definition of gifted or talented:

A child capable of high performance with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

- General intellectual ability;
- Specific academic aptitude;
- Creative or productive thinking;
- Leadership ability;
- Visual and performing arts ability; or
- Psychomotor ability.

"**Relative Caregiver**" means, pursuant to 14 **Del.C.** §202(f)(1)(2), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

3.0 Development and Components of the Plan

- 3.1 Each school district shall have a Plan which, at a minimum, shall:
- 3.1.1 Outline goals and specific outcomes;
 - 3.1.2 Be developed with input from various stakeholder groups including parents;
 - 3.1.3 Provide the process for identification of gifted or talented students by professionally qualified persons;
 - 3.1.4 Outline an identification process that ensures all students have an equal opportunity to be identified and participate in the program;
 - 3.1.5 Provide for a communication process, which shall include procedures to inform parent(s), guardian(s), or Relative Caregiver(s) of a student's participation in the gifted or talented education program;
 - 3.1.6 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.
 - 3.1.7 Establish procedures for ~~consideration~~ of the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred; and
 - 3.1.8 Provide for an evaluation of the Plan provided for its gifted or talented students.
- 3.2 ~~The Plan should be provided to the Department of Education by July 1, 2016 for implementation beginning no later than August 1, 2017~~ Implementation of the gifted or talented programs and services shall be aligned to the Plan.

4.0 Department of Education Responsibilities

- 4.1 The Department of Education shall maintain a resource guide of best practices, on its website, that a school district may use in the development and implementation of its Plan.

- 4.2 Each Plan shall be reviewed periodically, but not less than every five years, by the Department of Education for compliance with this regulation, and any substantive changes to the Plan shall be provided for review for compliance with this regulation.
-

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 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 **Del.C.** §1305(k), national certification salary supplements pursuant to 14 **Del.C.** §1305(l), and additional responsibility assignment salary supplements pursuant to 14 **Del.C.** §1305(n). The proposed amendments include adding definitions of the terms “Lead Mentor,” “Mentor,” and “National Certification” to Section 2.0; striking terms that do not appear in the body of the regulation from Section 2.0; removing references to clusters; adding Section 4.0, which concerns national certification; revising Section 5.0, which concerns additional responsibility assignments; striking the eligibility requirements for knowledge and skills salary supplements from Section 6.0 and the payment requirements for knowledge and skills salary supplements from Section 7.0 because there currently are not any approved knowledge and skills salary supplements; and revising Section 8.0.

Notice of the proposed regulation was published in the *Register of Regulations* on September 1, 2019. The Professional Standards Board did not receive any written submittals concerning the proposed amendments to the regulation.

On October 3, 2019, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators, in the form that was published, for adoption by the Department subject to the State Board of Education’s approval.

On October 24, 2019, the State Board of Education tabled the regulation for the Professional Standards Board to provide further information.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 13. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1501 Knowledge, Skills, and Responsibility Based 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 Knowledge, Skills, and Responsibility Based 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 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators attached hereto as Exhibit “A” is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1501 Knowledge, Skills, and Responsibility Based 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 of Education.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 21st day of November, 2019.

Department of Education

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

Approved this 21st day of November, 2019.

State Board of Education

Whitney Townsend Sweeney, President (absent)

Audrey J. Noble, Ph.D., Vice President

Candace Fifer

Vincent Lofink

Nina Lou Bunting (Voted Against the Motion)

Wali W. Rushdan, II

Provey Powell, Jr.

***Please note that no changes were made to the regulation as originally proposed and published in the September 2019 issue of the *Register* at page 155 (23 DE Reg. 155). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

1516 Professional Standards Board Standing Committees

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 1203 and 1205(b), the Delaware Department of Education ("Department"), in consultation and cooperation with the Professional Standards Board, is creating 14 **DE Admin. Code** 1516 Professional Standards Board Standing Committees. The regulation sets forth rules of practice and procedure used by the Professional Standards Board and is being created under the provision of 29 **Del.C.** §10113(b)(2).

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §§10113(b)(2).

II. FINDINGS OF FACT

The Department finds that the regulation sets forth rules of practice and procedure used by the Professional Standards Board. Accordingly, the Department finds that it is appropriate to create 14 **DE Admin. Code** 1516 Professional Standards Board Standing Committees.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to create 14 **DE Admin. Code** 1516 Professional Standards Board Standing Committees. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1516 Professional Standards Board Standing Committees, attached hereto as Exhibit "A," is hereby created.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1516 Professional Standards Board Standing Committees adopted hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1516 Professional Standards Board Standing Committees 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 13th day of December, 2019.

