
Delaware Register of Regulations

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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, 2018.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 17	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.

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DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ERRATA****Reimbursement Methodology for FQHCs**

* **Please Note:** The Final Regulation for Reimbursement Methodology for FQHCs that was published in the June 1, 2018 issue of the Delaware *Register of Regulations* (21 DE Reg. 975) contained three errors. The submitted Final Order for the regulation erroneously contained the language "effective for services provided on and after April 1, 2018" under the "Summary of Proposal" section of the Order rather than the correct date of July 1, 2018. The text of the regulation contained a typographical error by failing to indicate a deletion of the word "correct" in the second paragraph. In addition, the submitted Final Order regulation erroneously contained the Effective Date of "April 1, 2017" rather than the correct date of July 1, 2018. The Final Order and regulation are reprinted below with the corrections.

FINAL**ORDER****Reimbursement Methodology for FQHCs****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after ~~April~~ **July** 1, 2018 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs.

Background

In 2017, one of Delaware's Federally Qualified Health Centers (FQHCs) and the Division of Medicaid and Medical Assistance (DMMA) began a review of the FQHC's Medicaid reimbursement methodologies. At that time, it became apparent that current DMMA reimbursement policy - based on a methodology developed years ago - was in need of an update to be more in line with the present, true costs incurred by FQHCs for serving Medicaid members. The proposed update to the FQHC reimbursement policy will allow for more flexibility around adjusting for future changes in the spectrum of services offered by the providers.

Statutory Authority

1902(bb) of the Act

Purpose

The purpose of this proposed regulation is to better align DMMA reimbursement policy with the costs of

operating Delaware Federally Qualified Health Centers (FQHCs).

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on May 1, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

Updating the current methodology as intended could result in approximately \$251,830 in additional cost to the State in 2018, and approximately \$987,675 in 2019. Additionally, to completely implement the revised FQHC reimbursement methodology, independent auditing services will be necessary to validate the costs as reported by the FQHCs.

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$ 251,830	\$ 987,675
Federal funds	\$ 573,842	\$ 2,314,757

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: One commenter inquired if DMMA was establishing rates for assisted living.

Agency Response: The revised reimbursement methodology for FQHCs does not apply to rates for assisted living via Delaware Medicaid, nor does DMMA establish such rates.

No changes were made to the regulation as a result of this comment.

Comment: Another commenter had three separate comments.

First, The two methodologies are referred to as "a prospective payment system (PPS) rate" or the "per-visit cost". Please clarify that both methods are in fact a PPS rate, with a different basis for the rate. The first basis is 100% of reasonable costs based upon historical cost reports inflated by the Medicare Economic Index and the second basis is the per visit cost. Both methods are a PPS rate because the payment under either methodology is made regardless of the intensity of the actual service provided.

Agency Response: Per the Centers for Medicare and Medicaid Services:

"In 2000, Section 702 of the Medicare, Medicaid, and Benefits Improvement and Protection Act adapted the payment methodology for FQHCs, moving from a retrospective cost-based system to prospective payment system (PPS) methodology. This created a PPS per-visit rate equal to 100 percent of costs in the previous year. States are permitted to use an alternative payment methodology (APM); however, the new payment methodology must ensure that health centers do not receive less than what they would have received under PPS and the health centers have to agree to it."

As a result of the Prospective Payment System (PPS) having a very specific Federal statutory definition, for reimbursement purposes, the per-visit cost method option must be considered an alternate payment methodology (APM).

Second, Please provide additional details as to how the wraparound payment would be billed to DMMA and what day the 90 day timeframe is from (i.e. Date of service? Date of claim submission?)

Agency Response: Per the proposed reimbursement methodology revision, "The Delaware Medicaid Program will verify that the FQHC has received at least the PPS correct rate for every visit. If there is a discrepancy in payment amounts, DE will make a wraparound payment to the FQHC within 90 days." To clarify, if a discrepancy in payment amounts is observed and verified, the 90-day resolution timeframe commences from the date that the claim is submitted.

Third, The cost report is historically due on June 30. We support the audit performed by a certified public accountant under the per-visit cost method, however, are concerned about the timing of such audit given the effective date of July 1. We encounter significant problems when we have to retroactively bill the managed care organizations due to rate changes. An estimate should be made for the length of time the audit will take, and the cost report due date adjusted accordingly so that the July 1 effective date can be achieved without rebilling.

Agency Response: DMMA recommends allowing for at least one month of lead time to allow for the auditing component of the "per-visit cost" method. Therefore, it is recommended that the FQHC submit their cost report to DMMA by no later than June 1, given a rate effective date of July 1.

DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the reimbursement methodology for Federally Qualified Health Centers (FQHCs), specifically, to align DMMA reimbursement policy with the costs of operating Delaware FQHCs, is adopted and shall be final effective July 12, 2018.

6/18/18

Kara Odom Walker, MD, MPH, MSHS
Secretary, DHSS

FINAL

Attachment 4.19-B
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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE/TERRITORY: DELAWARE

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

FEDERALLY QUALIFIED HEALTH CENTERS

The Centers for Medicare and Medicaid Services (CMS) requires that Federally Qualified Health Centers (FQHCs) be reimbursed in compliance with the Benefits Improvement and Protection Act (BIPA) of 2000. Effective ~~January 1, 2004~~ July 1, 2018, Delaware will pay 100% of reasonable cost based on an average of the Fiscal Year 1999 and 2000 audited cost report reimburse each FQHC per-visit through one of the following two (2) methodologies, whichever nets the greater result:

1. A prospective payment system (PPS) rate, where 100 percent of the reasonable costs based upon an average of their fiscal years 1999 and 2000 audited cost reports are inflated annually by the Medicare Economic Index (MEI).

or

2. The per-visit cost as reported by the FQHC in its most recent cost report, subject to an audit performed by a certified public accountant as to the reasonableness of the reported costs.

The Medicaid Managed Care Organizations are contractually required to include the same service array and the same payment methodology as the State Medicaid FFS contracts with FQHCs. ~~The Medicaid FFS rate is a prospective payment system (PPS) rate paid per FQHC visit.~~ The Delaware Medicaid Program will verify that the FQHC has received at least the PPS ~~[correct]~~ rate **[as calculated by methodology option one (above)]** for every visit. If there is a discrepancy in payment amounts, DE will make a wraparound payment to the FQHC within 90 days **[following the date the claim was submitted].**

~~FQHCs are assigned a prospectively determined rate per clinic visit based in actual costs reported on their audited cost reports, and they do not correspond with the Federal Fiscal Year, they would span more than one fiscal year. Starting July 1, 2001, the Medicare Economic Index will be used to inflate their rates. The computation is also adjusted each year to reflect any increase or decrease in the Center's Scope of Services.~~

The Delaware Medical Assistance Program (DMAP) requires that a new provider submit an estimated cost report so that a rate based on reasonable costs can be established. **[It is recommended that the FQHC submit their annual cost report to the DMAP at least one month (30 days) prior to the July 1 rate effective date in order to allow for sufficient lead time to conduct the above-mentioned independent audit, as well as to reduce the need for retroactive rate adjustments to the facilities.]**

Any new FQHC will be capped at 100% of the highest rate that Medicaid pays to a FQHC for the initial rate year. Primary Care costs are separated from Administrative and General costs for purposes of rate calculation. The Administrative and General component is capped at 40% of the highest cost. Each cost component is inflated by the current HCFA Medicare Economic Index

Medicaid will ensure 100% percent cost payments regardless of the payment mechanism.

The rate year for FQHC services is July 1 through June 30.

The payment methodology for FQHCs will conform to section 702 of the BIPA 2000 legislation.

The payment methodology for FQHCs will conform to the BIPA 2000 requirements Prospective Payment System.

For services provided on or after January 2, 2017 the cost of long-acting reversible contraceptives (LARCs) will be based on actual acquisition cost (AAC). The FQHC must submit a separate claim to be reimbursed for the AAC of a LARC.

TN No. SPA <u>18-002</u>	Approval Date
TN No. SPA <u>17-003</u>	Effective Date [April July] 1, [20172018]

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATER****GROUNDWATER DISCHARGES SECTION**Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)7 **DE Admin. Code** 7102**ERRATA****7102 Regulations Governing Underground Injection Control**

* **Please Note:** The Final Regulation for 7102 Regulations Governing Underground Injection Control that was published in the June 1, 2018 issue of the Delaware *Register of Regulations* (21 DE Reg. 978) contained two errors. The submitted final regulation failed, for consistency purposes, to correct a unit of measurement of ppm in subsection 65.5.1 to the equal unit of measurement of mg/L. In addition, the submitted final regulation failed to amend the effective date of August 15, 1983 to June 11, 2018. The regulation is reprinted below with the corrections.

