
Delaware Register of Regulations

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Volume 21 - Issue 1, Pages 1 - 68



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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before June 15, 2017.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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
August 1	July 17	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 16	4:30 p.m.
December 1	November 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

Lori Christiansen, Director; **Mark J. Cutrona**, Deputy Director; **Julia Dumas-Wilks**, Administrative Specialist II; **Julie Fedele**, Joint Sunset Research Analyst; **Bethany Fiske**, Assistant Registrar of Regulations; **Deborah Gottschalk**, Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Dawn Morales**, Graphics and Printing Technician I; **Kathleen Morris**, Human Resources/Financial Manager; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Legislative Attorney; **Natalie White**, Administrative Specialist II; **Rochelle Yerkes**, Office Manager; **Sara Zimmerman**, Legislative Librarian.

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

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119
(7 **Del.C.** §903(h) and 29 **Del.C.** §10119)
7 **DE Admin. Code** 3511

Secretary's Order No. 2017-F-0016

3511 Summer Flounder Size Limits; Possession Limits; Season

AUTHORITY:

Pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), the Department of Natural Resources and Environmental Control is renewing amendments to 7 **DE Admin. Code** 3511: Summer Flounder Size Limits; Possession Limits; Seasons, as initially provided by Emergency Secretary's Order No. 2017-F-0012, without prior notice or public hearing. 29 **Del.C.** §10119 authorizes emergency regulations and provides for a one-time renewal where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations, and provides for a one-time renewal when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. It is the determination of the agency that renewal of the amendment is immediately necessary to ensure compliance with Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan to prevent overfishing of the Summer Flounder resource, and to provide for the welfare of those individuals and businesses dependent on the Summer Flounder recreational fishery.

REASON FOR THE EMERGENCY ORDER:

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan (FMP) on February 2, 2017, maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII requires each region to increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit (RHL). This action only affects Delaware's existing 16-inch minimum size limit, as Delaware's existing recreational Summer Flounder possession limit is four fish. The Department consulted with the other states (Maryland & Virginia) within our ASMFC-defined region and both states have adopted a 17-inch minimum size limit and a four fish possession limit. Renewal of the emergency regulation is necessary to provide for adoption of the amendment through the normal regulatory process, remain compliant with the FMP and to protect the Summer Flounder resource from overfishing. Furthermore, this action will allow Delaware's fishing-dependent businesses and their clients/customers to plan and participate in this important fishery. Failure to adopt these measures in a timely fashion may result in a federal closure of the fishery in accordance with the Atlantic Coastal Fisheries Cooperative Management Act.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 a.m. on June 30, 2017, and shall remain in effect for 90 days.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, this 2nd day of June, 2017 that the above referenced amendment to **7 DE Admin. Code 3511: Summer Flounder Size Limits; Possession Limits; Season**, a copy of which is hereby attached, is adopted, pursuant to **29 Del.C. §10119** and **7 Del.C. §903(h)**, and supported by the evidence contained herein.

Shawn M. Garvin, Secretary

3511 Summer Flounder Size Limits; Possession Limits; Season

(Penalty Section **7 Del.C. §936(b)(2)**)

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~sixteen (16)~~ seventeen (17) inches between the tip of the snout and the furthest tip of the tail.
- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~sixteen (16)~~ seventeen (17) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
 - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

EMERGENCY REGULATIONS

- 4.3 A bill of lading while transporting fresh or frozen summer flounder.
- 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.
-

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 HEALTH INFORMATION NETWORK

Statutory Authority: 19 Delaware Code, Sections 10306 & 10311-10315 (19 **Del.C.** §§10306, 10311-10315)

PUBLIC NOTICE

103 Delaware Health Care Claims Database Data Collection Regulation

Agency: Delaware Health Information Network

Contact: Dr. Jan Lee
Chief Executive Officer
(302)678-0220

Submit Comments by email to info@dhin.org by July 31, 2017

Title of Proposed Regulation: Delaware Health Care Claims Database Data Collection Regulation

Summary of the Regulation:

This regulation supports implementation of 16 **Del.C.** Ch. 103, Subchapter II, The Delaware Health Care Claims Database. It summarizes the requirements for submission of claims data by a mandatory reporting entity, to include a reporting schedule and a template for a data submission and use agreement to be entered into between DHIN and each reporting entity. The agreement includes procedures for submission, collection, aggregation, and distribution of claims data, and a summary of how claims data may be used for geographic, demographic, economic, and peer group comparisons.

Sub-regulatory technical guidance may be found on the DHIN web site in the form of a Data Submission Guide.

*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/july2017/proposed/21 DE Reg 9RFA 07-01-17.pdf>

PROPOSED REGULATIONS

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

103 Delaware Health Care Claims Database Data Collection Regulation

DEPARTMENT OF AGRICULTURE OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Section 2220(a) (3 **Del.C.** §2220(a))
3 **DE Admin. Code** 1201

PUBLIC NOTICE

1201 Nutrient Management Certification Regulations

The Delaware Nutrient Management Commission, pursuant to 3 **Del.C.** §2220(a), proposes to revise its regulations incorporating by reference the State Technical Standards developed by an appointed committee to establish appropriate standards for nutrient application, development and implementation of nutrient management and animal waste management plans, compliance with CAFO permits, and siting new CAFO facilities. The State Technical Standards can be viewed in person at the Delaware Department of Agriculture or online at http://dda.delaware.gov/nutrients/NM_TechStandards.shtml. Written comments should be sent to Chris Brosch, Administrator of the Delaware Nutrient Management Commission, 2320 S. DuPont Highway, Dover DE 19901. Written comments will be accepted until July 31, 2017 pursuant to 29 **Del.C.** §10118(a).

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

<http://regulations.delaware.gov/register/july2017/proposed/21 DE Reg 10RFA 07-01-17.pdf>

1201 Nutrient Management Certification Regulations *(Break in Continuity of Sections)*

3.0 Definitions

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

(Break in Continuity Within Section)

"State Technical Standards" are the practices and conduct required of individuals or entities overseen by the Nutrient Management Commission that were developed by a group of environmental scientists, agronomists, engineers, planners, agricultural operators, and policy makers from the Nutrient Management Commission, Department of Agriculture, the Department of Natural Resources and Environmental Control, the University of Delaware, USDA NRCS and the private sector. The Commission hereby adopts the State Technical Standards in their entirety by reference.

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

1201 Nutrient Management Certification Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education. The regulation is being amended to: 1) clarify that the requirements of this regulation do not apply to Institutions of Higher Education specified in 14 Del.C. Parts II, III, and VI; 2) add subsection 2.3 which provides that the requirements and approval process for educator preparation programs are specified in 14 DE Admin. Code 290; 3) add section 5.0 which specifies the criteria for obtaining the Department's approval to offer courses, programs of courses, and degrees within Delaware; 4) amend section 7.0 to clarify the requirements for the levels of degree-granting authority approval; and 5) add degrees to section 11.0 to clarify that Institutions of Higher Education are required to seek the Department's approval in order to offer an additional level of degree.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve the student achievement as measured against state achievement standards by helping to ensure that institutions of higher education have the appropriate approvals to operate within Delaware.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amendment does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendment will help 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 amendment preserves the necessary authority and flexibility of 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 amendment does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school level.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 Del.C. §§ 121(a)(16) & 122(b)(8). The amendments do not change the decision making authority and accountability for addressing the subject of this regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic

subjects of mathematics, science, language arts and social studies? The amendment is consistent with state and federal 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 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/july2017/proposed/21 DE Reg 11RFA 07-01-17.pdf>

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 729

PUBLIC NOTICE

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

729 School Custodians

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to amend 14 DE Admin. Code 729 School Custodians. This regulation is being amended to correct a typographical error in subsection 3.2.10. No other changes are needed.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation does not deal with student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation does not address students' receipt of an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does help to ensure that all students' health and safety are adequately protected by ensuring qualified school custodians are hired by districts and charter schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not address student's legal rights.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates

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

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

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

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

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

<http://regulations.delaware.gov/register/july2017/proposed/21 DE Reg 12RFA 07-01-17.pdf>

729 School Custodians

1.0 Definitions

(Break in Continuity Within Section)

“Chief Custodian” means a Custodian who has completed the 120 class hour Chief Custodian training as prescribed by the Department of Education in subsection 5.1.1 below. Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 **Del.C.** §1311(b). Employees who have earned the Chief Custodian certificate pursuant to 14 **Del.C.** §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 **Del.C.** §1311(a).

(Break in Continuity Within Section)

“Custodian” means a school district employee who is paid in accordance with 14 **Del.C.** §1311(a). The school district employee shall be entitled to an additional pay stipend pursuant to 14 **Del.C.** §1311(b) upon completion of the 60 hour Custodian certificate training as prescribed in subsection 5.1.3 below.

“Firefighter and Custodian-Firefighter” means a Custodian who has completed the 90 class Firefighter and Custodian-Firefighter certificate training as prescribed by the Department of Education in subsection 5.1.2 below. This training includes but is not limited to the operation of boilers and central heating plant systems. Employees who have earned the Firefighter and Custodian-Firefighter certificate shall be paid an additional pay stipend in accordance with 14 **Del.C.** §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 **Del.C.** §1311(b) are eligible to compete for Custodian Fireman positions when they become vacant and earn pay in accordance with the pay scale identified in 14 **Del.C.** §1311(a).

“Maintenance Mechanic” means an employee filling a custodial position with specialized technical skill in a particular trade or trades as determined by the school district in accordance with subsection 4.3 below and paid in accordance with the pay scale identified in 14 **Del.C.** §1311(a).

“Skilled Crafts Person” means an employee filling a custodial position with specialized technical certification and/or licensure in a particular trade or trades as determined by the school district in accordance with subsection 4.4 below and paid in accordance with the pay scale identified in 14 **Del.C.** §1311(a).

(Break in Continuity of Sections)

3.0 Allocation of Custodial Units

(Break in Continuity Within Section)

PROPOSED REGULATIONS

3.2 Districts and charter schools are allocated one (1) full-time custodial position for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:

(Break in Continuity Within Section)

3.2.10 Units for a central heating plant are determined from the following table:

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 to 15	1
16 to 20	1 1/2
21 to 25	2
26 to 30	2 1/2
31 to 25 <u>35</u>	3
36 to 40	3 1/2
41 to 45	4
46 to 50	4 1/2
51 to 55	5
56 to 60	5 1/2
61 or more	

(Break in Continuity Within Section)

3.4 A full custodial staff for a new school building may be employed two (2) months prior to the pupil occupancy of the building.

3.4.1 In order to maintain, heat and secure new school buildings completed with a certificate of occupancy date further in advance of student occupancy than the two (2) months identified in subsection 3.4 above, the district is eligible to earn the custodial units provided for site maintenance and central heating plant as of the certificate of occupancy date, until eligible to employ the full custodial staff in accordance with subsection 3.4.

(Break in Continuity Within Section)

4.0 Classification

(Break in Continuity Within Section)

4.4 Skilled Craftsperson

4.4.1 Each district may classify an incumbent in one or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:

4.4.4.1 4.4.1.1Has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or

4.4.4.2 4.4.1.2Possesses a current state license in any of the fields listed in ~~paragraph~~ subsection 4.4.1.1 above; or

4.4.4.3 4.4.1.3Is an Automobile Mechanic who possesses two or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or

4.4.4.4 4.4.1.4Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or

4.4.4.5 4.4.1.5Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

4.4.4.6 4.4.1.6 Is an HVAC Mechanic who possesses two or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or

4.4.4.7 4.4.1.7 Possesses two or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or

4.4.4.8 4.4.1.8 Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or

4.4.4.9 4.4.1.9 Is a Roofer who possesses Training Certifications from two or more manufacturers of Roofing Systems in use by the District; or

4.4.4.10 4.4.1.10 Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.

(Break in Continuity Within Section)

5.0 Certificates Granted by the Department of Education for Additional Hours of Special Training

- 5.1 The Department of Education shall specify the special training needed in order for an individual to receive a certificate(s) for the additional pay stipends as outlined in 14 **Del.C.** §1311(b). The following hourly requirements shall be met in order for the Department of Education to grant the custodial certificates listed in subsections 5.1.1 through 5.1.3. The certificate guarantees additional pay as specified in 14 **Del.C.** §1311(b) but only the local school district can change a custodian's classification for purposes of 14 **Del.C.** §1311(a).

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

729 School Custodians

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1202 Delaware Teacher Corps Program

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to create 14 **DE Admin. Code** 1202 Delaware Teacher Corps Program to provide guidance relative to the implementation of the program. This regulation is being created to establish the purpose, eligibility and other criteria for the award of this program.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 7, 2017 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. IMPACT CRITERIA

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

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

to help ensure all students who meet the established criteria will receive equal opportunity for this scholarship.

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

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

5. Will the regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The 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 this 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 is no expected cost 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/july2017/proposed/21 DE Reg 15RFA 07-01-17.pdf](http://regulations.delaware.gov/register/july2017/proposed/21%20DE%20Reg%2015RFA%2007-01-17.pdf)

1202 Delaware Teacher Corps Program

1.0 Purpose

The purpose of this teacher incentive program is to encourage academically talented Delawareans to pursue teaching careers in Delaware public schools.

2.0 Definitions

The following words and terms, for the purposes of this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Award" means a loan under the Delaware Teacher Corps Program, the repayment of which is forgiven when the borrower is employed in the teaching profession for the specified period of time.

"Delaware Higher Education Office (DHEO)" is 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 a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program this is a minimum of 12 credit hours per term or for a graduate program a minimum of 9 credit hours.

"High Priority Program" means classifications with the highest shortest of teachers and persistent need for teachers available for employment. These classifications of a subset of the identified Critical Need Areas. They will be posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.

"Qualifying Employment" means employment as a teacher in a Delaware public school, whether as an employee of the State, the Department of Education, a school district or an individual school, as an educator in the Department of Services for Children, Youth and Their Families or as an employee of a private organization providing educational services to Delaware school children under a contract with the State, the Department of Education, a school district or an individual school.

"Resident of the State" means the student 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 to eighteen weeks.

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

"Tuition" means the cost of attendance excluding room, board, mandatory fees, books and supplies.

"Undergraduate" means a student at a college or university who has not yet earned a bachelor's or equivalent degree; typically the first four years of college attendance.

3.0 Application Acceptance and Submission Period

- 3.1 Applications must be submitted online via the Student Account Access Site accessed via the DHEO's website.
 - 3.1.1 First time users shall establish an account and provide a valid email and mailing address before being permitted to submit an application online.
- 3.2 The application acceptance period for this scholarship loan will be posted on the DHEO's website by December 1 of each calendar year.
 - 3.2.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 3.2.2 Applicants are required to submit:
 - 3.2.2.1 A completed application form, including activities; and
 - 3.2.2.2 An unofficial transcript.
 - 3.2.2.2.1 An applicant is responsible for ensuring that he or she electronically submits his or her unofficial transcript to the DHEO.
 - 3.2.2.2.2 An applicant who is a current high school senior enrolled in a public or charter school in Delaware is not required to submit an unofficial transcript.
- 3.3 Incomplete applications shall not be accepted or processed.