Department of Education

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

Exhibit A

1516 Professional Standards Board Standing Committees

1.0 Applicability

This regulation shall apply to the Professional Standards Board's standing committees pursuant to 14 **Del.C.** §1206(d).

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Executive Director" means the Delaware Professional Standards Board's Executive Director.

"LCCC" means the Licensure and Certification Criteria Committee established pursuant to 14 **Del.C.** §1206(d)(1).

"PDACC" means the Professional Development and Associated Compensation Committee established pursuant to 14 **Del.C.** §1206(d)(2).

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

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

3.0 Standing Committees

3.1 The Standards Board's standing committees are:

3.1.1 LCCC; and

3.1.2 PDACC.

3.2 The LCCC makes recommendations for developing and amending, as necessary, regulations in the areas of licensure and certification.

3.3 The PDACC makes recommendations for developing and amending, as necessary, regulations in the areas of professional development and salary supplements for educators pursuant to 14 **Del.C.** Ch. 13.

4.0 Standing Committee Membership

- 4.1 Each committee shall consist of no more than 15 committee members.
- 4.1.1 Each committee shall include at least one current Standards Board member.
- 4.2 Committee members shall have expertise in the committee's subject matter.
- 4.3 Committee membership shall be geographically representative of the three counties and may include teachers from the elementary, middle, and high school levels, education specialists, administrators, local school board members, parents, higher education representatives, and Department representatives.
- 4.4 The Executive Director shall make a call for applications to fill vacancies on committees. Prospective committee members shall submit an application to the Executive Director. The Standards Board's Chairperson and the Secretary shall review applications and appoint committee members.
- 4.5 Each committee shall elect co-chairpersons annually. The committee co-chairpersons shall preside over all meetings of their respective committees. As part of its annual election, each committee may elect other officers as it deems necessary.
- 4.6 Committee members shall serve staggered 3-year terms.
- 4.7 Prior to the expiration of a committee member's term, the Executive Director shall verify the committee member's continued interest in serving on the committee. The Executive Director shall submit the names of the committee members who are interested in serving another term to the Standards Board's Chairperson and the Secretary for reappointment.
- 4.8 Committee members who miss 3 consecutive meetings shall be reported to the Standards Board's Chairperson and the Secretary, who may appoint replacement committee members.
- 4.9 The Board's Chairperson and the Secretary may remove a committee member whose actions are contradictory to the committee's purpose or the Standards Board's purpose or are in violation of applicable law. In such case, the Board's Chairperson and the Secretary shall appoint a replacement committee member.

5.0 Committee Reports and Recommendations

- 5.1 Each committee shall provide a progress report, including any recommendations, to the Standards Board after each meeting.
- 5.1.1 Committees shall submit the report in writing to the Standards Board or designate at least one committee member to deliver the report at the Standards Board's next regularly scheduled meeting.

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1522

REGULATORY IMPLEMENTING ORDER**1522 Elementary School Counselor****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1522 Elementary School Counselor. The regulation concerns the requirements for a Standard Certificate for Elementary School Counselor pursuant to 14 Del.C. §1220. The proposed amendments include striking the non-regulatory note at the beginning of the regulation; adding defined terms to Section 2.0; clarifying the requirements for issuing a standard

certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2019. The Professional Standards Board did not receive any written submittals concerning the proposed amendments to the regulation.

On November 7, 2019, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1522 Elementary School Counselor, in the form that was published, for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is 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** 1522 Elementary School Counselor.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1522 Elementary School Counselor subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1522 Elementary School Counselor attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1522 Elementary School Counselor adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1522 Elementary School Counselor in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 21st day of November, 2019.

Department of Education

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

Approved this 21st day of November, 2019.

State Board of Education

Whitney Townsend Sweeney, President (absent)

Audrey J. Noble, Ph.D., Vice President

Candace Fifer

Vincent Lofink

Nina Lou Bunting

Wali W. Rushdan, II

Provey Powell, Jr.