7102 Regulations Governing the Underground Injection Control

ADOPTED: August 15, 1983

~~EFFECTIVE: August 15, 1983~~ EFFECTIVE June 11, 2018]*(Break in Continuity of Sections)***65.0 Construction requirements for Class I non-hazardous wells***(Break in Continuity Within Section)*

65.5 At a minimum, the following information concerning the geologic formation shall be determined or calculated for new Class I wells:

65.5.1 Identification of the lowermost USDW. The applicant will be required to identify the base of the lowermost USDW at the injection well location. During construction, the applicant shall conduct tests and collect water samples, as needed, to identify the depth at which the TDS concentration of the aquifer exceeds 10,000 ~~ppm~~ mg/L. This demonstration shall be made using water samples, geophysical logs, drilling records and drill cuttings.

***Please Note:** The full text of the final regulation is not being republished. Please see 21 DE Reg. 978 for the final amendments to 7102 Regulations Governing the Underground Injection Control. A copy of the regulation is available at:

[http://regulations.delaware.gov/register/june2018/final/21 DE Reg 978 06-01-18.htm](http://regulations.delaware.gov/register/june2018/final/21%20DE%20Reg%20978%2006-01-18.htm)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122, 1280(a), and 1266 (14 **Del.C.** §§122, 1280(a), and 1266)
14 **DE Admin. Code** 290

PUBLIC NOTICE

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

290 Approval of Educator Preparation Programs

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(22) and §1280(a) and §1266, the Secretary of Education intends to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. This amendment is needed to comply with 14 **Del.C.** §1266, which establishes alternative routes to certification programs for teachers of students with disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 3, 2018 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation subject matter is not related to helping improve student achievement as measured against state achievement standards.

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

regulation will help ensure all students receive an equitable education.

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

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

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

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

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

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/july2018/proposed/22 DE Reg 11RFA 07-01-18.pdf>

290 Approval of Educator Preparation Programs (Break in Continuity of Sections)

2.0 Definitions

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

(Break in Continuity Within Section)

"Professional Development" means Professional Development as defined in 14 DE Admin. Code 1511.

"Satisfactory Progress" means a teacher candidate is on track to satisfy all program requirements within the required timeframe.

(Break in Continuity of Sections)

3.0 Program Requirements

3.2 Clinical Experiences (Provisions in this subsection shall be applicable to Candidates in Programs beginning July 1, 2015)

(Break in Continuity Within Section)

3.2.1 Educator Preparation Programs shall have Clinical Experiences required throughout the Program and aligned with Program curriculum. Clinical Experiences should align with the area, subject, or category of certification being sought by Candidates; such Experiences shall be designed and incorporated into the Program by the Provider, and begin in the first year of the Program. Programs should provide Candidates the opportunity to reflect on Clinical Experiences within the classroom setting.

(Break in Continuity Within Section)

3.2.1.2 Educator Preparation Programs for administrators must include Clinical Experiences totaling a minimum of two-hundred and forty (240) hours equitably distributed within the

Program. The clinical hours must be completed under the mentorship of a currently employed administrator with an effective or highly effective summative rating under 14 **DE Admin. Code** 108A.

(Break in Continuity of Sections)

9.0 Alternative Route to Certification Programs for Teachers of Students with Disabilities

- 9.1 Pursuant to 14 Del.C. §1266, alternative routes to certification programs for teachers of students with disabilities must meet the following requirements:
- 9.1.1 Deliver high quality professional development that is sustained, intensive and classroom-focused:
- 9.1.1.1 A teacher candidate who is seeking initial certification through participation in an alternative route for teacher licensure and certification program hired after July 1 of a school year shall fulfill the 120-hour seminar/practicum requirement prior to the start of the following school year.
- 9.1.2 Work with LEAs, to ensure teachers receive intensive supervision that consists of structured guidance, regular ongoing support, or teacher mentoring:
- 9.1.2.1 ARTC programs for teachers of students with disabilities shall observe and provide feedback at least three times in the first year.
- 9.1.3 Require completion of the program within a period of time that is no longer than three years from the beginning of the candidates' participation in the program:
- 9.1.4 Require teachers demonstrate satisfactory progress toward standard certification; and
- 9.1.5 Report on the progress of teachers on a form created by the department, which may be modified from time to time. Reports shall be submitted no later than January 15 and June 15 of each year.

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

290 Approval of Educator Preparation Programs

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1510

PUBLIC NOTICE

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

1510 Issuance of Initial License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation applies to the issuance of an initial license for educators pursuant to 14 **Del.C.** §1210. Proposed changes to make the regulation consistent with amendments to 14 **Del.C.** Ch. 12 were initially published on April 1, 2018. Thereafter, the Board made additional substantive changes, including amending the definition of "educator" in Section 2.0 so that it is consistent with the Delaware Code; clarifying that an applicant for an initial license must achieve a passing score on an approved performance assessment within the first two years of the

initial license in subsection 3.3; clarifying that electronic transcripts may be forwarded to the Department from an applicant's hiring authority in subsection 4.1.1; and amending subsection 6.3.1.1, which concerns supervised clinical nursing experience for school nurse applicants. The proposed changes in this regulation include the changes that were initially published on April 1, 2018 and the additional changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before August 1, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 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 Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to improve student achievement as measured against state achievement standards.

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

3. Will the amended regulation help to ensure all student's health and safety are adequately protected? The amended regulation addresses an initial license for educators, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses an initial license for educators, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 Del.C. Ch. 12 relating to licensure and certification of educators.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with 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/july2018/proposed/22 DE Reg 13RFA 07-01-18.pdf>

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

1510 Issuance of Initial License

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

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

PUBLIC NOTICE

Medicaid Recovery Audit Contractors Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on July 31, 2018. Please identify in the subject line: Medicaid Recovery Audit Contractors Program.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements.

Statutory Authority

- The Patient Protection and Affordable Care Act, Public Law 111-148, Section 6411, Expansion of the Recovery Audit Contractor (RAC) program
- Section 1902(a)(42)(b) of the Social Security Act, *requires States to establish programs to contract with RACs to audit payments to Medicaid providers by December 31, 2010*
- 42 CFR 455 Subpart A, *Medicaid Agency Fraud Detection and Investigation Program*
- 42 CFR 455 Subpart F, *Medicaid Recovery Audit Contractors Program*

Background

Under Section 1902(a)(42)(B)(i) of the Act, states and territories are required to establish programs to contract with one or more Medicaid Recovery Audit Contractors (RACs) for the purpose of identifying underpayments and overpayments, as well as recouping overpayments, under the Medicaid State Plan and any Medicaid State Plan Waivers. This applies to all services for which payment is made to any entity under such plan or waiver. States must establish these programs in a manner consistent with State law, and generally in the same manner as the Secretary contracts with contingency fee contractors for the Medicare RAC program.

Section 1902(a)(42)(B)(i) of the Act specifies that States shall establish programs under which they contract with Medicaid RACs subject to such exceptions or requirements as the Secretary may require for purposes of a particular State. This provision enables the Centers for Medicare and Medicaid Services (CMS) to vary the Medicaid RAC program requirements. For example, CMS may exempt a State from the requirement to pay Medicaid RACs on a contingent basis for collecting overpayments when State law expressly prohibits contingency fee contracting. However, some other fee structure could be required under any such exception (e.g., a flat fee arrangement).

States that otherwise wish to request variances with respect to, or an exception from, Medicaid RAC program requirements must submit a request to CMS, in writing, from the State's Medicaid Director to the CMS/Medicaid Integrity Group.

Although the Delaware Division of Medicaid and Medical Assistance (DMMA) previously had a Recovery Audit Contract (RAC) vendor, that contract is no longer in place. DMMA posted a Request for Proposals (RFPs) in an attempt to attract a new RAC vendor, but received no bids. The majority of Delaware's Medicaid population is enrolled in managed care and the providers treating them are not subject to audit recovery contracting. There is not sufficient revenue generation to fund an adequate contingency fee.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to seek an exception to the RAC contracting requirements.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Section 4.5 General Program Administration Pages 36, 36a, and 36b of Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, *to request an exception to the RAC contracting requirements.*

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 31, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

The proposed amendment is being implemented to clarify current DMMA practices and does not result in a change in current practice. Therefore, there is no projected fiscal impact.