4.0 Eligibility

- 4.1 Applicants shall meet the following eligibility requirements to be considered for the Delaware Teacher Corps Program:
 - 4.1.1 Be a Resident of the State; and
 - 4.1.2 Be a Full-Time Student; and
 - 4.1.3 Be enrolled at a Delaware college or university; and
 - 4.1.4 Be admitted into a Department of Education-approved teacher prep program leading to certification; and
 - 4.1.5 Be in a High Priority Program leading to teacher licensure and certification and have at least a 2.75 cumulative GPA.

5.0 Awards

- 5.1 The number and amount of Awards each year will vary and is subject to General Assembly appropriations for the Delaware Teacher Corps Program.
- 5.2 Awards shall first be provided to applicants planning to teach in one of the High Priority Program areas as listed on the DHEO website.
- 5.3 An Award is to be used for, and not in excess of, Tuition.
- 5.4 For Full-Time Students an Award may be renewed annually for up to three additional academic years depending on the degree program.
 - 5.4.1 An Award is renewable upon the condition that the student maintains enrollment in an eligible program of study leading to teacher certification in a High Priority Program.

PROPOSED REGULATIONS

6.0 Award Payment

- 6.1 Students awarded under this program shall sign a promissory note, which includes the terms of repayment and loan forgiveness, annually in order to receive and disburse the Award.
- 6.2 DHEO will contact the student's college or university to verify the student's enrollment and eligibility at the start of the fall and spring Semesters prior to an Award payment being disbursed.
- 6.3 All payments will be disbursed directly to the eligible student's college or university only.

7.0 Repayment

- 7.1 An individual shall meet the definition of Qualifying Employment, as defined within this regulation, in order to be eligible for loan forgiveness.
- 7.2 For each year of Qualifying Employment, one year of the Award payment will be forgiven.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §§7401 and 7405 (16 Del.C. §§7401 and 7405)
16 DE Admin. Code 4465

PUBLIC NOTICE

4465 Delaware Radiation Control Regulations

On July 1, 2017, the Department of Health and Social Services, Division of Public Health, Office of Radiation Control, plans to publish revised Regulations Governing Radiation Control - Part F and Part H and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Thursday, July 27, 2017, at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing to repeal and replace two chapters of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare and industry standards, and to align them more closely with current state administrative code and federal requirements. The regulations will apply to any facility or person that receives, possesses, uses, transfers, sells, owns or acquires ionizing radiation sources, or provides radiation services to such radiation source facilities, or who administers machine-generated radiation to human patients in the healing arts.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Friday, August 11, 2017 to:

Jamie Mack, Executive Assistant
Office of the Director
Delaware Division of Public Health
Jesse Cooper Building
417 Federal St.
Dover, DE 19901
Email: jamie.mack@state.de.us
Fax: 302-739-3984

***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/july2017/proposed/21 DE Reg 18RFA 07-01-17.pdf>

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

[4465 Delaware Radiation Control Regulations](#)

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 329, and 24 Delaware Code, Section 716(c) (18 Del.C. §§311 & 329; 24 Del.C. §716(c))

PUBLIC NOTICE

1318 Compensation for Chiropractic Services

A. Type of Regulatory Action Required

Proposed New Regulation

B. Synopsis of Subject Matter of the Regulation

The Department of Insurance hereby gives notice of proposed new Regulation 1318 relating to Compensation for Chiropractic Services. The proposed new regulation would prohibit insurance carriers from including in any insurance policy terms and conditions that unreasonably discriminate against the payment for Chiropractic Care or Services, or Chiropractic Supportive Care, and puts in place a mechanism by which the Department of Insurance may enforce this prohibition. The Delaware Code authority for the new regulation is 24 Del.C. §716(c) and 18 Del.C. §§311 and 329.

The Department of Insurance does not plan to hold a public hearing on the proposed new regulation. The proposed new regulation appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day, July, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, DE 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

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

<http://regulations.delaware.gov/register/july2017/proposed/21 DE Reg 19RFA 07-01-17.pdf>

1318 Compensation for Chiropractic Services

1.0 Authority

This regulation is promulgated and adopted pursuant to 18 Del.C. §§311 and 329 and 24 Del.C. §716.

PROPOSED REGULATIONS

2.0 Purpose

The purpose of this regulation is to implement 24 Del.C. §716, which provides that if a chiropractor is authorized by law to perform a particular service, the chiropractor shall be entitled to compensation for that service under all insurance plans and under all contracts issued by health service corporations and health maintenance organizations.

3.0 Scope

This regulation shall apply to all carriers as defined herein.

4.0 Definitions

For purposes of this regulation:

"Carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Chiropractic" means a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

"Chiropractic Care or Services" include, but are not limited to, the diagnosing and locating of misaligned or displaced vertebrae (subluxation complex), using x-rays and other diagnostic test procedures. The practice includes the use of telemedicine and may also include the practice of and participation in telehealth. Practice of chiropractic includes the treatment through manipulation/adjustment of the spine and other skeletal structures and the use of adjunctive procedures not otherwise prohibited by Chapter 7 of Title 24 of the Delaware Code.

"Chiropractic Supportive Care" means continuous, interval-based long-term treatment that is necessary for patients with chronic pain and/or disease. This care includes but is not limited to treatment for patients who must resume care, notwithstanding having been discharged from chiropractic care as cured for any particular ailment, because that person's body is unable to sustain those results due to treatment withdrawal.

"Chiropractor" means a person who is licensed to administer chiropractic care or services and chiropractic supportive care.

"Telehealth" means the use of information and communications technologies consisting of telephones, store and forward transfers, remote patient monitoring devices or other electronic means which support clinical health care, provider consultation, patient and professional health-related education, public health, and health administration services.

"Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care by a health-care provider practicing within his or her scope of practice as would be practiced in-person with a patient, and legally allowed to practice in the State, while such patient is at an originating site and the health-care provider is at a distant site.

5.0 Unreasonable and Discriminatory Reimbursement Practices Prohibited

5.1 No carrier shall include in any insurance policy, contract or certificate any provision that unreasonably discriminates against the payment for Chiropractic Care or Services, or Chiropractic Supportive Care, including but not limited to:

5.1.1 A cost containment or managed care provision that denies or restricts payment for Chiropractic Care or Services, or Chiropractic Supportive Care;

- 5.1.2 The classification of Chiropractic Supportive Care as "maintenance care" or "not medically necessary" for the purpose of denying payment;
- 5.1.3 Requiring a patient to pay a higher copay or deductible to be treated by a chiropractor than that patient would otherwise be required to pay for the identical services had those services been rendered by a primary care medical or osteopathic physician;
- 5.1.4 Requiring a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to the Chiropractor for Chiropractic Care or Services, or Chiropractic Supportive Care;
- 5.1.5 Including utilization or compensation restrictions or practices for Chiropractors that are not identical to the utilization or compensation restrictions or practices placed on medical and osteopathic physicians for the treatment of patients with conditions within the scope of chiropractic practice, including but not limited to:
 - 5.1.5.1 Restrictions on the number of compensated visits per condition or episode, year or other period, number of allowed services per day, and the reimbursement amount for each procedure performed; and
 - 5.1.5.2 Unfair or overly restrictive precertification requirements and allowances for initial or subsequent visits, and for the determination of medical necessity; and
- 5.1.6 Any other cost containment or managed care provision that restricts or denies payment for Chiropractic Care when the patient who chooses to receive such care would otherwise be eligible to be reimbursed for medical, osteopathic or pharmaceutical care.
- 5.2 Nothing in this section shall prevent a carrier from implementing reasonable and nondiscriminatory cost containment or managed care provisions as provided in 24 Del.C. §716(b).

6.0 Compensation

No carrier shall deny a Chiropractor compensation for a service rendered by that Chiropractor if the carrier would otherwise reimburse a medical or osteopathic physician for that same service.

7.0 Penalty Assessment

The Commissioner upon a finding after notice and hearing conducted in accordance with the provisions of 18 Del.C. Ch. 3, that a carrier has violated any provision of 24 Del.C. §716 or any provision of this regulation, may impose or order an administrative penalty in an amount of money up to \$50,000 per violation that the Commissioner determines is reasonable and appropriate, as provided by and in accordance with 18 Del.C. §329.

8.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

9.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a carrier or its representative based upon a violation of 24 Del.C. §716 or any provision of this regulation.

10.0 Effective Date

This regulation shall become effective for all claims submitted for payment on or after {insert effective date of regulation}.

PROPOSED REGULATIONS

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 19 Delaware Code, Section 105(a)(8) and 29 Delaware Code, Section 6960(a) (19 **Del.C.** §105(a)(8) & 29 **Del.C.** §6960(a))
19 **DE Admin. Code** 1322

PUBLIC NOTICE

1322 Prevailing Wage Regulations

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to 19 **Del.C.** §105(a)(8) and 29 **Del.C.** §6960(a).

HOW TO COMMENT ON THE PROPOSED REGULATION

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, or by August 7, 2017. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Mr. Anthony DeLuca, Department of Labor, Administrator of the Office of Labor Law Enforcement, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8317. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. DeLuca at the address of the Delaware Department of Labor as set forth above. Written comments must be received on or before August 7, 2017. The proposed regulations will be considered at a public hearing scheduled for Friday, July 21, 2017 from 4 p.m. to 5:30 p.m. in the Department of Labor offices at Blue Hen Corporate Center, 655 S. Bay Road, Suite 2H, Dover, Delaware 19901. Copies of the proposed amended regulations may be obtained from the Division of Industrial Affairs (see address above).

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** §10111(1), the Department of Labor is proposing to amend its regulations for the Prevailing Wage Law as described in 29 **Del.C.** §6960. The proposed amendments will clarify the types of activity which fall under the prevailing wage statute; limit the number of fringe benefits deductions the Department will recognize; modify investigative procedures; expand the scope of the circumstances under which the Department shall hold administrative hearings; and make minor changes to the conduct of those hearings themselves. Minor amendments and changes are also inserted regarding other portions of the regulations.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

19 **Delaware Code**, §105(a)(8); 29 **Delaware Code**, §6960(a).

OTHER REGULATIONS AFFECTED

None.

***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/july2017/proposed/21 DE Reg 22RFA 07-01-17.pdf](http://regulations.delaware.gov/register/july2017/proposed/21%20DE%20Reg%2022RFA%2007-01-17.pdf)

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

1322 Prevailing Wage Regulations

**DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF LABOR LAW ENFORCEMENT**

Statutory Authority: 19 Delaware Code, Section 105(a)(8) and 19 Delaware Code, Section 3503(f)

(19 **Del.C.** §105(a)(8) & 19 **Del.C.** §3503(f))
19 **DE Admin. Code** 1326

PUBLIC NOTICE

1326 Workplace Fraud Act Regulations

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to 19 **Del.C.** §105(a)(8) and 29 **Del.C.** §6960(a).

HOW TO COMMENT ON THE PROPOSED REGULATION

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*, or by August 7, 2017. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Mr. Anthony DeLuca, Department of Labor, Administrator of the Office of Labor Law Enforcement, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8317. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. DeLuca at the address of the Delaware Department of Labor as set forth above. Written comments must be received on or before August 7, 2017. The proposed regulations will be considered at a public hearing scheduled for Friday, July 21, 2017 from 5:30 p.m. to 7 p.m. in the Department of Labor offices at Blue Hen Corporate Center, 655 S. Bay Road, Suite 2H, Dover, Delaware 19901. Copies of the proposed amended regulations may be obtained from the Division of Industrial Affairs (see address above).

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** §10111(1), the Department of Labor is proposing to amend its regulations for the Workplace Fraud Act as described in 19 **Del.C.** §§3501 *et seq.* The proposed amendments will provide additional due process to entities found by the Division to be in violation of the Workplace Fraud Act. They will make changes to the conduct of those hearings themselves. Minor amendments and changes are also inserted regarding other portions of the regulations.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

19 **Delaware Code**, §105(a)(8); 19 **Delaware Code**, §3503(f).

OTHER REGULATIONS AFFECTED

None.

***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/july2017/proposed/21 DE Reg 23RFA 07-01-17.pdf>

1326 Workplace Fraud Act Regulations

1.0 General Provisions

1.1 Purpose and scope.

PROPOSED REGULATIONS

- 1.1.1 The regulations set forth in this part contain the procedures established by the Department of Labor for carrying out its responsibilities in the administration and enforcement of ~~49 Delaware Code, Ch. 35~~ the Workplace Fraud Act.
- 1.2 Address; office hours.
- 1.2.1 Questions may be addressed to "Office of Labor Law Enforcement - Administrator" at ~~225 Corporate Boulevard, Suite 104, Newark, DE 19702~~ 4425 North Market Street, Wilmington Delaware 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.
- 1.3 Definitions.
- 1.3.1 The terms "**Construction services**," "**Debarment**," "**Department**," "**Employee**," "**Employer**," "**Exempt person**," "**Independent contractor**," "**Knowingly**," "**Public body**," "**Secretary**," "**Secretary of Labor**," "**Stop work order**," "**Violate**," and "**attempts to violate**," when used in this regulation, shall have the meanings set forth in ~~49 Delaware Code, §3512~~ the Workplace Fraud Act.
- 1.3.2 The following words and terms, when used in this regulation, shall have the following meanings:
"Administrator" means the Office of Labor Law Enforcement Administrator or his designee.
"Corporate officer" or **"officer of a corporation"** means any person who fills an office provided for in the corporate charter or articles of incorporation. As to persons engaged in the construction industry, the term "officer of a corporation," includes a member owning at least 10 percent of a limited liability company.
"Day" means calendar day unless otherwise specified.
"Party" means any employee, employer or the Department of Labor.
- 1.4 Attorneys; form of appearance on behalf of parties.
- 1.4.1 An attorney admitted to practice before the State of Delaware Supreme Court may appear on behalf of a party by providing written notice of appearance. To constitute an appearance, a form, letter, or document shall contain the names of the parties, the ~~department's~~ Department's docket number if known, the name of the party that the attorney represents, and the attorney's address, telephone number, facsimile number, and e-mail address.
- 1.4.2 If a party appears through an attorney, all papers shall be served on the attorney with the same force and effect as though served on the client.
- 1.4.3 An attorney may withdraw his appearance by providing written notice of withdrawal to the ~~department~~ Department, certifying that a copy of the notice of withdrawal was mailed to all parties.
- 1.5 Parties' obligation to keep department informed of change of address or status.
- 1.5.1 The parties shall promptly notify the ~~department~~ Department of any change in address, telephone number, contact information, or other material change in business status while the charge is pending.
- 1.6 Liberal construction of regulations.
- 1.6.1 These regulations shall be liberally construed by the administrator to permit the ~~department~~ Department to discharge its statutory duties under ~~49 Delaware Code, Ch. 35~~ the Workplace Fraud Act.
- 1.6.2 No party shall be permitted to subcontract to an entity who performs similar work, except that this Provision shall not preclude legitimate joint ventures bid as such in accordance with applicable statutes.
- 1.7 Practice where regulations do not govern.
- 1.7.1 In any circumstance that arises not governed by these regulations, the administrator shall exercise his discretion in order to permit the ~~department~~ Department to discharge its statutory duties under ~~49 Delaware Code, Ch. 35~~ the Workplace Fraud Act while ensuring procedural due process to employers and other parties.
- 1.8 Validity of regulations if any portion declared invalid.