*Please note that no changes were made to the regulation as originally proposed and published in the October 2019 issue of the *Register* at page 278 (23 DE Reg. 278). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1522 Elementary School Counselor

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1545

REGULATORY IMPLEMENTING ORDER

1545 Secondary School Counselor

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board (“Board”), acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1545 Secondary School Counselor. The regulation concerns the requirements for a Standard Certificate for Secondary School Counselor pursuant to 14 **Del.C.** §1220. The proposed amendments include striking the non-regulatory note at the beginning of the regulation; adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a first and second or subsequent standard certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; adding Section 8.0, which concerns requests for the Secretary of Education to review standard certificate applications; and adding Section 9.0, which concerns recognizing past certification.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2019. The Professional Standards Board did not receive any written submittals concerning the proposed amendments to the regulation.

On November 7, 2019, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1545 Secondary School Counselor, in the form that was published, for adoption by the Department subject to the State Board of Education’s approval.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is 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** 1545 Secondary School Counselor.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1545 Secondary School Counselor subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1545 Secondary School Counselor attached hereto as Exhibit “A” is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1545 Secondary School Counselor adopted hereby shall be in the form attached hereto as Exhibit “A,” and said regulation shall be cited as 14 **DE Admin. Code** 1545 Secondary School Counselor in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 21st day of November, 2019.

Department of Education

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

Approved this 21st day of November, 2019.

State Board of Education

Whitney Townsend Sweeney, President (absent)

Audrey J. Noble, Ph.D., Vice President

Candace Fifer

Vincent Lofink

Nina Lou Bunting

Wali W. Rushdan, II

Provey Powell, Jr.

***Please note that no changes were made to the regulation as originally proposed and published in the October 2019 issue of the *Register* at page 285 (23 DE Reg. 285). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1545 Secondary School Counselor

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11003

ORDER

Determination of Child Care - Parents Under Age 18

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Child Care, specifically, to update policy regarding minor parents who are under the age of 18 and residing with their legal guardians or parents. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after December 11, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual section 11003.9.4 regarding Child Care, specifically, to update policy regarding minor parents who are under the age of 18 and residing with their legal guardians or parents.

Statutory Authority

45 CFR 98.20 (3)(i)(ii)

Background

Child Care is provided by the Division of Social Services as a support for families with children to enable the caretaker to hold a job, obtain training or meet special needs of the parent or child. Child care may also be provided in child abuse cases to help protect the child.

Purpose

The proposed regulation is being amended to improve the formatting of the regulation and to provide clear instructions to DSS eligibility staff on determining child care eligibility for minor parents.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 31, 2019.

Fiscal Impact Statement

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

Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Child Care, specifically, to update policy regarding minor parents who are under the age of 18 and residing with their legal guardians or parents, is adopted and shall be final effective January 11, 2020.

12/9/19

Date of Signature

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

POLICY – AMENDMENT

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

11003.9.4 Determining Child Care for Parents Who Are Under Age 18 and Family Size

45 CFR 98.20 (3)(i)(ii)

~~Consider minor parents (under 18) for child care services separately from their legal guardian or parents. This means that minor parents can apply for child care services on their own even if they live with their legal guardian or parents. In this case, need for care and financial eligibility is based on the minor parents' circumstances and not that of their parents or legal guardian.~~

~~EXAMPLE: A 17 year old, who lives with mom, has a child of her own and she needs child care to continue high school. Completing high school is her need. If she seeks child care as a Category 31 case, financial eligibility is based on her income. She and her child are a family of two.~~

~~Even though minor parents who are living with a legal guardian or their parents can apply on their own, still seek the signature of the legal guardian or parents on the minor parent's application for child care. However, if the legal guardian or parents refuse to sign the application, deny service.~~

~~The legal guardian or parents of the minor parent could apply for child care as caretakers if they demonstrate that they provide for the primary support and care of the minor parent's child.~~

This policy applies to minor parents who are under the age of 18 and residing with their legal guardians or parents.

1. A minor parent who is applying for child care services must:

- Have a need for child care;
- Meet financial eligibility requirements based on the minor parent's income;
- Provide a referral from the Division of Family Services (DFS) if the family has an active DFS case; and
- Provide a medical form or statement of a special need, if applicable.

2. The legal guardian or parent of a minor parent must:

- Sign the child care application of the minor parent. DSS will deny child care if the legal guardian or parent of the minor parent does not sign the application.
- Verify legal guardianship of the minor parent's child if:
 - i. The legal guardian or parent provides primary support for the minor's child; and
 - ii. The legal guardian or parent is applying for child care services.