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

<http://regulations.delaware.gov/register/july2018/proposed/22 DE Reg 15RFA 07-01-18.pdf>

Revision: HCFA-PM-88-10 (BERC) OMB No: 0938-0193
September 1988

36

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

Citation
42 CFR 455.12
AT 78-90

4.5 Medicaid Agency Fraud Detection and Investigation Program

~~48 FR 3742~~
~~52 FR 48817~~
~~§1902(a)(42)(B)~~
~~P.L. 111-148~~
~~§42 CFR 455 Subpart A~~
~~§42 CFR 455 Subpart F~~

The Medicaid agency has established and will maintain methods, criteria, and procedures that will meet all requirements of 42 CFR 455.13 through 455.21 and 455.23 for prevention and control of program fraud and abuse, including methods for identification, investigation, and referral of suspected fraud cases.

TN No. SPA# <u>18-002</u>	Approval Date
Supersedes	HCFA ID: 1010P/0012P
TN No. SP# <u>268</u>	Effective Date <u>July 1, 2018</u>

36a

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

4.5 Medicaid Recovery Audit Contractor Program

PROPOSED REGULATIONS

Citation

Section 1902(a)(42)(B)(i) of the Social Security Act

The State has established a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan.

Section 1902(a)(42)(B)(ii)(I) of the Act

The State is seeking an exception to establishing such program for the following reasons:

Although the Delaware Division of Medicaid and Medical Assistance (DMMA) previously had a Recovery Audit Contract (RAC) vendor, that contract is no longer in place. DMMA posted a Request for Proposals (RFPs) in an attempt to attract a new RAC vendor, but received no bids. The majority of Delaware’s Medicaid population is enrolled in managed care and the providers treating them are not subject to audit recovery contracting. There is not sufficient revenue generation to fund an adequate contingency fee

The State/Medicaid agency has contracts of the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute. Delaware RFP for RACs is completed.

Place a check mark to provide assurance of the following:

The State will make payments to the RAC(s) only from amounts recovered.

The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.

Section 1902 (a)(42)(B)(ii)(II)(aa) of the Act

The following payment methodology shall be used to determine State payments to Medicaid RACs for identification and recovery of overpayments (e.g., the percentage of the contingency fee):

The State attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs, as published in the Federal Register

TN No. SPA# <u>18-002</u>	Approval Date _____
Supersedes	
TN No. <u>10-005</u>	Effective Date <u>July 1, 2018</u>

4.5 Medicaid Recovery Audit Contractor Program

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|--|--|
| Citation | <input type="checkbox"/> The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate. |
| | <input type="checkbox"/> The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee. |
| Section 1902 (a)(42)(B)(ii)(II)(bb) of the Act | <input checked="" type="checkbox"/> The following payment methodology shall be used to determine State payments to Medicaid RACs for the identification of underpayments (e.g., amount of flat fee, the percentage of the contingency fee):

The Medicaid RAC will be paid an equivalent percentage contingency fee for the identification of underpayments. |
| Section 1902 (a)(42)(B)(ii)(III) of the Act | <input checked="" type="checkbox"/> The State has adequate appeal process in place for entitles to appeal any adverse determination made by Medicaid RAC(s). |
| Section 1902(a)(42)(B)(ii)(IV)(aa) of the Act | <input checked="" type="checkbox"/> The State assures that the amounts expended by the State to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State plan or waiver of the plan. |
| Section 1902(a)(42)(B)(ii)(IV)(bb) of the Act | <input checked="" type="checkbox"/> The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share. |
| Section 1902 (a)(42)(B)(ii)(IV)(cc) of the Act | <input checked="" type="checkbox"/> Efforts of the Medicaid RAC(s) will be coordinated with other contactors or entitles performing audits of entitles receiving payments under the State plan or waiver in the State, and/or State and Federal law enforcement entitles and the CMS Medicaid Integrity Program. |

TN No. SPA# <u>18-002</u> Supersedes TN No. <u>10-005</u>	Approval Date _____ Effective Date <u>July 1, 2018</u>
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PROPOSED REGULATIONS

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Temporary Assistance for Needy Families (TANF)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, to revise the requirements of the Contract of Mutual Responsibility (CMR).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on July 31, 2018. Please identify in the subject line: Temporary Assistance for Needy Families (TANF).

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS) is proposing to amend Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, to revise the requirements of the Contract of Mutual Responsibility (CMR).

Statutory Authority

- Social Security Act Title IV Part A-Block Grants To States For Temporary Assistance For Needy Families
- CFR Title 45 Public Welfare Subtitle B Regulations Relating To Public Welfare Chapter II-Office Of Family Assistance (Assistance Programs), Administration For Children And Families, Department Of Health And Human Services

Background

The Contract of Mutual Responsibility (CMR) is an agreement between the TANF client and DSS which sets obligations and expectations for helping the client achieve self-sufficiency. The policies define the Temporary Assistance for Needy Families (TANF) as well as the requirements of the contract and the responsibilities of TANF recipients and the Division of Social Services.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to enhance the definition, provide clarity to the requirements, increase readability, and add a financial coaching orientation to the CMR.

Summary of Proposed Changes

Effective for services provided on and after September 12, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual to Temporary Assistance for Needy Families (TANF), specifically, to revise the requirements of the Contract of Mutual Responsibility (CMR).

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social

Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on July 31, 2018.

Fiscal Impact

There is no anticipated fiscal impact to the agency as a result of this proposed change in program policy.

*Please Note:

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

<http://regulations.delaware.gov/register/july2018/proposed/22 DE Reg 20RFA 07-01-18.pdf>

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

[Temporary Assistance for Needy Families \(TANF\)](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(3) & 903(h) (7 Del.C. §§901(c & d), 903(e)(3) & 903(h)
7 DE Admin. Code 3507

REGISTER NOTICE #2018-09

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.

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

This action is to adopt provisions consistent with the federal measures proposed for the recreational Black Sea Bass fishery in compliance with Addendum XXX to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup [and] Black Sea Bass. Specifically, the proposed action will eliminate Delaware's September 22 through October 21 closure and set the open season from May 15 through December 31 for the recreational Black Sea Bass fishery.

Black Sea Bass are cooperatively managed by the ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) through the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide 2018 recreational harvest limit (RHL) for Black Sea Bass of 3.66 million pounds. Addendum XXX uses a combination of exploitable biomass information from the latest stock assessment and historical harvest to allocate the coastwide RHL between three regions. The ASMFC's Black Sea Bass Management Board approved measures that require the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for Black Sea Bass consistent with those measures required for federal waters. The MAFMC's recommended federal measures for the recreational fishery include a 15-fish possession limit, a 12.5-inch minimum size limit and an open season from May 15 through December 31. These measures, when combined with measures being implemented in the other regions (Massachusetts through New York and New Jersey), are predicted to constrain recreational Black Sea Bass landings at or below the 2018 coastwide RHL.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901 & §903(a), (b) & (e)

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 DE Admin. Code 3507 *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* will open July 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held in conjunction with a public hearing on proposed amendments to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season* on July 26, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, August 10, 2018.

7. PREPARED BY:

Stewart Michels

Email: Stewart.Michels@state.de.us

Ph: 739-9914

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

[http://regulations.delaware.gov/register/july2018/proposed/22 DE Reg 21RFA 07-01-18.pdf](http://regulations.delaware.gov/register/july2018/proposed/22%20DE%20Reg%2021RFA%2007-01-18.pdf)

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 Del.C. §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department

as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.

- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned a an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. January 1, and ending midnight May 14, ~~and beginning at 12:01 a.m. September 22 and ending mid-night October 21.~~
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 15 through ~~September 21 and during the period October 22 through~~ December 31.
-

PROPOSED REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d) and 903(e)(2)a (7 **Del.C.** §§901(c) and (d) and 903(e)(2)a)
7 **DE Admin. Code** 3511

REGISTER NOTICE SAN #2018-10

3511 Summer Flounder Size Limits; Possession Limits; Season

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 3511 Summer Flounder Size Limits; Possession Limits; Season.

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

This action is to adopt a minimum recreational summer flounder size limit of 16.5 inches (formerly 17 inches), consistent with Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass. The Department previously amended 7 **DE Admin. Code** 3511 Summer Flounder Size Limits; Possession Limits; Season to accommodate this change through an emergency action (Secretary's Order 2018-F-0026) pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) to assure that Delaware's recreational summer flounder fishery resource avoided unnecessary hardship, benefited from a sustainable harvest liberalization and remained competitive with similar fishing resources in New Jersey, Maryland and Virginia.