- 1.8.1 If any portion of these regulations is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any portion loses its force and effect, the ruling or action will not affect, impair or void the remainder of these regulations.
- 1.9 Amendment of regulations.
- 1.9.1 The administrator may rescind, amend or expand these regulations from time to time as necessary to comply with the purpose of the Workplace Fraud Act, ~~19 Del.C. Ch. 35~~, and such new regulations shall be submitted to the Registrar's office in accordance with the provisions of 29 Del.C. §10161(b).
- 1.10 Examples of Workplace Fraud. Pursuant to 19 Del.C. §3503(f), the following examples are provided to demonstrate violations of the Workplace Fraud Act. These examples are by no means exhaustive.
- A. John Smith has an oral agreement with ABC Building Company (ABC) to do carpentry work on houses in a development designated by ABC. John Smith supplies his own hand tools and has his own business license. ABC supplies the material for each job. He has to do the work himself and he works on a full time basis for the company. For some work he is paid on a piecework basis and for some work he is paid on an hourly basis. He does not have assistants, does not have an office, and does not advertise in newspapers or otherwise hold himself out to the public as being in the carpentry business. ABC can fire him any time before he finishes a job without contractual liability. John Smith is an employee of ABC. **Violation 3503(c).**
- B. Sarah Green is a painting subcontractor who has contracted with XYZ General Contracting, Inc. (XYZ) to paint 264 houses. She in turn hired 40 painters to do the work for her and as condition of employment requires the 40 painters to obtain business licenses before they can start work and they will receive a 1099 tax document at the completion of the project, although only about 15 are on the job at any one time. She supplies all the paint, brushes, and ladders. She designates the house to be painted and either pays the painters per house or by the hour. Detailed instructions about the work are not necessary because of the painters' skill in their trade. Sarah Green inspects the work and requires them to repaint any unsatisfactory work. The painters cannot engage helpers without her consent. She can discharge them for any reason, and they are free to resign at any time. The painters assume no business risks and have no capital investment. The painters are employees of Sarah Green, not XYZ, and Sarah Green is an independent contractor, not an employee of XYZ. **Violation 3503(c).**
- C. Chris Johnson, an experienced tile and terrazzo journeyman, orally agreed with Floor, Inc. (Floor) to perform full-time services at construction sites. He uses his own tools and performs services in the order designated by Floor, Inc. and according to its specifications. Floor, Inc. supplies all materials, makes frequent inspections of his work, pays him on a piecework basis, and carries workers' compensation insurance on him. He does not have a place of business or hold himself out to perform similar services for others. Either party can end the services at any time. Chris Johnson is an employee of Floor, Inc. **Violation 3503 (c).**
- D. Person A employs workers from a temporary agency. These workers are never given a chance to become permanent hires. Their contracts are continually renewed by Person A, with no opportunity provided to become full-fledged employees. Person A classifies them as independent contractors. **Violation 3503 (c).**
- E. Person A and Person B are co-owners of Construction Company X. At the suggestion of Person A, Person B assists in the incorporation of Subsidiary Company Y, nominally owned by his relative, Person C. When Construction Company X receives a contract, it sub-contracts the work on this contract to Subsidiary Company Y. Subsidiary Company Y hires the employees of Construction Company X, and treats them as independent contractors. **Violation 3503(d), 3503(e).**
- F. Attorney A advises Contractor B to create a corporation separate and distinct from his primary business. When his primary business receives contracts, Attorney A advises him to employ the employees from his primary business in the separate corporation as independent contractors. **Violation 3503(e).**
- G. Person A enters into a "sub-contracting agreement" with "Worker B, LLC" and "Worker C, LLC." These workers are paid once per week at an hourly rate by Person A. Person A provides all materials and tools for them to complete the project. Person A provides them with the truck they use for hauling

materials, and they report to Person A's business location at the start of the workday to receive instruction from Person A concerning the work they will perform. No sub-contracting agreements are drafted or signed. As a condition of entry into these "sub-contracting agreements" and of employment on the project, Workers B and C are required to obtain business licenses through the efforts of Person B, who is employed by Person A. Bid forms do not list any of the sub-contractors. **Violation 3503(c), 3503(d), 3503(e).**

2.0 Commencement of Actions

- 2.1 Manner of commencing actions.
 - 2.1.1 An action may be commenced by the filing of a complaint with the ~~department's~~ Department's Office of Labor Law Enforcement.
- 2.2 Who may file a complaint.
 - 2.2.1 An employee or the ~~department~~ Department on its own may file a complaint alleging a violation of the Workplace Fraud Act.
- 2.3 Preparation and contents of a complaint.
 - 2.3.1 A complaint shall be filed on a printed form approved by the administrator.
 - 2.3.2 The ~~department~~ Department shall assist the employee in the completion of the complaint where necessary.
 - 2.3.3 The complaint shall indicate that it is filed with the ~~department~~ Department, and shall set forth the following:
 - 2.3.3.1 The employee's full name, address, and telephone number;
 - 2.3.3.2 The employer's full name, address, and telephone number if known;
 - 2.3.3.3 A brief statement of jurisdiction identifying the nature, date of, and location of the employment relationship;
 - 2.3.3.4 The specific prohibited basis or bases that gave rise to the filing of the complaint;
 - 2.3.3.5 A brief statement of the facts deemed to constitute the alleged violation;
- 2.4 Filing a complaint.
 - 2.4.1 The filing of a complaint is perfected when received by an official of the Office of Labor Law Enforcement.

3.0 Investigation

- 3.1 Timing of investigations.
 - 3.1.1 The ~~department~~ Department shall promptly initiate an investigation into alleged violations when:
 - 3.1.1.1 The ~~department~~ Department received a complaint; or
 - 3.1.1.2 The ~~department~~ Department, on its own motion, determines to initiate an investigation.
 - 3.1.2 The ~~department~~ Department shall complete its investigation as promptly as possible.
- 3.2 Investigatory procedures.
 - 3.2.1 All investigatory powers granted by 19 **Del.C.** §3504 shall be available to the ~~department~~ Department. In its discretion, the ~~department~~ Department may conduct investigations using, among other things, written requests for information, investigatory conferences, subpoenas, on-site visits, interviews, and depositions as provided by these regulations.
 - 3.2.2 In connection with an investigation, the ~~department~~ Department may require the submission of information relating to:
 - 3.2.2.1 The employer's books and records;
 - 3.2.2.2 The employment records of employees;
 - 3.2.2.3 The employer's accounts and payroll records;
 - 3.2.2.4 The employer's procedures for hiring and selecting employees; and

- 3.2.2.5 Such other information as the department determines to be reasonably necessary to carry out the provisions of the Workplace Fraud Act.
- 3.3 Requests for Information.
- 3.3.1 The ~~department~~ Department may serve requests for information to assist the ~~department~~ Department in its investigation. Unless otherwise specified in a request for information, the response shall be due to the ~~department~~ Department within 15 days from the date of the request.
- 3.4 On-Site Visits.
- 3.4.1 The ~~department~~ Department may conduct on-site visits to assist in the investigatory process for the purpose of gathering evidence, interviewing witnesses, observing a employer's place of business or work site, and reviewing documents.
- 3.4.2 The ~~department~~ Department is not required to provide the employer with any notice prior to its on-site visit.
- 3.4.3 The employer shall grant access to its premises, documents, and employees during the ~~department's~~ Department's on-site visit.
- 3.5 Subpoenas
- 3.5.1 The administrator may issue a subpoena as he deems necessary to assist the investigatory process. The administrator shall issue a subpoena in the name of the ~~department~~ Department, and the subpoena shall direct the person designated to personally appear and bring any books, records, documents and any other evidence that relates to any violation under investigation, or, in lieu of personal appearance, to produce any books, records, documents and any other evidence which relates to any violation under investigation.
- 3.5.2 A subpoena shall state the time and place where the person designated is directed to appear.
- 3.5.3 A subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.
- 3.6 Depositions.
- 3.6.1 The ~~department~~ Department may take depositions of witnesses under oath as part of any investigation when, in the discretion of the administrator, such depositions will aid the investigatory process.
- 3.7 Enforcement of subpoenas.
- 3.7.1 If any person fails to comply with a subpoena issued by the ~~department~~ Department, he shall be subject to the appropriate enforcement provisions of ~~49 Delaware Code, §3505~~ the Workplace Fraud Act.
- ~~3.8 Investigatory conferences.~~
- ~~3.8.1 Investigatory conferences, as part of the department's investigation, are subject to the following:~~
- ~~3.8.1.1 As part of its investigation and at the discretion of the administrator, the department may convene an investigatory conference for the purpose of obtaining evidence, identifying the issues in dispute, and ascertaining the positions of the parties. The investigatory conference is not an adjudication of the merits of the charge.~~
- ~~3.8.1.2 The department shall provide the parties with written notice of the investigatory conference at least 30 days prior to the conference. The notice shall specify the date, time and location of the conference and shall identify the individuals requested to attend, and any documents that a party is requested to provide at the conference.~~
- ~~3.8.2 The conference shall be conducted as follows:~~
- ~~3.8.2.1 A department employee shall conduct and control the proceedings.~~
- ~~3.8.2.2 With prior notice to the department, the parties may request to bring witnesses to the conference in addition to those whose attendance may be specifically requested by the department. The department employee has discretion over which witnesses shall be heard and the order in which they are heard. The department employee may exclude any~~

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~~witness or other person from the conference, except that one representative of each party and counsel shall be permitted to remain throughout.~~

~~3.8.2.3 The department may request that the parties provide affidavits from witnesses who intend to appear at the conference.~~

~~3.8.2.4 A party may be accompanied at the conference by his attorney, and by a translator, if necessary.~~

~~3.8.2.5 An attorney for a party who has not previously entered his appearance shall do so at the onset of the conference.~~

~~3.8.2.6 Because the investigatory conference is part of the department's investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the department employee, unless in his discretion the department employee permits questions to be asked by other persons present at the conference.~~

~~3.8.3 Postponement of a conference.~~

~~3.8.3.1 Except in extraordinary circumstances, requests for postponements must be made by notice to all parties at least 15 days prior to the conference.~~

~~3.8.3.2 Any opposition to a request for postponement must specifically state the basis for the opposition and must be received by the department at least seven days prior to the conference.~~

~~3.8.3.3 If a party or witness fails to appear at a scheduled conference, the department may proceed with the conference without the party or witness.~~

~~3.8.4 If a party refuses or fails to attend a scheduled conference, the department may in its discretion schedule an alternate conference date. The department may subpoena any party or witness who failed or refuses to attend a scheduled conference. The department may also subpoena any documents that either party was requested to bring to the conference, but failed to bring to the conference.~~

3.8 Final Determinations

3.8.1 Issuance of findings.

3.8.1.1 Following the completion of an investigation, the administrator shall determine whether or not the employer violated or committed an unlawful employment practice in violation of the Workplace Fraud Act.

3.8.1.2 If the administrator determines after completion of an investigation that the employer has violated one (1) or more of the provisions of the Workplace Fraud Act, the administrator will issue a violation determination. This determination will specify the violations which occurred, and will specify which penalties will be imposed pursuant to the Workplace Fraud Act.

3.8.1.3 If the administrator determines after completion of an investigation that no violation(s) of the provisions of the Workplace Fraud Act have occurred, the administrator will issue a no violation determination.

3.8.1.4 If the administrator determines after completion of an investigation that the employer has violated some but not all of the alleged violations, the administrator will issue a violation determination as to those violations which the Department has determined has occurred, and a no violation determination as to those violations which the Department determines no violation has occurred. This determination will also specify which penalties will be imposed pursuant to the Workplace Fraud Act.

3.8.1.5 The final determination will be sent to the parties by certified mail, return receipt, and shall include notice to the employer of the opportunity to appeal in accordance with applicable law and these regulations.

3.9 Administrative Hearings.

3.9.1 Administrative hearings may be requested by either the Department of Labor or the employer. The opportunity to request such a hearing shall occur once the employer has received formal written

notification from the Department of Labor that it has found the employer in violation of one or more of the provisions of the Workplace Fraud Act. The notification letter shall also inform the employer of the deadline for them to request an administrative hearing. The deadline shall be 20 days from the date of the issuance of the written notification.

3.9.2 The Secretary of the Department of Labor may serve as hearing officer in the hearing, or may appoint a designee to serve as hearing officer in his or her behalf. The hearing officer will rule upon all motions and questions relating to the administrative hearing.

3.9.3 The hearing officer is empowered to:

3.9.3.1 Issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party;

3.9.3.2 Administer oaths to witnesses;

3.9.3.3 Exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

3.9.3.4 Limit unduly repetitive proof, rebuttal and cross-examination; and

3.9.3.5 Cause interrogatories to issue and depositions to be taken.

3.9.4 At least two weeks before the scheduled administrative hearing, counsel (or the parties themselves, if pro se) shall participate in a scheduled status conference with the hearing officer. Status conferences may be in person or by telephone. The purposes of this conference will be to resolve any outstanding scheduling matters; to simplify factual and legal issues by stipulation; to resolve any discovery disputes or other preliminary or procedural matters; to pre-mark for identification and admission into evidence all stipulated exhibits; and to afford the parties the opportunity to discuss the admissibility or exclusion of any outstanding evidentiary issues. The hearing officer will permit the parties to argue their positions, and may issue a ruling either during the conference or by subsequent written decision. The status conference may be waived by the written stipulation of the opposing parties. In the absence of such a stipulation, failure to participate in the status conference may result in a finding contrary to the party which fails to participate in the status conference.

3.9.5 Prior to the administrative hearing, or at any time when directed by the hearing officer, the Department of Labor will make available to the employer all documents and records relevant to its decision, unless prohibited by statute or the confidentiality rights of others, or the documents in question are protected by attorney-client or other evidentiary privilege. Personal identifying information and confidential sources shall be redacted from any such disclosure. The hearing officer may at any time also direct the employer to make available to the Department any appropriate documents and records requested by the Department, and any evidence the employer intends to introduce during the administrative hearing. Failure to comply with this directive by the Department may result in dismissal of the alleged violation upon application of the employer to the hearing officer, who shall give the Department the opportunity to respond prior to reaching a decision upon the dismissal. Failure to comply with this directive by the employer may result in the dismissal of their appeal, and the hearing officer may then impose statutory penalties in accordance with the Workplace Fraud Act, upon application of the Department to the hearing officer, who shall give the employer the opportunity to respond prior to reaching a decision upon the dismissal.

3.9.6 The hearing officer shall rule on requests for changing the timing, manner, or location of the hearing. Such requests shall be made to the hearing officer within a reasonable time prior to the hearing. The opposing party shall have the right to oppose such a request. In ruling on such a request the hearing officer shall include consideration of the sufficiency of the grounds for the request, the length of time appropriate for a continuance, and the degree of prejudice, if any, to the party opposing the request.

3.9.7 At the administrative hearing, any party or his or her representative shall have the opportunity to produce witnesses and cross-examine adverse witnesses; to express all pertinent facts and circumstances through evidence, oral or written; to advance any arguments without undue interference; and to question or refute any testimony or evidence.