Note: An agency that has custody of a minor parent must apply on behalf of the minor requesting child care services.
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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

Secretary's Order No.: 2019-A-0046

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1125:

Requirements for Preconstruction Review

Date of Issuance: December 06, 2019

Effective Date of the Amendment: January 11, 2020

1125 Requirements for Preconstruction Review

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments (“Amendments”) to 7 **DE Admin. Code** 1125: *Requirements for Preconstruction Review*. Specifically, the Department proposes to amend regulations for 7 **DE Admin. Code** 1125: *Requirements for Preconstruction Review* to adopt provisions, by incorporating by reference, the most recent revisions to the *Guideline on Air Quality Models* (“*Guideline*”) as published by the United States Environmental Protection Agency (“EPA”), as set forth in Appendix W to 40 CFR Part 51 — *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*. This action will enable the Department to be consistent with the updates to the aforementioned EPA *Guideline* by updating the air quality models and databases for use in air quality assessments.

The Clean Air Act (CAA), established by Congress in 1977, mandated consistency and encouraged the standardization of air quality models for regulatory purposes. To satisfy the requirements of the CAA, the EPA initially published its *Guideline* in April of 1978. The *Guideline* specifies air quality models, while providing guidance for their use, and a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emissions limits.

Most recently, the EPA promulgated revisions to the *Guideline* effective February 16, 2017. The revisions to the *Guideline* provide a consistent basis for the most accurate models and databases for use in air quality assessments. Appendix W to 40 CFR Part 51 provides the EPA’s preferred models and other recommended techniques, as well as guidance for their use in estimating ambient concentrations of air pollutants. In addition, Appendix W to 40 CFR Part 51 includes enhancements to the formulation and application of the EPA’s preferred near-field dispersion modeling system, (the American Meteorological Society/EPA Regulatory Model), and the incorporation of a tiered demonstration approach to address the secondary chemical formation of ozone and fine particulate matter (PM_{2.5}) associated with precursor emissions from single sources.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 **Del.C.** §6010(a) and (c). The Amendments to 7 **DE Admin. Code** 1125 reflect the most recent updates to Title 40 of the Code of Federal Regulations – *Protection of the Environment*, specifically at Appendix W to 40 CFR Part 51, as published in the Federal Register, dated July 1, 2018.

The Department published its initial proposed regulation Amendments in the September 1, 2019 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on September 25, 2019. There were no members of the public in attendance at the public hearing. Pursuant to 29 **Del.C.** §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on October 10, 2019, with no comment having been received by the Department during any phase of this formal promulgation.

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

Hearing Officer Theresa Newman prepared her report dated November 6, 2019 (“Report”), which expressly incorporated the Department’s proposed Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A.”

Reasons and Conclusions

Based on the record developed by the Department’s experts in the Division of Air Quality, and established by the Hearing Officer’s Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 1125: *Requirements for Preconstruction Review*, are well-supported. I further find that the Department’s Air Quality experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings

in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on September 25, 2019, and during the 15 days subsequent to the hearing (through October 10, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 **DE Admin. Code** 1125: Requirements for Preconstruction Review, will enable the Department to incorporate the updates made to the federal Requirements for Preconstruction Review at 40 CFR 55, as noted above;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B", as this revision is a requirement of federal law, established by the EPA, to which the EPA's impact evaluation provides that the revisions herein would not have a significant economic impact on a substantial number of small entities;

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

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

8. The Department shall submit this Order approving the proposed Amendments as final regulatory to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

~~[12/11/2016 1/11/2020]~~

3.0 Prevention of Significant Deterioration of Air Quality

*Please note that no additional changes were made to the regulation as originally proposed and published in the September 2019 issue of the *Register* at page 201 (23 DE Reg. 201). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1125 Requirements for Preconstruction Review

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Sections 7406, 7407 and 7408 (7 **Del.C.** §§7406, 7407 & 7408)

7 DE Admin. Code 1351

Secretary's Order No.: 2019-WH-0047

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1351:
Underground Storage Tank Systems**

Date of Issuance: December 12, 2019

Effective Date of the Amendment: January 11, 2020

1351 Underground Storage Tank Systems

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 **Del.C.** §§6006 and 6010, and all other relevant statutory authority, the

following findings of fact based on the Record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments to 7 **DE Admin. Code** 1351: *Underground Storage Tank Systems* (“Amendments”). This action is being taken by the Department so that Delaware’s UST Regulations will properly reflect (1) recent regulatory changes promulgated at the federal level by the United States Environmental Protection Agency (“EPA”); and (2) recent advances in Underground Storage Tanks (“UST”) system technologies. It should be noted that Delaware’s UST Regulations must be at least as stringent as the correlating federal regulations, pursuant to the requirements of 40 CFR 281, *State Program Approval*. Additionally, the proposed Amendments will clarify and improve installation, operation and maintenance, release detection and remedial requirements.