The Atlantic States Marine Fisheries Commission (ASMFC) and Mid Atlantic Fisheries Management Council extended the regional approach to recreational summer flounder management outlined in Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass through 2018. Addendum XXVIII allows states or regions to develop measures that will achieve the coastwise recreational harvest limit (RHL) of 4.42 M pounds. Based on summer flounder stock status, states or regions may liberalize their 2017 recreational summer flounder regulations to allow for up to a 17% harvest increase in 2018.

By extending the provisions of Addendum XXVIII, Delaware continues to be grouped in a region (DelMarVa) with Maryland and Virginia. The DelMarVa region submitted an analysis to the ASMFC Summer Flounder Technical Committee for a four (4) fish possession limit, a 365-day season and a 16.5-inch minimum size limit that was estimated to result in 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §901 & §903 (a), (b) & (e)

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3511 *Summer Flounder Size Limits; Possession Limits; Season* will open July 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held in conjunction with a public hearing on proposed amendments to 7 **DE Admin. Code** 3507 *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* on July 26, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, August 10, 2018.

7. PREPARED BY:

Stewart Michels
Email: Stewart.Michels@state.de.us
Ph: 739-9914

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

<http://regulations.delaware.gov/register/july2018/proposed/22 DE Reg 24RFA 07-01-18.pdf>

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 ~~seventeen (17)~~ sixteen and one half (16.5) 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 ~~seventeen (17)~~ sixteen and one half (16.5) 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
 - 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.

PROPOSED REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8402 and 8404(a)(14) (11 Del.C. §§8402, 8404(a)(14))
1 DE Admin. Code 801

PUBLIC NOTICE

801 Regulations of the Delaware Council on Police Training

The Council on Police Training (COPT), pursuant to 11 Del.C. §8404(a)(14), proposes to revise its regulations. The proposed amendments, which were voted on in a Special Meeting by the COPT on May 23, 2018, seek to update, clarify and provide more detailed information regarding minimum training requirements, firearms training and qualifications for instructors.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail Christopherm.klein@state.de.us. Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on July 31, 2018. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Robert M. Coupe, Chairman COPT

***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/july2018/proposed/22 DE Reg 26RFA 07-01-18.pdf>

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

[801 Regulations of the Delaware Council on Police Training](#)

DEPARTMENT OF STATE
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

PUBLIC NOTICE

300 Board of Architects

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise its regulations in order to clarify the education requirements for applicants; change the name of the NCARB training program from Intern Development Program to Architectural Experience Program; clarify that the continuing education requirements apply to calendar years; and allow licensees to seek pre-approval of continuing education units.

The Board will hold a public hearing on the proposed regulation change on September 5, 2018 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 20, 2018 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/july2018/proposed/22 DE Reg 27RFA 07-01-18.pdf>

300 Board of Architects
(Break in Continuity of Sections)

3.0 Application for Registration:

(Break in Continuity Within Section)

3.4 Applicants for Registration by Examination (A.R.E.):

3.4.1 Must have filed a completed application with the Board, including the NCARB record.

~~3.4.2 An applicant who has met the education requirements as set forth in the NCARB Education Guidelines and has enrolled in the NCARB Intern Development Program by establishing an NCARB Record shall be eligible for admission to examination.~~

3.4.2 An applicant who holds a NAAB accredited professional degree or is a student actively participating in an NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within a NAAB-accredited professional degree shall be eligible for admission to examination.

3.5 An applicant re-applying with a lapsed registration shall submit evidence of having completed at least 24 HSW Continuing Education hours Units for the preceding two (2) year period leading up to the date of application.

4.0 Registration Standards:

4.1 Registration Standards: To be granted registration an applicant must:

(Break in Continuity Within Section)

4.1.2 Training – meet the Training Requirements set forth in the NCARB ~~Intern Development~~ Architectural Experience Program Guidelines (~~IDP~~) (AXP). Check NCARB's website, www.ncarb.org for updates and the most current information regarding the ~~IDP~~ AXP.

4.1.2.1 Training, as defined above, is a requirement for all applicants for initial registration in the State of Delaware. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable

PROPOSED REGULATIONS

to the Board may obtain a waiver of the ~~IDP~~ AXP requirement. A request for waiver shall be made on a form prescribed by the Board.

- 4.1.2.2 The ~~IDP~~ AXP, which is administered by NCARB, will be initiated by completing an application for NCARB/~~IDP~~ Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006-1310 or www.ncarb.org. Preparation of all components of the ~~IDP~~ AXP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.

(Break in Continuity of Sections)

6.0 Registration

(Break in Continuity Within Section)

6.2 Continuing Education requirements for renewal.

- 6.2.1 In addition to all other requirements for registration renewal, an architect must complete a minimum of ~~24 Continuing Education Hours each renewal period~~ Continuing Education Units (CEUs) in the two calendar (January 1 – December 31) years preceding the license renewal deadline, including a minimum of ~~8 Continuing Education Hours~~ eight CEUs in each calendar year, or be exempt from these continuing education requirements as provided below. For an architect's initial registration period, the continuing education requirements shall be pro-rated at one Continuing Education ~~Hour~~ Unit per month of registration, beginning with the first full month following the month of issuance, through the end of the renewal cycle. ~~Up to four CE hours can be carried over into a subsequent calendar year.~~

- 6.2.1.1 Continuing Education ~~Hours~~ Units. All Continuing Education ~~Hours~~ Units must be completed in Health, Safety, and Welfare Subjects acquired in Structured Educational Activities. Continuing Education ~~Hours~~ Units may be acquired at any location.

- 6.2.1.2 Reporting and Record keeping. An architect shall complete and maintain forms as required by the Board certifying that the architect has completed the required Continuing Education ~~Hours~~ Units. Forms may be audited by the Board for verification of compliance with these requirements. Documentation of reported Continuing Education ~~Hours~~ Units shall be maintained by the architect for six years from the date of award.

(Break in Continuity Within Section)

- 6.2.2 The following are considered acceptable Continuing Education and do not require pre-approval by the Board:

(Break in Continuity Within Section)

- 6.2.3 Course providers and licensees may request Board approval of courses at any time by submitting a written request to the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor. Course providers and licensees seeking pre-approval should submit the request a sufficient amount of time in advance of the CE course to permit the Board to consider the request at a regularly-scheduled Board meeting. Board approval shall expire 2 years after the approval date. If the course is amended at any time during the 2 years, the sponsor or licensee shall submit a new Application Form.

- 6.2.3.1 Any licensees who complete courses not yet approved by the Board do so at their own risk, and the Board may not approve the course nor allow it to count toward completion of the biennial requirement of 24 hours of continuing education.

6.3 Audits and Attestation of Compliance

- 6.3.1 Random audits shall be performed by the Board. All registrants shall maintain documentation of continuing education, which shall include proof of attendance and verification that the education was an ~~NCARB monograph course or a health, safety, and welfare course approved by the AIA~~ an NCARB monograph course, a health, safety, and welfare course approved by the AIA, or approved by the Board.

~~6.3.2 Attestation of compliance must be completed.~~

~~6.3.3 Attestation of continuing education shall be submitted to the Division of Professional Regulation prior to January 31st of the reporting year. Attestation that the required Continuing Education has been completed in the previous two calendar years shall be submitted to the Division of Professional Regulation prior to the January 31st renewal deadline.~~

6.4 Hardship Extension: Requests for a hardship extension must be in writing and submitted to the Board prior to ~~the expiration of the licensing period~~ December 31st of the second calendar year of reporting period. The Board may, at its discretion, grant an extension of time within which the Continuing Education requirement must be completed. The period of hardship extension granted shall be determined by the Board.