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- 3.9.8 The burden of proving facts alleged as the basis for its decision shall be on the Department by a preponderance of the evidence. The burden of proof regarding any affirmative defenses shall be on the employer by a preponderance of the evidence.
- 3.9.9 The rules of evidence applied in civil cases by the courts of the State of Delaware shall not be strictly followed. The hearing officer may allow evidence not admissible under these rules of evidence where, in his or her judgment, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs. Hearsay may be admissible in administrative hearings, but may not constitute the sole basis for the hearing officer's determination upon the factual issue addressed by the hearsay evidence.

4.0 Administrative Dismissal

- 4.1 The administrator or hearing officer may in his discretion administratively dismiss a complaint for reasons including but not limited to the following:
- 4.1.1 Lack of jurisdiction;
- 4.1.2 The employee is unavailable or unwilling to participate in the investigation, or to attend a scheduled conference, deposition or hearing;
- 4.1.3 Relief is precluded by ~~the respondent's bankruptcy~~ or other special circumstances as determined by the administrator or hearing officer;
- 4.1.4 The complaint on its face fails to state a claim under the Workplace Fraud Act.
- 4.2 Prior to administratively dismissing a complaint, the administrator or hearing officer shall notify the employee of the reason for the proposed dismissal and shall offer the employee the opportunity to respond.
- 4.2.1 The administrator or hearing officer shall make his final determination, considering all responses received within 15 days of the date of notice to the employee.

5.0 ~~Final Determinations~~

- 5.1 ~~Issuance of findings.~~
- 5.1.1 ~~Following the completion of an investigation, the administrator shall determine whether or not the employer violated or committed an unlawful employment practice in violation of, 19 Del.C. Ch. 35.~~
- 5.1.2 ~~If the administrator determines after completion of an investigation that the employer has violated one (1) or more of the provisions of 19 Del.C. Ch. 35, the administrator will issue a violation determination.~~
- 5.1.3 ~~If the administrator determines after completion of an investigation that no violation(s) of the provisions of 19 Del.C. Ch. 35, have occurred the administrator will issue a no violation determination.~~
- 5.1.4 ~~If the administrator determines after completion of an investigation that the employer has violated some but not all of the alleged violations, the administrator will issue a violation determination as to those violations which the department has determined has occurred, and a no violation determination as to those violations which the department determines no violation has occurred.~~
- 5.1.5 ~~The department's initial determination is final when issued.~~
- 5.1.6 ~~The initial determination will be sent to the parties by certified mail, return receipt, and shall include notice to the employer of the opportunity to appeal in accordance with the Administrative Procedures Act, 29 Del.C. Ch. 101.~~

65.0 Enforceability of settlement agreements.

- 65.1 A settlement agreement reached during an investigation shall be set forth in writing and signed by the parties.
- 65.2 Allegations of breach of a settlement agreement shall be brought to the attention of the administrator or hearing officer, depending upon which is responsible for enforcing settlement agreements in the

matter at the time of the alleged breach. The administrator or hearing officer shall review and investigate the allegations of breach of a settlement agreement to determine whether a breach has occurred.

65.3 The administrator or hearing officer shall issue written findings to the parties with regard to the allegation of breach of a settlement agreement.

65.4 The administrator or hearing officer in his discretion will determine whether to forward allegations of breach of the settlement agreement to the Attorney General for review.

76.0 Access to Department's Investigatory Files

76.1 Confidentiality of ~~department's~~ Department's investigatory files.

76.1.1 The ~~department's~~ Department's investigatory records are confidential and exempt from public access under 29 **Del.C.** Ch. 100 except to the extent required by subsections 3.9.5 and 3.9.8 of this regulation.

76.2 Discovery of ~~department's~~ Department's investigatory files by non-parties.

76.2.1 Non-parties to an investigation shall not have access to the material in the ~~department's~~ Department's investigatory file(s).

76.3 Copying Costs.

76.3.1 The ~~department's~~ Department's fee for copying documents requested under this section shall be the same fee as is applicable to requests granted pursuant to 29 **Del.C.** Ch. 100. The administrator or hearing officer may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause.

87.0 Retention of Investigatory Files

8.4 The ~~department~~ Department shall retain investigatory files for three years after the end of the administrative process.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER

SURFACE WATER DISCHARGES SECTION

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 7204

REGISTER NOTICE SAN # 2016-05

7204 Regulations for Licensing Operators Of Wastewater Facilities

1. TITLE OF THE REGULATIONS:

Regulations For Licensing Operators Of Wastewater Facilities

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

This action is being taken to: (1) incorporate language as recommended by the regulated entities; (2) adhere to the new regulation format and numbering requirement; (3) reorganize the structure of the Board of Certification for wastewater operators; (4) update the treatment plant classification process; (5) modify and enhance licensing requirements. There are no new fees proposed and no current fee increases proposed in this action. The Regulations for Licensing Operators of Wastewater Facilities are licensing regulations and there are no changes/modifications being proposed that will add increased burden or cost to small business or other individuals.

PROPOSED REGULATIONS

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this regulation.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 60, Environmental Control

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

None

6. NOTICE OF PUBLIC COMMENT:

The Delaware Department of Natural Resources and Environmental Control's Surface Water Discharges Section (SWDS), Board of Certification for Wastewater Operator Licensing, is proposing amendments to the Regulations for Licensing Operators of Wastewater Treatment Facilities. The regulations for licensing of wastewater operators have been revised to incorporate language as recommended by the operating community, reorganization and structure of the Board of Certification, updates to the treatment plant classification process, and enhancement of the licensing process. There are no new fees proposed, and there are no changes/modifications being proposed that will increase current costs to affected public and private entities, nor the wastewater operating community.

A Public Hearing will be held on Thursday, August 10, 2017 beginning at 6:00 pm in the DNREC Auditorium at 89 Kings Highway, Dover, DE 19901. Written comments may be submitted via email to: Ms. Faye Wheeler (email: faye.wheeler@state.de.us or by fax at 302-739-8369). For other information concerning this matter, please contact Bryan Ashby, Environmental Program Manager, at Bryan.Ashby@state.de.us or by phone at 302-739-9946.

The proposed changes /updates to the Wastewater Operator Licensing Regulations can be found on our website at: www.dnrec.delaware.gov/wr/Information/SWDInfo/Documents/WastewaterOperatorRegulations.pdf

7. PREPARED BY:

Bryan Ashby

Bryan.Ashby@state.de.us

302.739.9946*Please Note:

*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/july2017/proposed/21 DE Reg 31RFA 07-01-17.pdf](http://regulations.delaware.gov/register/july2017/proposed/21%20DE%20Reg%2031RFA%2007-01-17.pdf)

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

[7204 Regulations for Licensing Operators Of Wastewater Facilities](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

24 DE Admin. Code 2400

PUBLIC NOTICE

2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del.C. Ch. 27

proposes to amend/adopt the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 4.0 - Badges & Vehicle Markings - requires all badges and vehicle markings to be approved by the Board; Rule 9.0 - Minimum Training Standards and In-Service Training - removes the required eight hours of classroom instruction and leaves it open on the minimum hours. If you wish to view the complete Rules, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by August 1, 2017, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting in the Fall of 2017 but no later than December 2017, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

***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/july2017/proposed/21 DE Reg 32RFA 07-01-17.pdf](http://regulations.delaware.gov/register/july2017/proposed/21%20DE%20Reg%2032RFA%2007-01-17.pdf)

2400 Board of Examiners of Constables (Break in Continuity of Sections)

4.0 Reserved

4.0 Badges and Vehicle Markings

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

(Break in Continuity of Sections)

9.0 Minimum Training Standards and In-Service Training

(Break in Continuity Within Section)

- 9.3 In-service training shall be completed every year through a Board approved facility. Odd years will be ~~eight hours~~ of classroom instruction. Even years will be done by completing an on-line modular and test.

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

2400 Board of Examiners of Constables

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 1000 BOARD OF PILOT COMMISSIONERS

Statutory Authority: 23 Delaware Code, Section 102 (23 Del.C. §102)
24 DE Admin. Code 1000

PUBLIC NOTICE

1000 Board of Pilot Commissioners

The Delaware Board of Pilot Commissioners, pursuant to 23 Del.C. §102(1), proposes to revise its regulations adding a new regulation establishing the process to be followed for accepting applications for licensure. The Board will hold a public hearing on the proposed regulation change on August 18, 2017 at 1:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Melanie Alexander, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 4, 2017 pursuant to 29 Del.C. §10118(a).

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

<http://regulations.delaware.gov/register/july2017/proposed/21 DE Reg 34RFA 07-01-17.pdf>

1000 Board of Pilot Commissioners (Break in Continuity of Sections)

13.0 Applications for Licensure

- 13.1 When notice is received that apprentices are needed, the following procedure will be implemented. The Board will schedule a special meeting within 30 days to begin the application process. The purpose of this meeting is to approve the application packets, determine the deadline for submission, and approve the interview questions.
- 13.2 The application process will begin with a posting of a notice on the Division of Professional Regulation's website. Application packets will be made available in this manner as well at the time the application process begins.
 - 13.2.1 A completed application packet will include all of the following:
 - 13.2.1.1 An application form.
 - 13.2.1.2 A supplemental questionnaire inquiring as to relevant training and experience, and conflict management.
 - 13.2.1.3 The fee set by the Division.
 - 13.2.2 Proof of age is required in the form of a photocopy of a current driver's license from any state, passport, or birth certificate.
 - 13.2.3 Proof of a baccalaureate degree from either a recognized and certified college or university or maritime academy operated by the United States or any State must be sent directly from the degree-granting institution to the Division of Professional regulation or submitted in a school-sealed envelope from the school.
 - 13.2.4 Proof of a U.S. Coast Guard-issued license is required in the form of a photocopy of the applicant's current license.
 - 13.2.5 Certificates of good standing are required from every jurisdiction where an applicant is or has been licensed as a river pilot. These certificates must be sent directly to the Division from each jurisdiction where an applicant is or has been licensed.
 - 13.2.6 Only those application packets that are fully completed by the deadline for submission will be considered.

- 13.3 Completed application packets will be reviewed by the Board after the deadline for submission has passed. At the time of this review, the application packets will have all identifying information redacted by the Division, so the applicants remain unknown to the Board. The Board will select those applicants that should move forward in the selection process. The Board will also determine the number of "alternates" it will ultimately select at this stage of the review.
- 13.4 Those applicants selected to move forward in the selection process will then have their personally identifiable information and supplemental questionnaires reviewed by the Board. Based on its review of the complete application packet, the Board will select those applicants it wishes to interview. No applicant will be selected for an interview without obtaining at least the vote of four Board members.
- 13.5 Interviews will be conducted by the Board, or at least four of its members, at the Board's convenience. Telephone or teleconference video interviews will be permitted. All applicants who are interviewed will be asked all of the Board approved interview questions.
- 13.6 Following the interviews, the Board will select those applicants who will be licensed. This number is as determined by the Pilot's Association. The Board will also select the "alternates" in whatever number the Board previously determined. Offers of licensure will be communicated to the applicants selected by the Division. If an offer of licensure is not accepted by an applicant, an offer will be made to one of the alternates. This process will proceed until the Board has confirmed acceptance from the number of applicants the Pilot's Association determined should be licensed.

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

1000 Board of Pilot Commissioners

DIVISION OF PROFESSIONAL REGULATION

2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 **Del.C.** §2706(a)(1))
24 **DE Admin. Code** 2700

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to clarify the surveyor's position on property conditions. The Board will hold a public hearing on the proposed rule changes on September 21, 2017 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904, no later than October 6, 2017.

***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/july2017/proposed/21 DE Reg 35RFA 07-01-17.pdf>

2700 Board of Registration for Professional Land Surveyors (Break in Continuity of Sections)

12.0 Minimum Technical Standards for Licensees

(Break in Continuity Within Section)

- 12.2 Procedure and Standards. Whenever a surveyor conducts a boundary survey, or an ALTA/ACSM Land Title Survey, or Subdivision Survey, a plat showing the results shall be prepared. An ALTA/ACSM Land

PROPOSED REGULATIONS

Title Survey shall be titled in accordance to the current published ALTA/ACSM standard. A Subdivision Survey shall be titled as required by the governing regulatory agency. The plat of a boundary survey shall be titled "Boundary Survey Plan"; no other plat title is acceptable. A copy of the survey shall be furnished to the client unless deemed unnecessary by the client. The plat shall conform to the following requirements and shall include the following information:

(Break in Continuity Within Section)

12.2.15 A plat or survey shall clearly bear the Firm Name and licensee's name, license number, title, "Professional Land Surveyor", contact address, and date of survey and original signature and board-approved seal of the licensed surveyor in responsible charge. This signature and seal is certification that the survey meets minimum requirements of the Standards for Land Surveyors as adopted by the Delaware Board.

12.2.15.1 A plat or survey shall include a statement. The statement shall be in the following form for the purpose of complying with this regulation:

"I, [name] registered as a Professional Land Surveyor in the State of Delaware, hereby state that the information shown on this plan has been prepared under my supervision and meets the standards of practice as established by the State of Delaware Board of Professional Land Surveyors. Any changes to the property conditions, improvements, boundary or property corners after the date shown hereon shall necessitate a new review and certification for any official or legal use.

[name], DE PLS _____ Date: _____

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

2700 Board of Registration for Professional Land Surveyors

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

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

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199 as well as other process changes identified through implementation. These amendments include: (1) providing for equal weighting of the DPAS II Components; (2) eliminating a required annual assessment; and (3) adding language related to new provisional license.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2017, 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** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199 as well as other process changes identified through implementation. These amendments include: (1) providing for equal weighting of the DPAS II Components; (2) eliminating a required annual assessment; and (3) adding language related to new provisional license.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 June 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 15th day of June 2017.

Department of Education

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

Approved this 15th day of June 2017

State Board of Education

Teri Quinn Gray, Ph.D., President

Nina L. Bunting, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 853 (20 DE Reg. 853). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

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

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199 as well as other process changes identified through implementation. These amendments include: (1) providing for equal

weighting of the DPAS II Components; (2) eliminating a required annual assessment; and (3) adding language related to new provisional license.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2017, 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199 as well as other process changes identified through implementation. These amendments include: (1) providing for equal weighting of the DPAS II Components; (2) eliminating a required annual assessment; and (3) adding language related to new provisional license.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 June 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of June 2017.

Department of Education

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

Approved this 15th day of June 2017

State Board of Education

Teri Quinn Gray, Ph.D., President

Nina L. Bunting, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 858 (20 DE Reg. 858). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 108A

REGULATORY IMPLEMENTING ORDER

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation is being amended to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199 as well as other process changes identified through implementation. The amendment is regarding providing for equal weighting of the DPAS II Components.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2017, 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 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to align with changes made during the second session of the 148th General Assembly by House Bill 399 as amended by House Amendment 1 and Senate Amendments 1 and 2, and by Senate Bill 199 as well as other process changes identified through implementation. The amendment is regarding providing for equal weighting of the DPAS II Components.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 June 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of June 2017.