The EPA recently promulgated revisions to update both the federal *Underground Storage Tank Regulations* and the *State Program Approval Regulations*. Those revisions were published in the July 15, 2015 edition of the *Federal Register*, and were codified at 40 CFR 280-281 (*Revising Underground Storage Tank Regulations—Revisions to Existing Requirements*; and *New Requirements for Secondary Containment and Operator Training*, respectively).

The aforementioned revisions promulgated by the EPA included the following: (1) the addition of secondary containment requirements for new and replaced tanks and piping, operator training requirements, and periodic operation and maintenance requirements for UST systems; (2) the addressing of UST systems deferred in the 1988 UST regulation; (3) the addition of new release prevention and detection technologies; (4) the updating of practice codes; (5) the creation of editorial corrections and technical amendments; and (6) the updating of state program approval requirements to incorporate these new changes. In support of that promulgation, the EPA has stated that the above revisions at the federal level will protect human health and the environment by reducing the number of releases to the environment, and quickly detecting releases, should they occur.

The Department is charged with adhering to the recommendations and standard procedures of organizations as set forth under 7 **Del.C.** §7403. In preparation for this proposed promulgation, specifically, to make Delaware’s existing UST Regulations as stringent as the correlating federal regulations at 40 CFR 281, *State Program Approval*, the Department established the Underground Storage Tank Advisory Committee (“USTAC”). The USTAC consisted of stakeholders within Delaware’s regulated UST community who were charged with exchanging ideas and soliciting feedback regarding the Department’s proposed UST Regulations. Between October 2016 and January 2019, the USTAC met eight (8) times, allowing the public the opportunity to make comment at each meeting. On January 22, 2019, the USTAC finalized its recommendations to the Department with regard to the draft Amendments.

It should be noted that Delaware’s existing UST Regulations (7 **DE Admin. Code** 1351) provide a significant part of the regulatory basis to other Department regulations promulgated by the Division of Air Quality, namely, 7 **DE Admin. Code** 1124, *Control of Volatile Organic Compound Emissions*, Sections 26 and 36 (*Gasoline Dispensing Facility Stage I Vapor Recovery and Vapor Emission Control at Gasoline Dispensing Facilities*, respectively). To that end, the Department’s Division of Waste and Hazardous Substances held joint workshops regarding this proposed promulgation with the Department’s Division of Air Quality, in both New Castle County (at 10:00 a.m.) and Kent County (at 6:30 p.m.), on April 16, 2019.

The April 16, 2019 joint workshops provided the opportunity for Department staff from both the Division of Air Quality and the Division of Waste and Hazardous Substances to discuss numerous proposed regulatory revisions with the public, specifically: (1) phasing out Stage II vapor recovery systems at Delaware gasoline dispensing facilities; (2) establishing effective controls on vapor emission from gasoline dispensing facilities, and ensuring gasoline USTs remain vapor tight once Stage II systems are removed; and (3) reviewing the changes required due to the promulgation of new UST regulations by EPA at the federal level. The Department answered all questions received from the public at these workshops, and considered all of the public comments which were received through April 17, 2019. No substantive changes to the Department’s proposed Amendments were determined to be necessary at that time, and thus the public hearing regarding this matter was scheduled for August 27, 2019.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 **Del.C.** §§7406 - 7408. The Department published its initial proposed regulation Amendments in the August 1, 2019 Delaware *Register of Regulations*. Thereafter, the public hearing

regarding this matter was held on August 27, 2019.

It should be noted that, subsequent to the publication of the Department's initial proposed Amendments in the *Register* on August 1, 2019, but prior to the public hearing of August 27, 2019, the Department found numerous clerical errors contained in the Amendments as published. The Department made the necessary corrections to the initial proposed Amendments, and then fully vetted the proposed *revised* Amendments to the public at the time of the aforementioned public hearing. To aid the public's review and understanding of these corrections, the Department also provided a Regulatory Revisions Summary Chart, summarizing all changes necessitated to the initial proposed Amendments, specifically: (1) the specific regulatory section affected by the error; (2) the version that was published by the *Register* on August 1, 2019; and (3) the *revised* regulatory language proposed by the Department in this matter.