6.5 Late Renewal

(Break in Continuity Within Section)

~~6.5.3 A registrant who has failed to complete the Continuing Education requirement of the previous two calendar years by the January 31st renewal date may request, in writing, an extension of time of no more than four (4) months following the January 31st renewal date to satisfy the immediately preceding two (2) year requirement. The request for an extension must be received by the Board in writing prior to the January 31st renewal date.~~

~~6.5.4 No continuing education completed during the extension in order to satisfy the requirements of a preceding registration period may be used to satisfy future renewal requirements.~~

(Break in Continuity Within Section)

6.8 Re-application

~~6.8.1 Applicants who were previously registered as architects in Delaware shall be required to certify that they have completed at least 24 HSW Continuing Education hours for the two year period preceding the new registration.~~

~~6.9.8~~ Architect Emeritus

~~6.9.1.6~~ 6.8.1 To qualify for an Architect Emeritus license, the applicant shall:

~~6.9.1.1~~ 6.8.1.1 currently be registered as a Delaware Architect; and

~~6.9.1.2~~ 6.8.1.2 have been registered as a Delaware Architect for at least the immediate preceding ten years; and

~~6.9.1.3~~ 6.8.1.3 not be the subject of a pending disciplinary action related to architectural licensure in this or any other state; and

~~6.9.1.4~~ 6.8.1.4 have met all of the annual continuing education requirements of this Board prior to the filing of the application for emeritus status; and

~~6.9.1.5~~ 6.8.1.5 have filed an Architect Emeritus application on a form prescribed by the Board along with the required fee; and

~~6.9.1.6~~ 6.8.1.6 be at least 65 years old on the date of application for Architect Emeritus status.

~~6.9.2.6~~ 6.8.2 A Delaware Architect Emeritus shall:

~~6.9.2.1~~ 6.8.2.1 not engage in the practice of architecture; and

~~6.9.2.2~~ 6.8.2.2 not be required to complete the annual continuing education requirements; and

~~6.9.2.3~~ 6.8.2.3 use the title "Architect Emeritus" in lieu of the title "Architect."

~~6.9.3.6~~ 6.8.3 A Delaware Architect Emeritus may re-apply for active status as a registered Delaware Architect provided that the individual has completed 12 ~~continuing education hours~~ Continuing Education Units of the annual continuing education requirement during the calendar year in which the re-application is filed.

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

300 Board of Architects

PROPOSED REGULATIONS

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

PUBLIC 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") has proposed revisions to its rules and regulations.

A public hearing will be held on August 21, 2018 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 or to karen.carn@state.de.us.

The Board's proposed amendments add a requirement that licensees must timely update their addresses with the Division of Professional Regulation. Licensure requirements for speech/language pathologists, pertaining to the clinical practicum and the clinical fellowship, are updated to be consistent with the American Speech-Language-Hearing Association's standards. The new Section 11.0 adds disclosure requirements in connection with the fitting and sale of hearing aids. Audiologists and hearing aid dispensers must notify the prospective purchaser of the operation and benefits of telecoil technology, which is used to increase access to telephones and communication with businesses and the community. Finally, the list of substantially related crimes has been revised to include updated drug offenses.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be September 5, 2018, 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.

***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/july2018/proposed/22 DE Reg 30RFA 07-01-18.pdf>

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

1.0 General

- 1.1 ~~Applications and other forms may be obtained from and be returned to the Division of Professional Regulation (Division). Please address correspondence to the Board: ATTN: SLP AUD HAD and mail to 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467. Information Division of Professional Regulation (Division) information and forms are also available on the Division's web site dpr.delaware.gov.~~
- 1.2 ~~Fees required by statute shall be made payable to: "State of Delaware" and remitted to the Division. No license shall be issued until all required fees are paid.~~

(Break in Continuity Within Section)

1.4 Duty to Update Address

- 1.4.1 All licensees must provide the Division with their current home mailing address. Any change in home mailing address must be reported to the Division within ten days of such change. All notifications and correspondence pertaining to a licensee's license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current home mailing address will not operate to excuse any duty or responsibility

of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists

(Break in Continuity Within Section)

2.2 Clinical Practicum for Speech/Language Pathologists

2.2.1 The Speech/Language Pathology applicant must have completed a minimum of 400 clock hours of supervised clinical practicum experience. ~~Clinical observation may qualify for up to 25 of the hours in the supervised clinical practicum. At least 25 hours must have been spent in clinical observation and at least 375 clock hours must have been spent in direct client/patient contact.~~

2.2.1.1 Only direct contact with the client or client's family in assessment, management, and/or counseling can be counted towards the practicum requirement.

2.2.2 A minimum of ~~250~~ 325 clock hours ~~in the area of specialty of the supervised clinical practicum must have been obtained~~ be completed at the graduate level.

2.3 Clinical Fellowship (CF) for Speech/Language Pathologists

2.3.1 The Speech/Language Pathology ~~or Audiology~~ applicant must have ~~the equivalent of nine (9) months of full-time or eighteen (18) months of part-time (defined as 15-20 hours per week) supervision in the major professional area in which the license is being sought. 36 weeks of full-time (35 hours per week) experience (or the equivalent part-time experience) totaling a minimum of 1,260 hours. Part-time work can be completed, as long as the clinical fellow works more than 5 hours per week. Working more than 35 hours per week will not shorten the minimum requirement of 36 weeks.~~ The ~~CF~~ CF must start after completion of the academic and clinical practicum requirements.

~~* Supervision is defined as direct observation consisting of 36 supervisory activities, including 18 one-hour on-site observations and 18 other monitoring activities. (From standards adopted by the American Speech-Language-Hearing Association (ASHA) in 1985 and revised in 2009, which can be found at www.asha.org)~~

2.3.2 The applicant must be mentored by an individual holding certification from the American Speech-Language-Hearing Association (ASHA) in speech/language pathology.

2.3.3 The applicant must attain a score of "3" or better on the core skills in the final segment of the experience, as rated by the Speech/Language Pathology Clinical Fellowship mentor using the SLP Clinical Fellowship Skills Inventory Form.

2.3.4 Eighty percent of the applicant's time must be spent in direct clinical contact (assessment/diagnosis/evaluation, screening, treatment, report writing, family/client consultation, and/or counseling) related to the management of disorders that fit within the ASHA Speech and Language Pathology Scope of Practice.

2.3.5 There must be no fewer than 18 hours of on-site observation of the clinical fellow providing clinical services throughout the CF experience. At least 18 other monitoring activities must occur during the experience.

2.4 National Examination

2.4.1 The Speech/Language Pathology and Audiology applicant must have completed and passed the national examination approved by the Division of ~~Professional Regulation~~ for the area of specialty with at least the minimum nationally recommended score. Scores must be sent directly from the testing service to the Division of ~~Professional Regulation~~.

(Break in Continuity Within Section)

2.5 Application Process-Temporary Licensure

2.5.1 An applicant must complete a notarized application for temporary licensure. Items which must be provided to the Division of ~~Professional Regulation~~ include:

(Break in Continuity Within Section)

PROPOSED REGULATIONS

2.5.2 A temporary license is valid for one year from the date of issuance and may be renewed for one year in extenuating circumstances upon application to the Board. The licensee shall take the examination at least once prior to submitting a request for renewal of the temporary license. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.

2.6 Application Process -Permanent Licensure

(Break in Continuity Within Section)

2.6.4 A Speech/Language Pathologist applicant who has completed the supervised CF in Delaware and has a current temporary license, must submit the following documentation to the Division of Professional Regulation 30 days prior to expiration of the temporary license:

(Break in Continuity Within Section)

3.0 Licensure Requirements for Hearing Aid Dispensers

(Break in Continuity Within Section)

3.4 Reciprocal Licensure

3.4.1 An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this state, must comply with 24 **Del.C.** §3710. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 **Del.C.** §3710. Verification of practice shall be by notarized letter from the employer(s).

4.0 Expired Licenses and Inactive Status

4.1 Expired Licenses

4.1.1 A holder of an expired license may renew the license within one year of the date the renewal was due by fulfilling all of the renewal requirements and paying the late fee established by the Division of Professional Regulation.

4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of CEs completed within the preceding 24 months as required by subsection 8.2.3, and payment of the fee established by the Division of Professional Regulation.

(Break in Continuity of Sections)

8.0 Continuing Education For All Licensees:

(Break in Continuity Within Section)

8.2 Continuing Education Criteria

(Break in Continuity Within Section)

8.2.2 The required number of CEs varies with the date of issuance of license, certification and/or professional status. ~~Effective as of the license renewal period beginning August 1, 2009, licensees must meet the following CE requirements:~~

(Break in Continuity Within Section)

8.2.5 CE is required for license renewal and shall be completed by July 31 of odd-numbered years.

8.2.5.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Section 8.0.

8.2.5.2 Attestation may must be completed online. ~~In the alternative, paper renewal documents that contain the attestation of completion can be submitted.~~

(Break in Continuity Within Section)

9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

(Break in Continuity Within Section)

9.2 Standards of Professional Conduct

- 9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 **Del.C.** §3715(a)(2).

(Break in Continuity Within Section)

- 9.2.1.5 Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.