Department of Education

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

Approved this 15th day of June 2017

State Board of Education

Teri Quinn Gray, Ph.D., President
Nina L. Bunting, Vice President
G. Patrick Heffernan

Barbara B. Rutt
Gregory B. Coverdale, Jr.
Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the May 2017 issue of the *Register* at page 863 (20 DE Reg. 863). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

613 Uniform Procedures for Processing Attorney General's Reports

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to create 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports. This regulation is created pursuant to 14 **Del.C.** §122(b)(26) to provide districts and charter schools with uniform procedures for processing Attorney General's Reports.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2017, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities, as well as Lake Forest, Capital, Milford, and Smyrna School Districts. Comments were regarding: (1) confusing use of terms "district" and "charter school" in the regulation. Changes were made to add and clarify the definition of each term as well as capitalizing them when they reference a specific district or charter school; (2) the need for the word "crime" or "criminal conduct" to be defined. The term "crime" is not used in the regulation and the term "criminal conduct," is defined where used; (3) both insufficient and extremely detailed definitions. For clarity and consistency, the Department used the same definitions as found in other regulations; (4) the definition of "parent" not including persons appointed by power of attorney, DOE grant of authority or one appointed by an IEP team. Section 5.1 specifies that nothing in this regulation shall alter a district or charter school's duties under the IDEA or 14 **DE Admin. Code** 922-929; (5) a lengthy, potentially unclear definition of "regular school program". The Department believes that the lengthy definition is important to clarify what is meant by this term; (6) a suggested correction for the definition of "suspension, long-term" as it does not include federal guidance regarding short term removals that may constitute a long term suspension. The Department believes that this issue is covered by Section 5 of the regulation. (7) retaining reports during the time for initiating a dispute resolution application under IDEA. The Department believes that this issue is addressed in Section 5 of the regulation. (8) the requirement that districts and charter schools are allowed to take Disciplinary Action for "all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others..." is too broad. The Department notes that regulation states a district or charter school "may" subject a student to Disciplinary Action dependent on the conduct which prompted the AG report. It is at their discretion; (9) concerns that the regulation authorizes disciplinary action before adjudication. The regulation only provides guidance to districts and charter schools regarding the action in a school context in accordance with the applicable law and does not address delinquency or criminal proceedings of the student (10) the consideration of a Memorandum of Agreement or Understanding (MOA) in relation to the regulation A clarifying change was made so the specific agreement is identified. As part of this change, the definition of the Interagency Agreement was added to the regulation for clarification; (11) that three-day time period districts and charter schools have to review the Attorney General's Report and determine if they need to access CJIS for additional information. The Department believes the turnaround time is appropriate.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 613 Uniform Procedures for

Processing Attorney General's Reports in order to provide districts and charter schools with uniform procedures for processing Attorney General's Reports.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports attached hereto as Exhibit "B" is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports hereby created 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** 613 Uniform Procedures for Processing Attorney General's Reports created hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 613 Uniform Procedures for Processing Attorney General's Reports 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 June 15, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 15th day of June 2017.

Department of Education

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

Approved this 15th day of June 2017

613 Uniform Procedures for Processing Attorney General's Reports

1.0 Purpose

Pursuant to 14 **Del.C.** §122(b)(26), this regulation, which applies to all public school ~~[districts and charter schools—Districts and Charter Schools]~~, provides uniform procedures for processing Attorney General's Reports.

2.0 Terms and Definitions

In this regulation, the following terms and words shall have the following meaning unless the context clearly indicates otherwise:

"Administration" means administrative staff from a ~~[district District]~~, school, or ~~[charter school Charter School]~~.

"Alternative Placement" means the removal of a student from ~~[his/her his or her]~~ school on a temporary basis for a period of time as determined by the Alternative Placement Team and Assignment to an Alternative Program.

"Alternative Program" means a school discipline improvement program that provides Appropriate Educational Services that has been created for students whose behavior(s) is within the defined conduct under 14 **DE Admin. Code** 614. This includes any programs managed by a school ~~[district/charter District or Charter School]~~ or the Consortium Discipline Alternative Program.

"Appropriate Educational Services" means instruction and assessment provided by the ~~[district/charter District or Charter School]~~ and includes access to instructional materials, graded homework and communication with educators so as to enable the student to continue to participate in the general

education curriculum, although in another setting, and to progress toward meeting a level of proficiency in that curriculum.

“**Assignment to an Alternative Program**” means student Assignment to an Alternative Program, including Consortium Discipline Alternative Program and any Alternative Program maintained by a ~~[district/charter school]~~ **District or Charter School**], until the student has fulfilled the requirements to return to the Regular School Program.

“**Attorney General's Report (Electronic Notice of Charges)**” or “**Report**” means the Department of Justice's report of: 1) an enrolled student's alleged 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; 2) wanted persons enrolled in a school and; 3) missing persons enrolled in a school.

“**Board of Education**” means the Board of Education of a ~~[reorganized school district]~~ **District**] or the Board of Directors of a ~~[charter school]~~ **Charter School**].

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

“**Consortium Discipline Alternative Program**” means a school discipline improvement program which serves an organized consortium of school ~~[districts and/or charter schools]~~ **Districts or Charter Schools**] as provided for in 14 **Del.C.** Ch. 16.

“**Criminal History Record Information**” or “**CHRI**” means a subset of CJI, set forth in 11 **Del.C.** §8602(2), that includes identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision and release.

“**Criminal Justice Information**” or “**CJI**” means all Criminal Justice Information System data. The term includes: criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

“**Criminal Justice Information System**” or “**CJIS**” means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

“**Delaware Criminal Justice Information System**” or “**DELJIS**” means the administrative body created within 11 **Del.C.** Ch. 86 that manages, operates, and maintains CJIS in the State of Delaware.

“**Disciplinary Action**” means the student identified for Short or Long-Term Suspension, Expulsion, or Alternative Placement who may be excluded from all school activities, including but not limited to, extracurricular sports/programs, field trips, and ceremonies; is not allowed on School Property unless placed in an Alternative Placement on School Property; and, if applicable, will have his **[or her]** driver's license suspended in accordance with 14 **Del.C.** §4130(e).

“**District**” means ~~[traditional reorganized school districts, vocational technical school districts and charter schools]~~ a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code].

“**Expulsion**” means Disciplinary Action approved by the Board of Education resulting in a student being removed from the Regular School Program for a duration not to exceed the total number of student days in a school year. A student expelled without Appropriate Educational Services shall be unenrolled from the ~~[district/charter]~~ **District or Charter School**] during the term of the expulsion. Regardless of whether without or with services, including Alternative Placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the Expulsion and until any reasonable terms of the Expulsion are fulfilled.

“**Grievance**” means a formal complaint, filed per specific ~~[district/charter]~~ **District or Charter School**] procedures, to school Administration regarding a student's rights or liberty interests having been denied or impaired. At a minimum, the procedures shall be similar to the Grievance Guidelines applicable to this regulation, as posted on the Department of Education website.

FINAL REGULATIONS

["Interagency Agreement" means the Interagency Agreement between the Delaware Criminal Justice Information System Board of Managers; the Delaware Department of Education; the Delaware Police Chiefs Council; Local Educational Agencies (LEAs) and Charter Schools; and the Delaware Department of Justice governing access to the Criminal Justice Information System (CJIS).]

"Parent" means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file; an individual or entity who is otherwise legally responsible for the child's welfare; a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19; or a student who has reached the age of majority as defined in 1 **Del.C.** §701.

"Principal" means the building principal, or the equivalent of the building principal, of any ~~[district or charter school]~~ District or Charter School], or the principal's designee.

"Regular School Program" means student enrollment in a [traditional] public school [or Charter School], not including specially assigned non-special education or student behavioral intervention programs within or outside the enrolled school, in which the student's classroom or course placement is based primarily on age, grade level and cognitive abilities as assigned by the school Administration or an IEP team and the student's participation in daily course instruction and activities within the assigned classroom or course.

"School Discipline Committee" means a school-level committee consisting of appropriate school personnel, similar to those identified in 14 **Del.C.** Ch. 16, which meets to decide on student Disciplinary Action recommendations made by the Principal.

"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.

"School Property" means any building, structure, athletic field, sports stadium or real property that is owned, operated, leased or rented by any public school ~~[district or charter school]~~ District or Charter School] including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or charter school, or any motor vehicle owned, operated, leased, rented or subcontracted by any public school [District] or ~~[charter school]~~ Charter School].

"Student Code of Conduct" means the ~~[district/charter school]~~ District or Charter School] approved document which specifies the rights and responsibilities of students, defines conduct that ~~[disrupts/threatens]~~ disrupts or threatens] a ~~[positive/safe]~~ positive and safe] School Environment, standardizes procedures for consequences and Disciplinary Action, and defines due process and Grievance procedures.

"Superintendent" means the chief school officer of any public school ~~[district or charter school]~~ District or Charter School], or the equivalent of a superintendent.

"Suspension, Long-term (Long-term Suspension)" means Disciplinary Action approved by the Superintendent upon recommendation of the Principal or District [or Charter School] Alternative Placement Team resulting in the student being removed from the Regular School Program for eleven (11) consecutive school days or more and not to exceed the total number of school days in a school year. Student chooses to waive his right to a formalized due process hearing as outlined in Section 10.0 of 14 **DE Admin. Code** 616, maintains enrollment in the ~~[district/charter]~~ District or Charter School], and is provided Appropriate Educational Services during the term of the suspension, but is excluded from all school activities including, but not limited to, extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when suspension is out-of-school. A Long-term Suspension requires initial due process procedures as outlined in Section 4.0 of 14 **DE Admin. Code** 616 and the student choosing to waive his right to a formalized due process hearing as outlined in Section 10.0 of 14 **DE Admin. Code** 616.

“**Suspension, Short-term (Short-term Suspension)**” means Disciplinary Action approved by the Principal or School Discipline Committee resulting in the student being removed from his Regular School Program for at least one ~~(4)~~ half school day and not more than ten (10) consecutive school days. Student maintains enrollment in ~~[district/charter a District or Charter School]~~, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on School Property when Short-term Suspension is out-of-school. A Short-term Suspension requires initial due process procedures as outlined in subsection 5.1 of 14 DE Admin. Code 616.

3.0 Uniform Processing Procedures

- 3.1 When a District [or Charter School] receives an Attorney General's Report, the following uniform procedures shall be followed:
- 3.1.1 Only the Superintendent or designated ~~[District-level District- or Charter School-level]~~ administrative professional employee (hereinafter “designee”) shall handle the processing of the Attorney General's Report. The designee shall be an employee at the ~~[District/administrative District or Charter School administrative]~~ office level and shall not be a secretary or administrative assistant.
- 3.1.2 The Superintendent or designee shall review the Attorney General's Report, as soon as practicable thereafter and no later than three (3) school days, to determine if the listed charges warrant accessing the Criminal Justice Information System to obtain additional information. In the event of the absence of the Superintendent or designee, procedures shall be identified for the review of the Attorney General's Report within the allotted time frame.
- 3.1.2.1 If the Superintendent or designee determines that access to the Criminal Justice Information System is needed, that access will occur as soon as practicable thereafter and no later than three (3) school days of the determination.
- 3.1.2.2 On the basis of that review, the Superintendent or designee shall make a determination as to whether the student's alleged action(s) is a threat to the health, safety and welfare of others, in particular, staff and students within the School Environment and action needs to be taken.
- 3.1.3 The District [or Charter School] may provide the Attorney's General Report and Criminal Justice Information to the school Principal if the District [or Charter School] decides to take action. The school Principal shall use this information only for action planning purposes.
- 3.1.4 A hard copy of a student's Report or Criminal Justice Information shall not be maintained in any manner except for use as evidence in a student discipline hearing and manifestation determination meeting. Upon conclusion of the student disciplinary hearing and any appeal(s), the hard copy of the Report and Criminal Justice Information shall be destroyed. Notwithstanding the foregoing, the hard copy of the Report and Criminal Justice Information used at the manifestation determination meeting shall be maintained as part of the record of that meeting during the time for filing any dispute resolution proceedings under the Individuals with Disabilities Education Act (IDEA).
- 3.1.4.1 Any personally identifiable information relating to a victim listed in a Report or the Criminal Justice Information used for a disciplinary hearing or manifestation determination shall be redacted. For the purposes of this regulation, personally identifiable information includes name, date of birth, age, sex, race, home address, school, workplace, driver license number, and vehicle registration number. If the victim and alleged offender attend the same school, that information may be shared with the Principal of the school for safety planning purposes.

4.0 District [or Charter School] Action in Response to Attorney General's Report

- 4.1 The decision to act upon the information provided in the Attorney General's Report and Criminal Justice Information shall be the sole discretion of the District [or Charter School] in accordance with the District's [or Charter School's] policies and procedures including the Student Code of Conduct.

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Such action may include, but is not limited to, student and/or Parent conference, counseling, safety planning and Disciplinary Action.

- 4.1.1 If the victim listed in the Criminal Justice Information attends the same school as the Report's alleged offender, the victim and victim's Parent shall be notified regarding any safety planning actions decided upon by the District [or Charter School]. The District [or Charter School] shall make reasonable efforts to include the victim and victim's Parent in the safety planning process.
- 4.1.2 If a District [or Charter School] policy allows for Disciplinary Action to be taken in response to a student Attorney General's Report, the ~~[District~~ District's or Charter School's] Student Code of Conduct shall include a statement that clearly gives notice that all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses, may subject a student to Disciplinary Action as indicated in the District's [or Charter School's] Student Code of Conduct.
- 4.1.2.1 Any Disciplinary Action taken by the District [or Charter School] in response to an Attorney General's Report that results in a Short-Term or Long-Term Suspension, Alternative Placement, or Expulsion of a student shall be in accordance with the requirements of 14 DE Admin. Code 614 and 616.

5.0 Students with Disabilities

- 5.1 Nothing in this regulation shall alter a ~~[District's school's~~ District's or Charter School's] duties under the Individual with Disabilities Act (IDEA) or 14 DE Admin. Code 922 through 929. Nothing in this regulation shall prevent a ~~[district/charter school~~ District or Charter School] from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Delaware Department of Education regulations.
- 5.2 Nothing in this regulation shall alter a ~~[District's~~ District's or Charter School's] duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a ~~[district/charter school~~ District or Charter School] from providing supportive instruction to such students.

6.0 Implementation

If any portion of this regulation is in conflict with ~~[any Memorandum of Understanding or Agreement in existence, the Memorandum of Understanding or Agreement~~ the Interagency Agreement in existence, the Interagency Agreement] shall control.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)
7 DE Admin. Code 1120

Secretary's Order No.: 2017-A-0015

1120 New Source Performance Standards

Date of Issuance: May 30, 2017

Effective Date of the Amendment: July 11, 2017

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, 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 regulatory Amendments to 7 **DE Admin. Code** 1120, New Source Performance Standards ("Amendments"), to wit: the adoption of a new Section 30.0 (as required by 40 CFR Part 60, Subpart XXX and 40 CFR Part 60, Subpart Cf), and proposed revisions to Delaware's State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills, hereinafter referred to as Delaware's "Section 111(d) State Plan".

On August 29, 2016, the United States Environmental Protection Agency ("U.S. EPA", "EPA") adopted two regulations applicable to municipal solid waste landfills ("MSWLs"): 40 CFR Part 60, Subpart XXX (which regulated emissions from new MSWLs); and 40 CFR Part 60, Subpart Cf (which mandated state agencies to develop a plan to regulate emissions from existing MSWLs). The purpose of these two federal regulations was to reduce the public health risks associated with both Volatile Organic Compounds ("VOCs") and methane emissions from MSWLs.