Two members of the public attended the aforementioned public hearing, with one comment being received by the Department at that time. Pursuant to 29 **Del.C.** §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed for comment in this matter on September 11, 2019, with one additional comment received by the Department during the post-hearing phase of this formal promulgation. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

After the close of the comment period, the Department's Division of Waste and Hazardous Substances performed a review of the Record, including the comments received on the proposed *revised* Amendments. At the request of the presiding Hearing Officer, a Technical Response Memorandum ("TRM") was prepared by Department staff to serve as a comprehensive summary of the comment received in this matter. The Department's TRM not only provides a thorough discussion of the comment received in this matter, but also provides the Department's responses and recommendations concerning the same. Furthermore, the TRM notes that none of the comments received in this matter warranted changes to the proposed *revised* Amendments.

Hearing Officer Lisa A. Vest prepared her Report dated November 1, 2019 ("Report"), which expressly incorporated the Department's proposed *revised* Amendments, the Department's Regulatory Revisions Summary Chart (detailing the clerical corrections and non-substantive revisions made to the initially proposed Amendments subsequent to the August 1, 2019 publication in the Delaware *Register of Regulations*), and the aforementioned TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory amendments to 7 **DE Admin. Code** 1351: *Underground Storage Tank Systems*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed *revised* Amendments be promulgated as final. I further find that the Department's experts fully developed the record to support adoption of these *revised* Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* regulatory amendments to 7 **DE Admin. Code** 1351: *Underground Storage Tank Systems*, pursuant to 7 **Del.C.** §§7406 – 7408;

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

3. The Department provided adequate public notice of the initial proposed Amendments, and all proceedings in a manner required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at the time of the public hearing held on August 27, 2019, and during the 15 days subsequent to the hearing (through September 11, 2019), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed *revised* Amendments will enable Delaware's UST Regulations to properly reflect (1) recent regulatory changes promulgated at the federal level by the EPA; and (2) recent advances in Underground Storage Tanks ("UST") system technologies.

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

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

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:**

1351 Underground Storage Tank Systems

**OFFICE OF THE STATE TREASURER
CASH MANAGEMENT POLICY BOARD**

Statutory Authority: 29 Delaware Code, Section 2716 (29 **Del.C.** §2716)
1 **DE Admin. Code** 1201

REGULATORY IMPLEMENTING ORDER

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

The Cash Management Policy Board (the "Board") hereby adopts and issues this ORDER repealing the prior guidelines and promulgating revised guidelines for the deposit and investments of State funds (the "Guidelines").

I. BACKGROUND

The Board is authorized by statute to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. See 29 **Del.C.** §2716(a). The Board previously promulgated Guidelines that, among other things, require collateralization of State deposits and establish maturity restrictions for securities purchased with State funds. See 1 **DE Admin. Code** 1201.

The Board, upon the recommendations of the Board's subcommittees, has proposed changes to the Guidelines. The changes (a) provide for and require the collateralization of merchant services-related settlement accounts, (b) clarify the exclusion of Rule 144A private placement securities from the scope of approved investments, (c) clarify the list of permissible U.S. governmental agency obligations, (d) include as permissible investments certain supranational and international agency obligations, and (e) remove the five percent cash holding requirement for the State's endowment accounts. The Board, after a public meeting on August 28, 2019, and by unanimous vote, approved revised Guidelines for proposal under Delaware's Administrative Procedures Act, 29 **Del.C.** Ch. 101 (the "APA").

In accordance with the APA, OST caused notice and a copy of the revised Guidelines to be published in the Delaware *Register of Regulations*, Vol. 22, Issue 4, from October 1, 2019 through November 1, 2019. No comments were received relating to the proposed changes. The revised Guidelines are approved as proposed.

II. FINDINGS OF FACT

The Board, for the reasons discussed in detail at, and reflected in the minutes of, the Board meeting convened on August 28, 2019, finds that the revised Guidelines are necessary and appropriate to ensure the safe deposit and prudent investment of State funds.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Board concludes that it is appropriate to repeal the Guidelines presently published at 1 **DE Admin. Code** 1201 and replace them with the revised Guidelines attached hereto as Exhibit A.

IV. TEXT AND CITATION

The text of 1 **DE Admin. Code** 1201, as amended hereby, shall be in the form attached hereto as Exhibit A and shall be cited as 1 **DE Admin. Code** 1201, Objectives and Guidelines for the Investment of State of Delaware Funds.

V. EFFECTIVE DATE

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

IT IS SO ORDERED the 4th day of December, 2019.