9.3 Standards of Professional Integrity.

(Break in Continuity Within Section)

- 9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful practice and disciplined pursuant to 24 **Del.C.** §3715(a)(1).

(Break in Continuity Within Section)

- 9.3.2.2 A licensee who has evidence that an individual is practicing the profession without a license in violation of 24 **Del.C.** §3707 has a duty to report that information to the Division of Professional Regulation.

(Break in Continuity of Sections)

11.0 Operation and Benefits of Telecoil Technology: Required Disclosures

- 11.1 At the time of the initial examination for the fitting and sale of a hearing aid, audiologists and hearing aid dispensers shall:

11.1.1 Notify the prospective purchaser or client of the operation and benefits of telecoil, also known as "t" coil, or "t" switch technology, in using a hearing aid with "hearing loop" technology; and

11.1.2 Provide written information explaining telecoil and its uses, including increased access to telephones, and communication with businesses and the community and noninvasive access to assistive listening systems.

44-012.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

44-412.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

44-212.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

44-312.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

44-412.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment

program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

- ~~44.5~~12.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection ~~44.8~~ 12.8.
- ~~44.6~~12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- ~~44.6-1~~12.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- ~~44.6-2~~12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- ~~44.6-3~~12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- ~~44.6-4~~12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- ~~44.6-5~~12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- ~~44.6-6~~12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- ~~44.7~~12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- ~~44.8~~12.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- ~~44.9~~12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

- ~~44.40~~12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- ~~44.44~~12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- ~~44.42~~12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

42.013.0 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing.

- 42.1.13.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing in the State of Delaware without regard to the place of conviction:
- 42.1.13.1.1 Assault in the second degree. 11 **Del.C.** §612.
 - 42.1.213.1.2 Assault in the first degree. 11 **Del.C.** §613.
 - 42.1.313.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
 - 42.1.413.1.4 Terroristic threatening; felony. 11 **Del.C.** §621
 - 42.1.513.1.5 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
 - 42.1.613.1.6 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
 - 42.1.713.1.7 Murder in the second degree. 11 **Del.C.** §635.
 - 42.1.813.1.8 Murder in the first degree. 11 **Del.C.** §636.
 - 42.1.913.1.9 Unlawful Sexual Contact in the first degree. 11 **Del.C.** 769
 - 42.1.1013.1.10 Rape in the fourth degree. 11 **Del.C.** §770
 - 42.1.1113.1.11 Rape in the third degree. 11 **Del.C.** §771
 - 42.1.1213.1.12 Rape in the second degree. 11 **Del.C.** §772
 - 42.1.1313.1.13 Rape in the first degree. 11 **Del.C.** §773
 - 42.1.1413.1.14 Sexual extortion. 11 **Del.C.** ~~§776~~774
 - 42.1.1513.1.15 Continuous sexual abuse of a child. 11 **Del.C.** ~~§778~~776
 - 42.1.1613.1.16 Dangerous crime against a child. 11 **Del.C.** §777
 - 42.1.1713.1.17 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §777A
 - 42.1.1813.1.18 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778
 - 42.1.1913.1.19 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 **Del.C.** §778A
 - 42.1.2013.1.20 Kidnapping in the second degree. 11 **Del.C.** §783
 - 42.1.2113.1.21 Kidnapping in the first degree. 11 **Del.C.** §783A
 - 42.1.2213.1.22 Identity theft. 11 **Del.C.** §854
 - 42.1.2313.1.23 Forgery. 11 **Del.C.** §861
 - 42.1.2413.1.24 Insurance fraud. 11 **Del.C.** §913
 - 42.1.2513.1.25 Health care fraud. 11 **Del.C.** §913A
 - 42.1.2613.1.26 Dealing in children. 11 **Del.C.** §1100A
 - 42.1.2713.1.27 Endangering the welfare of a child. 11 **Del.C.** §1102

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- ~~42.1.28~~13.1.28 Crime against vulnerable adult. 11 **Del.C.** §1105
- ~~42.1.29~~13.1.29 Sexual exploitation of a child. 11 **Del.C.** §1108
- ~~42.1.30~~13.1.30 Unlawful dealing in child pornography. 11 **Del.C.** §1109
- ~~42.1.31~~13.1.31 Possession of child pornography. 11 **Del.C.** §1111
- ~~42.1.32~~13.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
- ~~42.1.33~~13.1.33 Sexual solicitation of a child. 11 **Del.C.** §1112A
- ~~42.1.34~~13.1.34 Perjury in the first degree. 11 **Del.C.** §1223
- ~~42.1.35~~13.1.35 Hate crimes (felony). 11 **Del.C.** §1304(a)
- ~~42.1.36~~13.1.36 Stalking; felony. 11 **Del.C.** §1312A
- ~~42.1.37~~13.1.37 Duty to report child abuse or neglect. 16 **Del.C.** §903
- ~~42.1.38~~13.1.38 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136.
- ~~42.1.39~~13.1.39 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. Formerly 16 **Del.C.** §4753A
- ~~42.1.40~~13.1.40 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. Formerly 16 **Del.C.** §4767
- ~~42.1.41~~13.1.41 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. Formerly 16 **Del.C.** §4768
- 13.1.42 Any offense under the Uniform Controlled Substances Act, Title 16 of the Delaware Code, in violation of the aggravating factors in 16 **Del.C.** §4751A
- 13.1.43 Drug dealing-Aggravated possession; class B felony. 16 **Del.C.** §4752
- 13.1.44 Drug dealing-Aggravated possession; class C felony. 16 **Del.C.** §4753
- 13.1.45 Drug dealing-Aggravated possession; class D felony. 16 **Del.C.** §4754
- ~~42.1.42~~13.1.46 Abuse, neglect, mistreatment or financial exploitation of an adult who is impaired. 31 **Del.C.** §3913
- ~~42.2~~13.2 Crimes substantially related to the practice of speech/language pathology, audiology, and hearing aid dispensing shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

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

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 362(b) (26 **Del.C.** §362(b))
26 **DE Admin. Code** 3008

PUBLIC NOTICE

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

IN THE MATTER OF THE ADOPTION OF RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT, 26 *DEL. C.* §§ 351-363, AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005; REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; SEPTEMBER 22, 2009; AUGUST 17, 2010; SEPTEMBER 6, 2011, SEPTEMBER 18, 2012; FEBRUARY 2, 2017)

PSC REGULATION DOCKET NO. 56

PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission, in compliance with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML, and pursuant to 26 **Del.C.** §362(b), proposes to revise its regulations for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 **DE Admin. Code** 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §354(i) and (j).

You can review the proposed revised Rules in the July 2018 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket # input "Reg. 56." If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Pamela Knotts, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to pamela.knotts@state.de.us, with the subject line "Regulation Docket No. 56." Written comments will be accepted until Tuesday, July 31, 2018, pursuant to 29 **Del.C.** §10118(a).

ORDER NO. 9241

AND NOW, this 19th day of June 2018 the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 2, 2015, in Docket No. 15-1462, the Delaware Division of the Public Advocate ("DPA") filed a Petition requesting that this Commission open a docket to consider whether to amend 26 **DE Admin. Code** 3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 **Del.C.** §354(i) and (j); and on October 12, 2015, the Caesar Rodney Institute ("CRI") submitted a Petition supporting the DPA's Petition; and

WHEREAS, on October 27, 2015, the Commission Staff ("Staff") and the Delaware Department of Natural

Resources and Environmental Conservation ("DNREC") filed a Joint Motion opposing the Petitions of the DPA and CRI and requesting that the Commission deny the Petitions (the "Joint Motion"); and on October 29, 2015, the DPA and CRI filed a joint response ("Joint Response") to the Joint Motion; and

WHEREAS, the Commission also received a letter signed by eight members of the Delaware House of Representatives supporting the Petition, and written comments from Dr. Jeremy Firestone and the Mid-Atlantic Renewable Energy Coalition opposing the Petition; and

WHEREAS, on November 3, 2015, the Commission met at its regularly-scheduled meeting to consider the Petition, the Joint Motion, the Joint Response, and other written comments, and to hear oral argument from the parties. After deliberations, the Commission denied the Petition and closed the docket. This decision was memorialized in Order No. 8807, which explained the Commission's decision as follows:

The language of the REPSA [Renewable Energy Portfolio Standards Act, 26 **Del.C.** §§351-363] is not a model of clarity. We believe that the language could be improved to make the respective responsibilities of the Commission and DNREC clearer, and we question whether the aims of the statute will be accomplished given the dispute about how to interpret the language. We urge the General Assembly to clarify those responsibilities going forward. In the meantime, we interpret Sections 354(i) and (j) to provide DNREC with the primary responsibility for issuing regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared.¹

WHEREAS, on December 7, 2015, the DPA filed a Notice of Appeal of the Commission's decision in Order No. 8807 with the Superior Court of the State of Delaware (the "Court"); and

WHEREAS, after briefing and oral argument by the DPA and the Commission, on December 30, 2016, the Court issued a Memorandum Opinion² reversing the Commission's decision in Order No. 8807 and remanding to the Commission for proceedings consistent with the decision; and

WHEREAS, in compliance with the Court's Memorandum Opinion, on February 2, 2017, the Commission adopted Order No. 9025 in Docket No. 15-1462, which 1) re-opened Docket No. 15-1462 for the limited purpose of complying with the Memorandum Opinion; 2) reversed Ordering Paragraph No. 21 of Order No. 8807, which denied the Petition of the DPA and CRI; and 3) directed Staff to re-open Regulation Docket 56 for the limited purpose of complying with the Memorandum Opinion, specifically to promulgate regulations to amend 26 **DE Admin. Code** 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §§354(i) and (j); and

WHEREAS, on February 2, 2017, the Commission adopted Order No. 9024 in this docket, which required the publication of proposed Rules in the March 1, 2017 *Delaware Register of Regulations*, publication of public notice, and a public comment period through April 24, 2017; and

WHEREAS, at the public hearing at the April 6, 2017 regularly-scheduled Commission meeting, the Commission heard public comments; and

WHEREAS, before April 24, 2017, 104 written public comments were received, including comments from the DPA, CRI, DNREC, and Mr. Gary Myers, among others; and

WHEREAS, on July 20, 2017, Staff filed its Review and Recommendation of the public comments and recommended that the Commission republish revised regulations; and

WHEREAS, after consideration of these public comments and Staff's recommendation, on July 25, 2017, the Commission adopted Order No. 9090 which republished revised regulations in the September 1, 2017 *Delaware Register of Regulations*, and opened a comment period through October 2, 2017; and

WHEREAS, before expiration of the October 2, 2017 comment period, eight written public comments were received, and 24 additional public comments were received after the comment period deadline; and

WHEREAS, on November 17, 2017, notice of the hearing was published in the *Delaware State News* and *The News Journal*, which took place on December 7, 2017, to determine whether to finalize the proposed regulations approved in Order No. 9090 or republish the substantively revised regulations in this docket; and

WHEREAS, at the December 7, 2017 hearing, the Commission heard arguments on the contested issues from several of the parties that submitted comments, and directed republishing of the proposed regulations in accordance with the Commission's deliberations; and

WHEREAS, on January 16, 2018, the Commission adopted Order No. 9016, which ordered republication of the proposed regulations as revised by its determinations at the December 7, 2017 public hearing (the

"Revised Proposed Regulations"), which republication occurred in the February 2018 *Register of Regulations* and opened a comment period through Friday, March 14, 2018;³ and

WHEREAS, the following filed public comments: Mr. Gary Myers; the Sierra Club; the DPA; DNREC Secretary Shawn M. Garvin;⁴ DNREC; as well as 128 additional public comments; and

WHEREAS, on March 26, 2018, Staff filed its Memorandum, attaching thereto (i) Exhibit A - proposed Order 9197 and (ii) the most recent draft regulations representing the Commission's December 7, 2017 determinations, and recommending that the Commission enter proposed Order 9197 approving the most recent draft regulations as final; and

WHEREAS, at the Commission's regularly scheduled meeting on March 27, 2018, the Commission considered whether to approve the proposed Order 9197 or set the matter for further hearing; and

WHEREAS, the Commission voted to not act on proposed Order 9197 and to again set the matter for hearing on June 5, 2018; and

WHEREAS, at its regularly-scheduled June 5, 2018 meeting, the Commission heard oral argument from the parties and then deliberated in public session; and

WHEREAS, Order No. 9197, dated June 5, 2018, failed to include a public notice for the public comment period; and

WHEREAS, on June 14, 2018, Staff submitted this Order which includes the notice period for public comment and nonsubstantive changes to the proposed regulations;

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

1. That the proposed regulations attached hereto as Exhibit "B" are approved for publication.
2. That pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the July 2018 *Delaware Register of Regulations* a copy of this Order and the attached proposed regulations.
3. That the Commission Secretary shall publish, in the manner described below, the Notice of Proposed Rulemaking attached as Exhibit "A." Such notice shall be published in the *Delaware State News* and *The News Journal* by July 1, 2018. The notice shall also be sent to the Delaware Registrar of Regulations for publication on July 1, 2018 in the *Delaware Register of Regulations*.
4. That the Commission will enter an Order setting forth the reasoning for our proposed regulations at a later date.
5. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the Commission allows persons or entities to submit written comments on or before Tuesday, July 31, 2018.
6. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

K. F. Drexler, Commissioner

Manubhai C. Karia, Commissioner

Harold B. Gray, Commissioner

ATTEST: Donna Nickerson, Secretary

1. Order No. 8807, ¶ 19 (Dec. 3, 2015).

2. *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, 2016 WL 7494899 (Del. Super. Ct. Dec. 30, 2016)(the "Memorandum Opinion").

3. PSC Order 9016, Paragraph 4, provided March 2, 2018 as the deadline for public comments. However, the Public Notice of Proposed Regulations, attached at Exhibit "A" to Order 9016, provided March 14, 2018 as the deadline for public comments. The Commission accepted public comments in accordance with the March 14, 2018 deadline.

4. On March 7, 2018, (Retired) Comm'n Exec. Dir. Robert Howatt's Letter to DNREC Sec'y was filed in

this docket.

***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/july2018/proposed/22 DE Reg 37RFA 07-01-18.pdf>

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

1.0 Definitions

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

"**Alternative Compliance Payment**" or "**ACP**" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under ~~Section~~ subsection 3.3.5 of this Regulation.

(Break in Continuity Within Section)

"**CREC**" means a Commission-regulated electric distribution company.

(Break in Continuity Within Section)

"**E&C Director**" means the Director of the Division of Energy & Climate, as the immediate successor to the State Energy Coordinator, to include any subsequent successor.

(Break in Continuity Within Section)

"**Freeze**" means suspension of the implementation of the annual increase in RPS under 26 Del.C. §354(a), (b), (i) and (j).

"**Fund**" or "**Green Energy Fund**" means the Delaware Green Energy Fund as authorized under 26 Del.C. §1014(a).

(Break in Continuity Within Section)

"**Non-Exempt Customers**" means all customers of the Commission-regulated electricity company that have not been certified by the Commission as exempt from the RPS under subsection 2.2.

(Break in Continuity Within Section)

"**Solar Alternative Compliance Payment**" or "**SACP**" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under ~~Section~~ subsection 3.3.4 of this Regulation.

(Break in Continuity Within Section)

"**Total Retail Cost of Electricity**" means the total costs paid by Non-Exempt Customers of the Commission-regulated electric company for the supply and transmission of retail electricity, including costs paid to third party suppliers, during a respective Compliance Year.

"**Total Retail Sales**" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.0 Purpose and Scope

(Break in Continuity Within Section)

2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have its load exempt from this Regulation provided that it meets the definitions found in ~~Section~~ subsection 1.1 and:

(Break in Continuity Within Section)

2.2.1.2 submits the Commission's Staff acknowledgement referenced in ~~Section~~ subsection 2.2.1.1.1 of this Regulation to its Retail Electricity Supplier.

2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have its load exempt, the aggregate of its accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and it must follow the procedure found in ~~Section~~ subsection 2.2.1.

(Break in Continuity Within Section)

3.0 Administration of RPS

3.1 Certifying and Decertifying Eligible Energy Resources:

3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in ~~Section~~ subsection 1.1 of this Regulation.

(Break in Continuity Within Section)

3.1.12 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to ~~Section~~ subsection 3.2.7, ~~Section~~ subsection 3.3.3 and ~~Section~~ subsection 3.3.4 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.1.13 An Eligible Energy Resource may be decertified for any of the following:

3.1.13.1 Failure to comply with ~~Sections~~ subsections 3.1.1 through 3.1.11;

3.1.13.2 A material change in circumstances that causes it to become ineligible for certification under ~~Section~~ subsection 3.1;

(Break in Continuity Within Section)

3.2 Compliance with RPS

(Break in Continuity Within Section)

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers subject to ~~Section~~ subsection 3.2.7 of these Regulations and, where appropriate, other Commission regulations.¹ Each Retail Electricity Suppliers shall file a report detailing its compliance with its RPS obligations within 120 days following the end of Compliance Year 2011.