The Department proposes to adopt the aforementioned Amendments in order for Delaware to incorporate the federal requirements found in Subpart XXX of 40 CFR Part 60 by reference into a new Section 30.0 of 7 **DE Admin. Code** 1120. To satisfy the federal requirements found in Subpart Cf of 40 CFR Part 60, the applicability of Section 30.0 will be expanded, such that it will apply to all MSWLs, i.e., both existing and new MSWLs. Once this proposed regulatory promulgation is finalized by the Department, both the newly adopted Section 30.0 of 7 **DE Admin. Code** 1120 and the revisions to Delaware's Section 111(d) Plan will be submitted to EPA for approval.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice ("SAN") #2017-03 dated February 20, 2017. The Department published its initial proposed regulation Amendments in the April 1, 2017 Delaware *Register of Regulations*. The Department then held a public hearing on April 24, 2017. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through May 10, 2017.

Members of the public attended the April 24, 2017 public hearing; however, no comment was received by the Department at that time, nor at any subsequent time prior to the hearing record closing with regard to public comment on May 10, 2017. Written comment was, however, received by the Department from the Delaware Solid Waste Authority ("DSWA") *prior* to the time of the April 24, 2017 public hearing, which provided updated data for each of its three MSWLs. This updated information was then incorporated by Department staff into the table in Section IV of Delaware's Section 111(d) State Plan, and was fully vetted to the public at the time of the aforementioned public hearing. No further public re-noticing or re-publication of this proposed regulatory promulgation is necessary at this time, given that the additions to Delaware's revised Section 111(d) State Plan consist only of updated descriptions of the DSWA facilities, are non-substantive in nature; and are not essential to either the proposed Amendments or Delaware's revised Section 111(d) State Plan. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Lisa A. Vest prepared a Hearing Officer's Report dated May 23, 2017 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments and Delaware's revised Section 111(d) State Plan, attached to the Report as Appendices "A" and "B", respectively.

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 regulatory Amendments to 7 **DE Admin. Code** 1120, New Source Performance Standards, to wit: the adoption of a new Section 30.0 (as required by 40 CFR Part 60, Subpart XXX and 40 CFR Part 60, Subpart Cf), and proposed revisions to Delaware's Section 111(d) State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these regulatory Amendments and of Delaware's Section 111(d) State Plan. The adoption of the above will enable Delaware to incorporate the aforementioned federal requirements found in both 40 CFR Part 60 Subpart XXX and 40 CFR Part 60 Subpart Cf, thereby reducing the public health risks associated with VOC and methane emissions from MSWLs.

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 amendments to 7 **DE Admin. Code** 1120, New Source Performance Standards, to wit: the adoption of a new Section 30.0 (as required by 40 CFR Part 60, Subpart XXX and 40 CFR Part 60, Subpart Cf); and proposed revisions to Delaware's Section 111(d) State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills, pursuant to 7 **Del.C.** Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments and proposed revisions to Delaware's Section 111(d) State Plan as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and proposed revisions to Delaware's Section 111(d) State Plan, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on April 24, 2017, and held the record open through close of business on May 10, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;
4. While the Department made revisions to the initial proposed Delaware's Section 111(d) State Plan as set forth above, such changes were made *prior* to the public hearing of April 24, 2017, and were all fully vetted to the public as referenced above. Moreover, since no additional comment was received by the Department subsequent to the aforementioned public hearing, no other changes were made to either the proposed Amendments or Delaware's Section 111(d) State Plan as a result of the same. Therefore, no additional re-publication or re-noticing is necessitated at this time;
5. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 1120, New Source Performance Standards, to wit: the adoption of a new Section 30.0 (as required by 40 CFR Part 60, Subpart XXX and 40 CFR Part 60, Subpart Cf); and proposed revisions to Delaware's Section 111(d) State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills, will enable the Department to incorporate the federal requirements found in Subpart XXX of 40 CFR Part 60 by reference into a new Section 30.0 of 7 **DE Admin. Code** 1120. To satisfy the federal requirements found in Subpart Cf of 40 CFR Part 60, the applicability of Section 30.0 will be expanded, such that it will apply to all MSWLs, i.e., both existing *and* new MSWLs. Moreover, the adoption of the aforementioned federal requirements will enable Delaware to further reduce the public health risks associated with VOC and methane emissions from MSWLs. Once this proposed regulatory promulgation is finalized by the Department, both the newly adopted Section 30.0 of 7 **DE Admin. Code** 1120 *and* the revisions to Delaware's Section 111(d) State Plan will be submitted to EPA for approval;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments and revisions to Delaware's Section 111(d) State Plan, as set forth in Appendices "A" and "B" thereto, are hereby adopted to provide additional reasons and findings for this Order;
7. The Department has reviewed these proposed regulatory amendments and revisions to Delaware's Section 111(d) State Plan in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "A" regarding same, as this proposed regulation is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to small businesses or individuals at all;
8. The Department's proposed regulatory Amendments and revisions to Delaware's Section 111(d) State Plan, as published in the April 1, 2017 Delaware *Register of Regulations*, and as fully vetted at the public hearing of April 24, 2017 as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments and revisions to Delaware's Section 111(d) State Plan, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
9. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1120, New Source Performance Standards, to wit: the adoption of a new Section 30.0 (as required by 40 CFR Part 60, Subpart XXX and 40 CFR Part 60, Subpart Cf); and the proposed revisions to Delaware's Section 111(d) State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills 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 that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 771 (20 DE Reg. 771). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1120 New Source Performance Standards

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

5500 BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code, Section 5504(e) (24 **Del.C.** §5504(e))
24 **DE Admin. Code** 5500

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on April 1, 2017 (Vol. 20, Issue 10). Following notice and a public hearing on the proposed adoption of amendments to Rule 2.0 - Badges, Patches, Advertisements and on proposed adoption of amendments to Rule 8.0 - Apprehension Procedures, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify the wording on the outer most garment and to clarify how, when and where notifications are to be made.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify the wording on the outer most garment and clarify how, when and where notifications are to be made.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify the wording on the outer most garment and to clarify how, when and where notifications are to be made.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be July 11, 2017.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed

simultaneously on the 25th day of May, 2017.

Major Daniel K. Meadows, Chairman
 Director John Yeomans
 Ms. Robin David
 Mr. Michael J. Dellose (absent)
 Alexander W. Funk, Esquire

Mr. Jack McGhee, II (absent)
 Mr. Harry O. Jennings
 Mr. R. Dale Hamilton
 Mr. Brandon Habron

***Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 774 (20 DE Reg. 774). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

DEPARTMENT OF STATE

ABANDONED OR UNCLAIMED PROPERTY VOLUNTARY DISCLOSURE AGREEMENT PROGRAM

Statutory Authority: 12 Delaware Code, Section 1173(a)(6) (12 Del.C. §1173(a)(6))

REGULATORY IMPLEMENTING ORDER

301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation

In accordance with 29 Del.C. §10003(d) and 12 Del.C. §1173(a)(6), for the reasons stated below, this ORDER is adopted promulgating new guidelines setting forth the rules relating to estimation governing the Department of State Voluntary Disclosure Agreement Program in the Abandoned or Unclaimed Property Law.

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In accordance with the procedures set forth in 12 Del.C. Ch. 11, and 29 Del.C. Ch. 101, the Department of State (hereinafter the "Department") is proposing to adopt new regulation relating to estimation in the Department's Voluntary Disclosure Agreement Program in the Delaware Abandoned or Unclaimed Property Law as described in 12 Del.C. §1173. The proposed regulation sets forth the rules governing practices as to estimation for this program.

Notice of the proposed regulation was published in the Delaware *Register of Regulations* Vol. 20, Issue 10, from April 1, 2017 through April 30, 2017. Six letters were received from several individuals or firms that contained comments and suggestions.

The suggestions included: (i) change proposed regulation 2.3.1 in that the State of Delaware would project only amounts escheatable to the State in the base years, when estimating liabilities for past due escheats; (ii) change proposed regulation 2.3.2.2 in that at least a three-year minimum be used for data to draw a representative error rate and not use the two oldest continuous year, as those years may include anomalies or not represent periods without records; (iii) change proposed regulation 2.3.4.2 in that a tracer analysis should not be mandated; (iv) change proposed regulation 2.3.3.1 to clarify and define when payments should be excluded; (v) change proposed regulation 2.3.2.3 in that attestation letters would be provided at the conclusion of the VDA because a holder has actual evidence to support their attesting to the availability of records and completeness of submissions to the Secretary of State; (vi) change proposed regulation 2.3.4.2 to clarify the requirements regarding accounts receivable analysis; (vii) change proposed regulation 2.3.5.1 to remove the last sentence regarding priority rules; (viii) change the proposed regulations so that the use of estimation techniques is not employed where the identity of a party entitled to claim abandoned or unclaimed property cannot be identified; (ix) change proposed regulation 2.1.1 to clearly provide that the regulations may only be applied to existing VDAs at the holder's election; (x) change proposed regulation 2.3.2.2 to any two years of complete and researchable records, not just the oldest continuous years; (xi) change proposed regulation 2.3.3 so the list of items to be exempted from estimation calculation be broadened; (xii) change the proposed regulations so that any representation made by a holder's

employee subjecting the employee to potential liability must be qualified as being made according to such employee's knowledge after reasonable inquiry; (xiii) recommend at 2.3.3.2 that items refunded, no matter when, be excluded; (xiv) recommend at 2.3.4.2 to limit review of accounting receivable to quarterly aging reports and items aged over 90 days, and (xv) change proposed regulation 2.4.2 by deleting requirement that at a minimum complete and researchable records include name and address of owner.

The Department considered all of the written comments and suggestions and decided to not make suggested changes to the proposed regulations based upon the written comments at this time. However, the Department believes that non-substantive clarifications to 2.3.2.3, 2.3.2.4, and 2.3.4.2 of the regulation is appropriate and would better clarify and explain the intent of the proposed regulation.

II. FINDINGS OF FACT

The Department finds that it is appropriate to adopt the proposed regulations with non-substantive clarifications to 2.3.2.3, 2.3.2.4, and 2.3.4.2 in order to make clear the following: provisions regarding a Holder's representation of records, who executes such representation, and how such representation is undertaken (2.3.2.3); reiterate that a Holder is bound by this representation and clarify the Department's right to review and make a determination regarding such representation (2.3.2.4); and Holders may review recent, not just quarterly, Accounts Receivables and may use statistical sampling in certain circumstances (2.3.4.2).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 12 **DE Admin. Code** 301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation, with the suggested clarifications to 2.3.2.3, 2.3.2.4, and 2.3.4.2. Therefore, pursuant to 12 **Del.C.** §1173, 12 **DE Admin. Code** 301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation attached hereto as Exhibit "A" is hereby created.

IV. TEXT AND CITATION

The text of 12 **DE Admin. Code** 301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation created hereby shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 12 **DE Admin. Code** 301 Department of State Voluntary Disclosure Agreement Program Regulations Relating to Estimation, in the Administrative Code of Regulations for the Department of State.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department of State on June 16, 2017. 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 June, 2017.

The Hon. Jeffrey Bullock

301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation
(Break in Continuity of Sections)

2.0 Delaware Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Estimation Regulations

(Break in Continuity Within Section)

2.3 Estimation

FINAL REGULATIONS

(Break in Continuity Within Section)

- 2.3.2 Base Periods: The "Base Period" is the period of time for which the holder possesses complete and researchable records. Consistent with a majority of states, Delaware requires that a Holder retain records for a minimum of 10 years plus dormancy (15 years total for most property types). It is expected that the Holder shall possess several years of dormant records even if the Holder does not possess records for the entire 10 year period.

(Break in Continuity Within Section)

- 2.3.2.3 At the conclusion of the Holder scoping its voluntary disclosure, ~~[the Chief Financial Officer or other officer of the]~~ Holder shall provide in a form amenable to the Department of State, a representation of the Holder regarding what records are available, for which property types and what years. ~~[The Holder is bound by this representation, absent good cause in the determination of the Secretary of State. A determination by the Department of State of a false statement will be considered willful misrepresentation made with intent to mislead the Secretary of State.]~~

- [2.3.2.4 At the conclusion of the Holder's analysis and with the submission of the Holder's findings to the State, Holder shall prepare a management representation letter signed by an officer of the company and notarized. The format and contents of the letter as provided by the Secretary of State. The Holder is bound by this representation, absent good cause in the determination of the Secretary of State. A determination by the Department of State of a false statement will be considered willful misrepresentation made with intent to mislead the Secretary of State.]

(Break in Continuity Within Section)

2.3.4 Aging Criteria

- 2.3.4.1 Checks that are outstanding or are voided less than 90 days after issuance shall be excluded from the estimation population.

- 2.3.4.2 As part of the Holder's self-review, it is expected that Holders will perform the following analysis of its Accounts Receivable a) an analysis of aged credit balances remaining on the company's books and records and b) an analysis to determine whether accounts receivable credits have been written off. For the former, Holders may review ~~[quarterly recent year end]~~ Accounts Receivable aging reports for Accounts Receivable credits aged 90 days or greater. For the latter, the Holder should conduct a credit tracing analysis of Accounts Receivable credit balances to test for any Accounts Receivable credits that may have been adjusted off of a customer's account. All credits adjusted off a customer's account and all of the accounts used to adjust credits off a customer's account should be included in the Holder's review. ~~[Nothing in this Regulation shall preclude a Holder from the use of statistical sampling should the population of credits identified be large enough to warrant sampling.]~~

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 776 (20 DE Reg. 776). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

301 Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation

DIVISION OF PROFESSIONAL REGULATION 100 BOARD OF ACCOUNTANCY

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 Del.C. §105(a)(1))
24 DE Admin. Code 100

ORDER

100 Board of Accountancy

On December 1, 2016, the Delaware Board of Accountancy published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 20, Issue 6. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 18, 2017 at a regularly scheduled meeting of the Board of Accountancy to receive verbal comments regarding the Board's proposed amendments to its regulations. Subsequent to final adoption citation and numbering errors were discovered. The purpose of this Order is to correct those errors.

This regulation will be effective 10 days from the date of publication in the Delaware *Register of Regulations*.

SO ORDERED this 17th day of May, 2017.

DELAWARE BOARD OF ACCOUNTANCY

Kathryn S. Schultz, CPA, President

Susan Benson, CPA

John McManus, PA

Dr. Araya Debessay

Prameela Kaza (absent)

Alison Houck, CPA

Sarah Patterson, CPA

Karen C. Smith, CPA

Richard Snyder (absent)

100 Board of Accountancy (Break in Continuity of Sections)

7.0 Issuance and Renewal of CPA Permits to Practice and Maintenance of Competency

(Break in Continuity Within Section)

7.2 Continuing professional education requirements for renewal of permits to practice

7.2.1 Hours Required

7.2.1.1 Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period. Each biennial reporting period ends on June 30 of each odd-numbered year. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period and must include eight (8) credit hours in accounting and/or auditing and eight (8) credit hours in taxation and four (4) credit hours in a Delaware specific ethics course approved by the Board as set forth in subsection ~~44-7~~ 7.2.3.2. In addition to these 20 specified hours, each permit holder must complete at least an additional twenty (20) credit hours in either accounting, auditing or taxation.