John V. Flynn, Chair
Cash Management Policy Board

David Marvin, Chair
Investment Subcommittee

Warren C. Engle, Chair
Banking Subcommittee

Colleen C. Davis, Member
State Treasurer

Jeffrey Bullock, Member
Secretary, Department of State

Manubhai C. Karia, Co-Chair
Investment Subcommittee

Tarrie Miller, Co-Chair
Banking Subcommittee

Richard J. Geisenberger, Member
Secretary, Department of Finance

Michael Morton, Member
Controller General

***Please note that no changes were made to the regulation as originally proposed and published in the October 2019 issue of the *Register* at page 297 (23 DE Reg. 297). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds](#)

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE STATE FIRE PREVENTION COMMISSION

PUBLIC NOTICE

710 Ambulance Service Regulations

The Delaware State Fire Prevention Commission, pursuant to 16 Del.C. §6604(1), proposes to revise regulation 710 to make many non-substantive and clarifying changes as well as adding provisions regarding bariatric ambulance requirements and updating ambulance compartment requirements to conform with current NFPA standards. The proposed regulations do not affect other existing regulations.

Written comments to the proposed revisions shall be sent to Sherry Lambertson, Executive Assistant for the Delaware State Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments will be accepted until February 1, 2020 pursuant to 29 Del.C. §10118(a).

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting January 16, 2020 at 5:00pm in the Professional Development Center of the Early Years Center in the Red Clay School District (1621 Telegraph Rd. Wilmington, DE).

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Non-Emergency Medical Transportation (NEMT)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding transportation specifically, to establish coverage and reimbursement methodologies for non-emergency medical transportation (NEMT) services.

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 January 31, 2020. Please identify in the subject line: Non-emergency Medical Transportation (NEMT).

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

Adult Dental

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Dental Services, specifically, to add dental services for adults.

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 January

31, 2020. Please identify in the subject line: Adult Dental.

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****Medicaid Long Term Care Program – Community Spouse**

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 Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program, specifically, to determine eligibility for medical assistance.

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 January 31, 2020. Please identify in the subject line: Medicaid Long Term Care Program – Community Spouse.

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****Title XXI Delaware Healthy Children's Program State Plan – Health Services Initiatives – Vision Services – School-Based Initiative**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XXI Delaware Healthy Children's Program State Plan regarding Health Services Initiatives, specifically, *to revise language for Delaware's CHIP State Plan Health Service Initiative to align with the Delaware Department of Education's (DDOE's) definition of low-income in its Vision Services - School-Based Initiative, and to revise the data collection process to aid in identification of uninsured children.*

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 January 31, 2020. Please identify in the subject line: Health Services Initiatives - Vision Services - School-Based Initiative.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Determining Special Needs and Income Eligibility for Child Care**

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,

CALENDAR OF EVENTS/HEARING NOTICES

Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

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 January 31, 2020. Please identify in the subject line: Determining Special Needs and Income Eligibility for Child Care.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Child Care Subsidy Program Terms

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to update term definitions.

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 January 31, 2020. Please identify in the subject line: Child Care Subsidy Program Terms.

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 JUSTICE

FRAUD AND CONSUMER PROTECTION DIVISION

INVESTOR PROTECTION UNIT

PUBLIC NOTICE

Rules Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and section 73-102(b) of Title 6 of the Delaware Code, the Investor Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed revision to the Rules Pursuant to the Delaware Securities Act.

The proposed revision amends existing Rules as follows:

- The proposed amendments include an amendment of Rule 102 relating to requests for interpretive opinion. It will increase the requisite fee for interpretive opinions and clarifies that the fee will be charged for each question asked, even if posited as one request, in recognition of the amount of time it can take to draft the requested opinion.
- The proposed amendments also include an amendment to Rule 502 relating to limited offering exemptions. The amendment will delete reference to Rule 505 of SEC Regulation D (17 C.F.R. §§230.505), which was repealed in 2016.
- The proposed amendments also include an amendment to Rule 505(a) relating to the definition of the word offer in the Act. The amendment will change the citation to eliminate an outdated code reference and instead refer to the general definition section of that code provision.

- The proposed amendments also include an amendment to Rule 700(d) to require investment adviser sole proprietorships to register at least one investment adviser representative with IPU.
- The proposed amendments also include revisions to Rules 611 and 712 relating to the requirement that Broker-Dealers (Rule 611) and Investment Advisers (Rule 712) with a place of business in Delaware display a sign bearing certain language in the public area of their place of business. The amendment modifies the requisite language to reflect that registration by IPU does not mean that IPU is endorsing a firm.

Persons wishing to comment on the proposed revision may submit their comments in writing no later than January 31, 2020, to:

Jillian Lazar
Investor Protection Director
Department of Justice, Investor Protection Unit
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

PUBLIC NOTICE

3300 Non-Tidal Finfish

3301 Definitions

The Department provides a put-and-take freshwater trout fishery each spring in select piedmont streams of New Castle County. Appropriate waters for stocking freshwater trout are limited due to restricted public access and trout habitat requirements. Development, property rights and population growth have reduced public access on some of Delaware's Designated Trout Streams, while freshwater trout angling has remained a seasonally popular activity. The acquisition of property along Pike Creek by Delaware State Parks (White Clay Creek State Park - Judge Morris Estate) provides an opportunity to expand Delaware's trout stocking sites and increase public access to Pike Creek's freshwater trout fishery.

The amendment proposed by this action will extend the defined Designated Trout Waters on Pike Creek downstream approximately 0.9 miles to the bridge at Route 2 (Kirkwood Highway). This will accommodate freshwater trout stocking and improve angler access to the put-and-take freshwater trout fishery on Pike Creek. Waters defined as a Designated Trout Stream are closed to all fishing 14 days before the trout season's opening day to provide for stocking, fish acclimation and dispersion and to provide fair access through an established starting time and date. Unless lawfully exempt, a trout stamp is required to fish a Designated Trout Stream from the first Saturday in April through June 30 and from the first Saturday in October through November 30 (\$2.10 resident youth / \$4.20 resident adult / \$6.20 non-resident). Trout stamp revenues support the purchase of trout in subsequent years. Delaware's Advisory Council on Wildlife and Freshwater Fish endorsed this proposed action.

The hearing record on the proposed changes to 7 **DE Admin.** Code 3300 Non-Tidal Finfish - 3301 Definitions opens January 1, 2020 (Hearing Docket No.: 2019 -R-F-0031). A public hearing on the proposed amendment will be held on Wednesday, January 29, 2020 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may submit written comments regarding the proposed changes via e-mail to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Thursday, February 13, 2020.

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
PUBLIC NOTICE****4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)
4005 Regulations for the Implementation of the Telecommunications Technology Investment Act (Docket 41)**

In April 2019, the role of the Delaware Public Service Commission (“Commission”) with respect to landline telecommunications regulation changed with the passage of Senate Bill No. 18 (“SB 18”). (The Commission does not regulate wireless or voice over internet services.) Among other things, SB 18 amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act (“TTIA”) (See 26 **Del.C.** §§215, 704-707).

Generally, telecommunications services provided over landlines fall into two categories: (1) “Basic Services,” which the Commission regulates for price and quality of service; and (2) “Competitive Services,” which the Commission does not regulate, other than to certify new carriers who seek to offer such services in Delaware. The SB 18 amendments maintained certification requirements for telecommunications carriers but revised the TTIA (§§704-707) to narrow the definition of “Basic Services” and to allow carriers to change the rates for Basic Services without Commission approval.

By Order No. 9506 dated December 5, 2019 (the “Order”), the Commission now proposes to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its “Rules for the Provision of Telecommunications Services,” codified at 26 **Del. Admin. C.** §4001 (“§4001”) (Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 **Del. Admin. C.** §4005 (“§4005”) to §4001; and (3) repealing its “Regulations for the Implementation of the Telecommunications Technology Investment Act,” codified at §4005 (Regulation Docket No. 41).

The text of the Amendments are attached to the Order. The Order and related exhibits are reproduced in the January 2020 edition of the Delaware *Register of Regulations* and may also be reviewed online at the Commission’s website at www.depssc.delaware.gov. You may also obtain a paper copy of the Orders at the Commission’s Dover office for a fee of \$0.25 per page.

Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material (10 copies) may be submitted to the Commission on or before March 13, 2020, by email to lisa.driggins@delaware.gov or at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Bldg., Suite 100
Dover, Delaware, 19904
Attn: PSC Reg. Dckts. Nos. 10 & 45

The Commission will conduct a public hearing on the Amendments on Wednesday, February 26, 2020, beginning at 1:00 PM in the Hearing Room of the Delaware Public Service Commission, 861 Silver Lake Blvd., Dover, Delaware.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission’s toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Internet e-mail addressed to pssc@delaware.gov.