(Break in Continuity of Sections)

10.0 Firm Permits to Practice

(Break in Continuity Within Section)

10.4 Each applicant for issuance of an initial firm permit to practice certified public accountancy must be enrolled in a peer review program pursuant to subsection ~~40-43~~ 10.12.

(Break in Continuity Within Section)

- 10.6 Each applicant for issuance of an initial firm permit to practice public accountancy must be enrolled in a peer review program pursuant to subsection ~~40.13~~ 10.12.
(Break in Continuity Within Section)
- 10.8 Notification of changes by firms.
- 10.8.1 A firm registered pursuant to 24 **Del.C.** §111 shall file with the Board a written notification of any of the following events concerning the practice of certified public accountancy or public accountancy within this State within thirty (30) days after its occurrence:
(Break in Continuity Within Section)
- 10.8.1.8 Issuance of the firm's first issued financial statements and accountant's reports for each level of service described in subsection ~~40.13~~ 10.12; or
(Break in Continuity Within Section)
- 10.12 Peer Review
(Break in Continuity Within Section)
- 10.12.6 Enrollment in an approved Peer Review Program, including but not limited to "peer review" programs or other comparable programs that have been approved by the Board, as a condition for renewal of permit.
(Break in Continuity Within Section)
- 10.12.6.7 The Board may accept extensions for completing peer reviews granted by sponsoring organizations provided the Board is notified by the firm within 14 days from the date of the letter from the sponsoring organization granting the extension. Extensions may be granted for the following reasons:
- 10.~~43~~12.6.7.1 Health;
- 10.~~43~~12.6.7.2 Military service; or
- 10.~~43~~12.6.7.3 Other good cause clearly outside of the control of the firm. For good cause shown, the Board may grant or renew applications for a reasonable period of time pending completion of the firm's peer review.

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

100 Board of Accountancy

**DIVISION OF PROFESSIONAL REGULATION
 300 BOARD OF ARCHITECTS**

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))
 24 **DE Admin. Code** 300

ORDER

300 Board of Architects

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposed to revise its regulations. The proposed amendments to the regulations seek to clarify the continuing education requirement for applicants re-applying for licensure in Delaware, re-implement the IDP waiver, and eliminate confusing provisions related to disallowance of acceptable continuing education credits.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on April 1, 2017 a public hearing was held on May 3, 2017. Written comment periods were held open for thirty days, and an additional fifteen days following the

public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked the following public comments as Board Exhibits:

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

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

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

There was no verbal testimony given at the public hearing on May 3, 2017. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §306(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to allow licensees to carry over up to four continuing education credits every calendar year.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations* on July 1, 2017.

IT IS SO ORDERED this 7th day of June, 2017 by the Delaware Board of Architects.

Paul Guggenberger, RA, President

Robert Maffia, RA

Brian Hutchison, Jr., RA

Richard Senato, Public Member (absent)

Teresa Wilson, Public Member (absent)

Daniel Ridgely, RA, Secretary

Todd Breck, RA

Phillip Winder, Public Member (absent)

Rosemarie Vanderhoogt, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 780 (20 DE Reg. 780). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

300 Board of Architects

GENERAL NOTICES

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 707 (19 Del.C. §707)

NOTICE

1327 Rules Relating to Exemptions from Meal Break Requirement

***Please note that the following regulation was adopted prior to the effective date of the current Administrative Procedures Act. The following is presented for informational purposes only.**

Background: The Rules Relating to Exemptions from Meal Break Requirement were adopted March 17, 1993, by Secretary Darrell J. Minott. The regulations were adopted in compliance with the Administrative Procedures Act ("APA"), 29 Del.C. §§10101 *et seq.* For unknown reasons the regulations were never incorporated into the Administrative Code during the period of transition in the latter part of the 1990s to the current APA system. Therefore, this notice serves to announce that the Rules Relating to Exemptions from Meal Break Requirement will be added to Title 19 of the Administrative Code.

1327 Rules Relating to Exemptions from Meal Break Requirement

Pursuant to the provision of 19 Del.C. §707(a), the Secretary of Labor hereby promulgates the following rules relating to exemptions from the meal break requirements of the statute.

1.0 Introduction

On July 10, 1992, Senate Bill 143 (as amended by Senate Amendment No. 1) was signed into law. It is codified at 19 Del.C. §707(a). The law requires that employers allow employees a meal break of at least thirty (30) consecutive minutes to employees who will be working seven and one-half (7 1/2) consecutive hours. The break must be given some time after the first two hours of work and before the last two hours. The break need not be a paid break. However, employees must be completely relieved from their duties during the break and the break time is to be free and uninterrupted time.

2.0 Exemptions

- 2.1 Although the law provides that the following types of employees do not have to be given a meal break of at least thirty (30) consecutive minutes, the employer must allow the employee to eat meals at their work stations or other authorized locations and to use restroom facilities as reasonably necessary. Employees covered by these exemptions must be compensated for the time spent eating at their work stations and using restroom facilities.
 - 2.1.1 Adverse effects on public safety. The thirty-minute break requirement does not apply in cases where compliance would adversely affect public safety. Compliance would "adversely affect public safety" when there is a possibility that injury, harm or damage could occur to any person or property if an employee were to be given the statutory thirty-minute break.
 - 2.1.2 Single employee duties. The thirty-minute meal break requirement does not apply in cases where only one employee performs the duties of a position. This exemption applies when there is only one person reasonably available to perform the duties of a position.
 - 2.1.3 Fewer than five workers on a shift. The thirty-minute meal break requirement does not apply in cases where an employer has fewer than five employees on a shift at a single place of business. "Place of business" means a single integrated operating or functional unit at a single geographical location. This exemption applies only to the shift on which fewer than five employees are working.
 - 2.1.4 Employer's continuous operations. The thirty-minute meal break requirement does not apply in cases where the continuous nature of an employer's operations, such as chemical production, research experiments or health care services requires employees to respond to urgent or unusual

conditions at all times. Likewise, employers operating consecutive, non-overlapping shifts may provide meal breaks of no less than twenty (20) consecutive minutes if employees are compensated for all such meal breaks.

3.0 Retaliation

Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor regarding a violation of these rules, or because he/she caused to be instituted or is about to cause to be instituted any proceedings under this sections, or has testified or is about to testify in such proceedings shall be deemed in violation of this section and be subject to an administrative penalty of not more than \$1,000 for each such violation. 19 **Del.C.** §707(b).

Approved this 17th day of March, 1993
Darrell J. Minott, Secretary of Labor

DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 1114 (19 **Del.C.** §1114)

NOTICE

1328 Rules Regulating Deductions from Wages for Wage Payment and Collection

***Please note that the following regulation was adopted prior to the effective date of the current Administrative Procedures Act. The following is presented for informational purposes only.**

Background: The Regulations Regulating Deductions from Wages for Wage Payment and Collections were adopted February 1, 1979, by Secretary Donald P. Whitely. The regulations were adopted in compliance with the Administrative Procedures Act ("APA"), 29 **Del.C.** §§10101 *et seq.* For unknown reasons the regulations were never incorporated into the Administrative Code during the period of transition in the latter part of the 1990s to the current APA system. Therefore, this notice serves to announce that the Regulations Regulating Deductions from Wages for Wage Payment and Collections will be added to Title 19 of the Administrative Code.

1328 Rules Regulating Deductions from Wages for Wage Payment and Collection

1.0 Definitions

As used herein:

"**Check**" means a draft drawn on a bank and payable on demand.

"**Department**" means the Department of Labor or its authorized representatives.

"**Employee**" means any person suffered or permitted to work by an employer under a contract of employment either made in Delaware or to be performed wholly or partly therein.

"**Employer**" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any of the same employing any person.

"**Wages**" means compensation for labor or services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission, or other basis of calculation.

2.0 Shortage Deductions

2.1 Cash and/or inventory shortages may not be deducted from an employee's pay in any case. Any written agreement permitting an employer to make such deductions is in violation of §1107.3 of the Wage Payment and Collection Act.

- 2.2 These regulations also will apply to shortages incurred as a result of failure to follow proper credit card, check cashing, or accounts receivable procedures.

3.0 Cash Advances and Charges for Goods or Services

- 3.1 If a cash advance or charges for goods or services are to be repaid through payroll deductions, both the employer and the employee must sign a written agreement specifying the amount of the advance or the value of the goods or services, the repayment schedule, and the method of repayment.
- 3.2 No such agreement shall provide for a repayment schedule of more than 15% of an employee's gross wages per pay period.
- 3.3 If, upon termination, an employee owes an amount greater than 15% of gross wages, that amount may be withheld from the employee's final compensation, but only if such an arrangement was included in the original agreement.

4.0 Damaged Property

A financial loss suffered by an employer due to damage to the employer's property or to that of a customer or client may not be deducted from an employee's pay in any case. Any written agreement permitting an employer to make such deductions is in violation of §1107.3 of the Wage Payment and Collection Act.

5.0 Return of Employer's Property

- 5.1 In no case shall an employer withhold all or part of the final compensation due an employee while the employer awaits return of property in the possession of the employee. Any written agreement which permits such withholding is in violation of §1107.3 of the Wage Payment and Collection Act.
- 5.2 An employer may request that a deposit be paid on a particular piece of property but such a deposit may not be deducted from the employee's wages without the employee's written consent. If the deposit is to be paid out of the employee's wages, the full deduction must be made by the first regular payday following the issuance of the property to the employee.
- 5.3 A deposit must be returned to the employee along with any financial compensation, provided the employee has returned the property on which the deposit was paid.
- 5.4 If property is returned after all other final compensation has been paid, the deposit on the property must be given to the employee immediately upon return of the property, if possible, but in no case later than the next regular payday.

6.0 Miscellaneous Provisions

- 6.1 Nothing in these regulations should be construed as preventing an employee from voluntarily reimbursing an employer.
- 6.2 Acceptance by an employee of a disputed amount of wages will not be considered evidence that the employee has agreed to the deductions in question.
- 6.3 The Secretary of Labor may, at any time, upon the Secretary's own motion or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of these regulations.

Approved this 1st day of February, 1979
Donald P. Whiteley, Secretary of Labor

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)
7 DE Admin. Code 1120

REGISTER NOTICE SAN # 2017-03

Final State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills

1. TITLE OF THE REGULATIONS:

State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills (State Plan)

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

On August 29, 2016, the EPA promulgated two regulations applicable to municipal solid waste landfills (MSWLs). The EPA promulgated 40 CFR Part 60 Subpart XXX; Subpart XXX regulated the emissions from new MSWLs. The EPA promulgated 40 CFR Part 60 Subpart Cf; Subpart Cf mandated state agencies to develop plans to regulate emissions from existing MSWLs. The purpose of the approved amendment to Regulation 1120 was to incorporate the federal requirements in Subpart XXX by reference as a new Section 30 and to expand the applicability of Section 30 to include both existing and new MSWLs. This amendment satisfied Delaware's State Plan requirements under Subpart Cf to regulate the emissions of existing MSWLs.

The proposed State Plan was published in the Delaware *Register of Regulations* as a General Notice in the April 2017 issue and a public hearing was conducted on April 24, 2017.

3. REVISIONS TO THE PROPOSED STATE PLAN:

The final version of the State Plan contains several non-substantive revisions that were made to the State Plan version proposed on April 1, 2017. The revisions included:

- Revisions to the "Design Capacity" and "Estimated NMOC Emissions" numbers that described the affected MSWLs in the Section IV table. These revisions were warranted as the Delaware Solid Waste Authority submitted new numbers during the public comment period that better characterized their MSWLs. These new numbers were not available at the time the proposed State Plan was submitted to the Delaware Registrar.
- Adding the missing documentation in Appendix C. Appendix C provides documentation that demonstrates that Delaware met all Delaware and federal public noticing and public hearing requirements. These documents were not available at the time the proposed State Plan was submitted to the Delaware Registrar; the proposed Appendix C served as a placeholder for these documents.
- The State Plan date, this was necessitated by the above changes, and other grammatical corrections.

4. PREPARED BY:

Jim Snead (302) 323-4542 jsnead@state.de.us June 7, 2017

Final State Plan illustrating changes in [Bold Bracketed] format

State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills- Revisions

Clean Final State Plan

Final State Plan for the Regulation of Air Emissions from Municipal Solid Waste Landfills

GENERAL NOTICES

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1799 GENETIC COUNSELOR ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1799I(c) (24 Del.C. §1799I(c))
24 DE Admin. Code 1799

NOTICE

1799 Genetic Counselor Advisory Council

Pursuant to 24 Del.C. §1799I(c), the Genetic Counselor Advisory Council ("the Council") of the Delaware Board of Medical Licensure and Discipline has proposed revisions to its rules and regulations. A new Section 7.0 is added to set forth standards for the use of telehealth in the practice of genetic counseling.

A public hearing was scheduled for June 2, 2017 but has been rescheduled to September 1, 2017 at 3:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Genetic Counselor Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be September 18, 2017. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION

3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))
24 DE Admin. Code 3700

NOTICE

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

Pursuant to 24 Del.C. §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015. The Board deliberated on January 19, 2016, and based on those deliberations, made substantive revisions to the proposed rules and regulations, which were published in the January 1, 2017 *Register of Regulations*, Volume 20, Issue 7. A second public hearing took place on February 21, 2017 at 2:00 p.m., and the Board deliberated on March 21, 2017. Once again, the Board made substantive changes to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing was scheduled for June 20, 2017, but has been rescheduled for September 19, 2017 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may

forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be October 4, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

Nature of the Proceedings

A public hearing was held before the Board on February 21, 2017 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 **Del.C.** §10118(a), the written public comment period was held open until March 8, 2017, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 21, 2017.

Summary of the Evidence

At the February 21, 2017 hearing, the following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Exhibit 3: Written comments from Leia Heckman, President of the Delaware Speech Language Hearing Association, objecting to subsection 10.2.1.2, outlining that the client shall be located within the borders of the State of Delaware during the telepractice treatment session. Ms. Heckman requested a change to the language to reflect the client's legal status as a Delaware resident in order to ensure continuity of care.

Exhibit 4: October 5, 2016 letter from Allison Wils of ERISA Industry Committee. Ms. Wils stated that ERIC is a national association that advocates for large employers on health, retirement and compensation public policies. Ms. Wils noted the benefits of telepractice, including flexibility and accessibility. Ms. Wils requested that the Board strike the proposed requirement that initial evaluations be performed face to face and not through telepractice in favor of permitting licensees to exercise their professional judgment. Ms. Wils also asked that the Board strike the requirement that a patient be located within the boundaries of Delaware during treatment.

Exhibit 5: November 29, 2016 letter from the Federal Trade Commission. The FTC objected to the provision requiring that initial evaluations be performed face to face. The FTC noted the benefits of telepractice in Delaware in terms of increasing competition and access to speech and hearing services and commented that certain health services are unevenly distributed throughout the state, in particular, audiology services. The FTC stated that telepractice can be used for the diagnostic evaluation of infants who failed a newborn hearing screening test at the birth hospital. This use of telepractice could enhance quality of care and yield benefits for children with hearing loss. The FTC noted that the proposed regulations hold licensees to in-person standards of care and, with the exception of the initial evaluation, entrusts the decision whether to use telepractice to the professional judgment of the licensee. The FTC continued that the proposed restriction on telepractice could discourage the use of telepractice and noted that of the 19 states and District of Columbia with laws, regulations or policies on speech/language pathology or audiology telepractice, only three require an in-person initial evaluation. Finally, the FTC noted that Delaware's Board of Occupational Therapy Practice declined to include an initial in-person evaluation requirement.

Exhibit 6: February 21, 2017 comments to the Board, from Kathryn Tullis, PhD, Delaware Division of Public Health. Dr. Tullis noted the need for infant hearing screening and stated that often families cannot receive the required screening by three months of age due to issues related to access, particularly in Kent and Sussex counties. Dr. Tullis requested that the Board permit audiological testing on infants via telepractice.

Exhibit 7: February 21, 2017 comments from Yell Inverso, AudD, PhD, CCC-A, of Nemours/A.I. duPont Hospital for Children. Dr. Inverso expressed concern with proposed Section 10.2.4.2 stating that initial evaluations must be performed face to face. She continued that because audiologists primarily provide diagnostic services, most evaluations are initial evaluations that may not result in the need to see the patient for further visits. Dr. Inverso stated that initial evaluations are critical, particularly for newborn infants who either did not receive a newborn hearing screening at birth or who failed the newborn screening. Further testing is needed, which is provided at only one location in Kent and Sussex counties. Families are required to travel 2-3 hours to New Castle

County for the necessary screening, a trip that may not be feasible given lack of transportation or lost wages with the result of infants lost to follow up. Dr. Inverso further stated that consequences are serious for these infants in terms of potential hearing loss. She concluded that the quality of this screening is comparable to a face to face visit.

Exhibit 8: February 21, 2017 comments from J. Heather Northam, MA, CCC-SLP addressing the shortage of speech and language pathologists in Delaware. She stated that providing services by telehealth provides an excellent method for addressing shortages by "extending the geographic reach" of licensed professionals. Ms. Northam objected to inclusion of the requirement that initial evaluations be performed face to face, stating that in some situations telehealth is not appropriate. However, licensed professionals can exercise professional judgment in deciding whether either initial evaluations or subsequent care can be provided by telehealth.

In addition, testimony was presented, as follows:

Jacqueline Truluck, Director of Clinical Education at the new Graduate Program at the University of Delaware, stated that she has been embracing telehealth for her students. She understands the need to follow the Board's licensing law. However, access is important. Telehealth is not a lesser service. She noted that Regulation 10.2.2.1 pertaining to informed consent mentions "risks and limitations." There are benefits to telehealth too. She is training her students to be professionals who can think critically.

Mike Kurliand from Nemours noted that in terms of payment, telehealth is not treated any differently. Clinical care can be provided through telehealth at the same level. Professionals should have the decision making power with respect to the use of telehealth.

Findings and Conclusions

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

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has statutory authority to promulgate rules and regulations. The proposed changes seek to establish standards for the delivery of services by telepractice for the professions regulated by the Board.

During deliberations, the Board considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence. The Board discussed the objection to proposed Section 10.2.1, which requires that the licensee shall have an active Delaware license, and during telepractice treatment, the client shall be located within the borders of the State of Delaware. Certain individuals offering public comment expressed reservations with respect to continuity of care and limiting access to needed services.

As previously stated in the Public Notice published in the January 1, 2017, *Register of Regulations*, Volume 20, Issue 7, the Board declines to amend Section 10.2.1. Care occurs where the client is physically located. A licensee who is licensed in Delaware only would be engaging in unlicensed practice if permitted to treat a client who has left Delaware and is located in another state. The Board would have no jurisdiction with respect to care provided in another state. Section 10.2.1 serves the interests of public protection by ensuring that clients located in Delaware receive care from practitioners properly licensed by the Board.

The Board also addressed the public comments regarding Section 10.2.4.2, which requires that first time evaluations be done in a face to face setting. The Board weighed the benefits and disadvantages of this requirement. On the benefits side, the practitioner may have enhanced ability to evaluate and make a treatment determination in a face to face setting. There was also discussion to the effect that an access to care problem does not mean that the Board should lessen treatment standards. However, on balance, the Board determined that the decision to use telepractice for an initial evaluation should be left to the professional judgment of the practitioner, as is the case for all further evaluations or treatment sessions. Telepractice will not be appropriate for all service recipients and individuals always have the option of declining to participate in telepractice. However, as highlighted by the members of the public presenting written comment, telepractice can result in making critical care available to underserved areas in Delaware, in particular, care related to infant hearing screening. Further, as noted by the FTC, provision of services by telepractice has a broader impact in increasing competition and access to services. The Board, therefore, decided to strike "only after an initial face to face evaluation," at the end of subsection 10.2.4.1, and subsection 10.2.4.2 in its entirety.

DELAWARE HEALTH INFORMATION NETWORK**PUBLIC NOTICE****103 Delaware Health Care Claims Database Data Collection Regulation**

Agency: Delaware Health Information Network

Contact: Dr. Jan Lee
Chief Executive Officer
(302)678-0220

Submit Comments by email to info@dhin.org by July 31, 2017

Title of Proposed Regulation: Delaware Health Care Claims Database Data Collection Regulation

Summary of the Regulation:

This regulation supports implementation of 16 **Del.C.** Ch. 103, Subchapter II, The Delaware Health Care Claims Database. It summarizes the requirements for submission of claims data by a mandatory reporting entity, to include a reporting schedule and a template for a data submission and use agreement to be entered into between DHIN and each reporting entity. The agreement includes procedures for submission, collection, aggregation, and distribution of claims data, and a summary of how claims data may be used for geographic, demographic, economic, and peer group comparisons.

Sub-regulatory technical guidance may be found on the DHIN web site in the form of a Data Submission Guide.

DEPARTMENT OF AGRICULTURE**OFFICE OF THE SECRETARY****PUBLIC NOTICE****1201 Nutrient Management Certification Regulations**

The Delaware Nutrient Management Commission, pursuant to 3 **Del.C.** §2220(a), proposes to revise its regulations incorporating by reference the State Technical Standards developed by an appointed committee to establish appropriate standards for nutrient application, development and implementation of nutrient management and animal waste management plans, compliance with CAFO permits, and siting new CAFO facilities. The State Technical Standards can be viewed in person at the Delaware Department of Agriculture or online at http://dda.delaware.gov/nutrients/NM_TechStandards.shtml. Written comments should be sent to Chris Brosch, Administrator of the Delaware Nutrient Management Commission, 2320 S. DuPont Highway, Dover DE 19901. Written comments will be accepted until July 31, 2017 pursuant to 29 **Del.C.** §10118(a).

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, July 20, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4465 Delaware Radiation Control Regulations**

On July 1, 2017, the Department of Health and Social Services, Division of Public Health, Office of Radiation Control, plans to publish revised Regulations Governing Radiation Control - Part F and Part H and hold them out for public comment per Delaware law.

A public hearing will be held on Thursday, July 27, 2017, at 10:00 a.m. in the First Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing to repeal and replace two chapters of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare and industry standards, and to align them more closely with current state administrative code and federal requirements. The regulations will apply to any facility or person that receives, possesses, uses, transfers, sells, owns or acquires ionizing radiation sources, or provides radiation services to such radiation source facilities, or who administers machine-generated radiation to human patients in the healing arts.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Friday August 11, 2017 to:

Jamie Mack, Executive Assistant
Office of the Director
Delaware Division of Public Health
Jesse Cooper Building
417 Federal St.
Dover, DE 19901
Email: jamie.mack@state.de.us
Fax: 302-739-3984

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1318 Compensation for Chiropractic Services**

The Department of Insurance hereby gives notice of proposed new Regulation 1318 relating to Compensation for Chiropractic Services. The proposed new regulation would prohibit insurance carriers from including in any insurance policy terms and conditions that unreasonably discriminate against the payment for Chiropractic Care or Services, or Chiropractic Supportive Care, and puts in place a mechanism by which the Department of Insurance may enforce this prohibition. The Delaware Code authority for the new regulation is 24 **Del.C.** §716(c) and 18 **Del.C.** §§311 and 329.

The Department of Insurance does not plan to hold a public hearing on the proposed new regulation. The proposed new regulation appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day, July, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance

841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF LABOR LAW ENFORCEMENT
PUBLIC NOTICE
1322 Prevailing Wage Regulations

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to 19 **Del.C.** §105(a)(8) and 29 **Del.C.** §6960(a).

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, or by August 7, 2017. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Mr. Anthony DeLuca, Department of Labor, Administrator of the Office of Labor Law Enforcement, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8317. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. DeLuca at the address of the Delaware Department of Labor as set forth above. Written comments must be received on or before August 7, 2017. The proposed regulations will be considered at a public hearing scheduled for Friday, July 21, 2017 from 4 p.m. to 5:30 p.m. in the Department of Labor offices at Blue Hen Corporate Center, 655 S. Bay Road, Suite 2H, Dover, Delaware 19901. Copies of the proposed amended regulations may be obtained from the Division of Industrial Affairs (see address above).

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** §10111(1), the Department of Labor is proposing to amend its regulations for the Prevailing Wage Law as described in 29 **Del.C.** §6960. The proposed amendments will clarify the types of activity which fall under the prevailing wage statute; limit the number of fringe benefits deductions the Department will recognize; modify investigative procedures; expand the scope of the circumstances under which the Department shall hold administrative hearings; and make minor changes to the conduct of those hearings themselves. Minor amendments and changes are also inserted regarding other portions of the regulations.

DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF LABOR LAW ENFORCEMENT
PUBLIC NOTICE
1326 Workplace Fraud Act Regulations

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to 19 **Del.C.** §105(a)(8) and 29 **Del.C.** §6960(a).

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, or by August 7, 2017. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Mr. Anthony DeLuca, Department of Labor, Administrator of the Office of Labor Law Enforcement, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8317. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. DeLuca at the address of the Delaware Department of Labor as set forth above. Written comments must be received on or before August 7, 2017. The proposed regulations will be considered at a public hearing scheduled for Friday, July 21, 2017 from 5:30 p.m. to 7 p.m. in the Department of Labor offices at Blue Hen Corporate Center, 655 S. Bay Road, Suite 2H, Dover, Delaware 19901. Copies of the

proposed amended regulations may be obtained from the Division of Industrial Affairs (see address above).

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** §10111(1), the Department of Labor is proposing to amend its regulations for the Workplace Fraud Act as described in 19 **Del.C.** §§3501 *et seq.* The proposed amendments will provide additional due process to entities found by the Division to be in violation of the Workplace Fraud Act. They will make changes to the conduct of those hearings themselves. Minor amendments and changes are also inserted regarding other portions of the regulations.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF WATER

SURFACE WATER DISCHARGES SECTION

PUBLIC NOTICE

7204 Regulations for Licensing Operators Of Wastewater Facilities

This action is being taken to: (1) incorporate language as recommended by the regulated entities; (2) adhere to the new regulation format and numbering requirement; (3) reorganize the structure of the Board of Certification for wastewater operators; (4) update the treatment plant classification process; (5) modify and enhance licensing requirements. There are no new fees proposed and no current fee increases proposed in this action. The Regulations for Licensing Operators of Wastewater Facilities are licensing regulations and there are no changes/modifications being proposed that will add increased burden or cost to small business or other individuals.

The Delaware Department of Natural Resources and Environmental Control's Surface Water Discharges Section (SWDS), Board of Certification for Wastewater Operator Licensing, is proposing amendments to the Regulations for Licensing Operators of Wastewater Treatment Facilities. The regulations for licensing of wastewater operators have been revised to incorporate language as recommended by the operating community, reorganization and structure of the Board of Certification, updates to the treatment plant classification process, and enhancement of the licensing process. There are no new fees proposed, and there are no changes/modifications being proposed that will increase current costs to affected public and private entities, nor the wastewater operating community.

A Public Hearing will be held on Thursday, August 10, 2017 beginning at 6:00 pm in the DNREC Auditorium at 89 Kings Highway, Dover, DE 19901. Written comments may be submitted via email to: Ms. Faye Wheeler (email: faye.wheeler@state.de.us or by fax at 302-739-8369). For other information concerning this matter, please contact Bryan Ashby, Environmental Program Manager, at Bryan.Ashby@state.de.us or by phone at 302-739-9946.

The proposed changes /updates to the Wastewater Operator Licensing Regulations can be found on our website at: www.dnrec.delaware.gov/wr/Information/SWDInfo/Documents/WastewaterOperatorRegulations.pdf

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 **Del.C.** Ch. 27 proposes to amend/adopt the following adopted rules in 24 **DE Admin. Code** 2400 Board of Examiners of Constables: Rule 4.0 - Badges & Vehicle Markings - requires all badges and vehicle markings to be approved by the Board; Rule 9.0 - Minimum Training Standards and In-Service Training - removes the required eight hours of classroom instruction and leaves it open on the minimum hours. If you wish to view the complete Rules, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by August 1, 2017, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold a meeting in the Fall of 2017 but no later than December 2017, at the Tatnall Building, 150 Martin L. King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1000 BOARD OF PILOT COMMISSIONERS
PUBLIC NOTICE

The Delaware Board of Pilot Commissioners, pursuant to 23 **Del.C.** §102(1), proposes to revise its regulations adding a new regulation establishing the process to be followed for accepting applications for licensure. The Board will hold a public hearing on the proposed regulation change on August 18, 2017 at 1:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Melanie Alexander, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 4, 2017 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
1799 GENETIC COUNSELOR ADVISORY COUNCIL
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §1799(c), the Genetic Counselor Advisory Council ("the Council") of the Delaware Board of Medical Licensure and Discipline has proposed revisions to its rules and regulations. A new Section 7.0 is added to set forth standards for the use of telehealth in the practice of genetic counseling.

A public hearing was scheduled for June 2, 2017 but has been rescheduled to September 1, 2017 at 3:30 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Genetic Counselor Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Council at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be September 18, 2017. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
2700 BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS
PUBLIC NOTICE

The Delaware Board of Professional Land Surveyors, in accordance with 24 **Del.C.** §2706(a)(1), has proposed revisions to its rules and regulations. The proposed revisions to the Rules and Regulations are intended to clarify the surveyor's position on property conditions. The Board will hold a public hearing on the proposed rule changes on September 21, 2017 at 8:30 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Professional Land Surveyors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904, no later than October 6, 2017.

DIVISION OF PROFESSIONAL REGULATION
3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The

new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public.

A public hearing was held on November 17, 2015. The Board deliberated on January 19, 2016, and based on those deliberations, made substantive revisions to the proposed rules and regulations, which were published in the January 1, 2017 *Register of Regulations*, Volume 20, Issue 7. A second public hearing took place on February 21, 2017 at 2:00 p.m., and the Board deliberated on March 21, 2017. Once again, the Board made substantive changes to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing was scheduled for June 20, 2017, but has been rescheduled for September 19, 2017 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be October 4, 2017, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.