3.2.3 Beginning June 1, 2012, ~~every Commission-regulated electric companies~~ ("CREC") shall be responsible for procuring RECs, SRECs, and any other attributes needed to comply with the minimum percentage requirements set forth in 26 **Del.C.** §354 and ~~Section~~ subsection 3.2.1 with respect to all energy delivered to the CREC's End-Use Customers. Such RECs and SRECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year. In fulfilling the duty imposed upon it by 26 **Del.C.** §354(e), a CREC shall succeed to, and assume, the obligations, entitlements, and responsibilities imposed or allowed to a "retail electricity supplier" under the provisions of 26 **Del.C.** §§354-362, ~~and Sections~~ subsections 3.2, and 3.3, and Sections 4.0 and 5.0 of these regulations.

(Break in Continuity Within Section)

3.2.3.2 Beginning with sales as of June 1, 2012, the CREC will charge all of its distribution system End-Use Customers for RPS compliance costs through a non-bypassable charge based on the weighted average cost of the RECs and SRECs supplied by the CREC.

3.2.3.2.1 Industrial Customers whose peak demand is in excess of 1500 kilowatts and have been acknowledged by the Commission as having their load exempted from the RPS compliance obligations pursuant to 26 **Del.C.** §353(b), ~~and Sections 4.0~~ Section 1.0.

1. The Commission understands the legislation to mean that the Total Retail Sales of *each* Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of SRECs and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1.

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~~and subsections 2.2.1; and 2.2.2,~~ shall not be charged the RPS compliance cost permitted by ~~Section subsection 3.2.3.2.~~

- 3.2.3.2.2 For a particular compliance year, the total recovery of the RPS compliance costs by the CREC, shall not be an amount greater than the CREC's actual dollar for dollar costs incurred for that compliance year in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to 26 **Del.C.** §358(d) and ~~Section subsection 3.3.5 of this Regulations~~ shall be recoverable only to the extent authorized by 26 **Del.C.** §358(f)(2) and ~~Section subsection 4.2 of this Regulation.~~
- 3.2.3.2.3 The CREC will credit the distribution portion of the bill of the End-User Customers identified in ~~Section subsection 3.2.3.1.1 of these Regulations~~ by the amount equal to the non-bypassable charge for the duration of the Transitional Retail Contract.
- 3.2.3.3 The CREC and Retail Electricity Suppliers shall place on their websites customer education pertaining to the RPS non-bypassable charge and credit required in ~~Section subsections 3.2.3.2 and 3.2.3.2.1.~~ The CREC shall also include information on the RPS non-bypassable charge and credit on its bill message or bill insert.
- (Break in Continuity Within Section)***
- 3.2.5 Energy output must be tracked using PJM-EIS GATS or its successor at law or pursuant to ~~Section subsection 3.1.8.1 of this Regulation.~~
- (Break in Continuity Within Section)***
- 3.2.7 No CREC, or Retail Electricity Supplier with existing contractual electric supply obligations can provide more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in ~~Section subsection 3.2.1 of this Regulation~~ must come from New Renewable Generation resources. In Compliance Year 2026 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- 3.2.8 A Retail Electricity Supplier shall not use RECs or SRECs used to satisfy another state's renewable energy portfolio requirements for compliance with ~~Section subsection 3.2.1 and Schedule 1.~~ A Retail Electricity Supplier may sell or transfer any RECs or SRECs not required to meet this Regulation.
- (Break in Continuity Within Section)***
- 3.2.11 Aggregate generation from small Eligible Energy Resources totaling 100 kilowatts or less of capacity, may be used to meet the requirements of ~~Section subsection 3.2.1 and Schedule 1~~ provided that the generators or their agents shall document the level of generation, as recorded by appropriate metering, as frequently as PJM-EIS-GATS shall prescribe.
- 3.2.12 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of ~~Sections subsection 3.2.1 and Schedule 1~~ of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- (Break in Continuity Within Section)***
- 3.2.14 A CREC shall receive 350% credit toward meeting the RPS for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.
- (Break in Continuity Within Section)***
- 3.2.14.2 CREC shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to ~~section subsection 3.2.14.~~
- (Break in Continuity Within Section)***
- 3.2.18 Cumulative minimum percentage requirements of Eligible Energy Resources and Solar Photovoltaic Resources shall be established by Commission rules for Compliance Year 2026 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2025 in ~~Sections subsection 3.2.1 and~~

Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

- 3.2.19 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of ~~Section subsection~~ 3.2.1 and Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 25%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

(Break in Continuity Within Section)

- ~~3.2.21 The minimum percentages from Eligible Energy Resources and Solar Photovoltaic Energy Resources as shown in Section 3.2.1 and Schedule 1 may be frozen for CRECs as authorized by, and pursuant to, 26 Del.C. § 354(i) (j). For a freeze to occur, the Delaware Energy Office must determine that the cost of complying with the requirements of this Regulation exceeds 1% for Solar Photovoltaic Energy Resources and 3% for Eligible Energy Resources of the total retail cost of electricity for Retail Electricity Suppliers during the same Compliance Year. The total cost of compliance shall include the costs associated with any ratepayer funded state renewable energy rebate program, REC and SREC purchases, and ACPs and SACP alternative compliance payments.~~

~~3.2.21.1 Once frozen, the minimum cumulative requirements shall remain at the percentage for the Compliance Year in which the freeze was instituted.~~

~~3.2.21.2 The freeze may be lifted only upon a finding by the State Energy Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% or 3% threshold, as applicable.~~

3.2.21 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

3.2.21.1 Within 120 days after the end of each Compliance Year, the CREC shall submit to the E&C Director the following information for the applicable Compliance Year:

3.2.21.1.1 The total costs associated with the purchase of SRECs retired to comply with the RPS;

3.2.21.1.2 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2;

3.2.21.1.3 The total costs associated with the purchase of RECs retired to comply with the RPS;

3.2.21.1.4 The total costs associated with all Alternative Compliance Payments as allowed under subsection 4.2;

3.2.21.1.5 The Total Retail Cost of Electricity;

3.2.21.1.6 The amount the CREC paid for the QFCPP output that it used to fulfill its REC requirement; and

3.2.21.1.7 The amount the CREC paid for the QFCPP output that it used to fulfill its SREC requirement.

3.2.21.2 Within 120 days after the end of each Compliance Year, the Division of Energy & Climate shall determine the following information for the applicable Compliance Year:

3.2.21.2.1 The total costs associated with any ratepayer funded state solar rebate program; and

3.2.21.2.2 The total costs associated with any ratepayer funded state renewable energy rebate program.

3.2.21.3 The Total Cost of Compliance for Renewable Energy shall be calculated as:

3.2.21.3.1 The total costs associated with any ratepayer funded state solar rebate program, plus

3.2.21.3.2 The total costs associated with the purchase of SRECs retired to comply with the RPS, plus

3.2.21.3.3 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2, plus

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- 3.2.21.3.4 The total costs associated with any ratepayer funded state renewable energy rebate program, plus
- 3.2.21.3.5 The total costs associated with the purchase of RECs retired to comply with the RPS, plus
- 3.2.21.3.6 The total costs associated with all Alternative Compliance Payments as allowed under subsection 4.2, plus
- 3.2.21.3.7 The amount the CREC paid for the QFCPP output that it used to fulfill its REC requirement, plus
- 3.2.21.3.8 The amount the CREC paid for the QFCPP output that it used to fulfill its SREC requirement.
- 3.2.21.4 The Total Cost of Compliance for Solar Renewable Energy shall be calculated as:
 - 3.2.21.4.1 The total costs associated with any ratepayer funded state solar rebate program, plus
 - 3.2.21.4.2 The total costs associated with the purchase of SRECs retired to comply with the RPS, plus
 - 3.2.21.4.3 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2, plus
 - 3.2.21.4.4 The amount the CREC paid for QFCPP output that it used to fulfill its SREC requirement.
- 3.2.21.5 Within 135 days after the end of each Compliance Year, the E&C Director or its assigned delegate shall calculate the Total Cost of Compliance for Renewable Energy and the Total Cost of Compliance for Solar Renewable Energy as described in subsections 3.2.21.3 and 3.2.21.4 as a percent of the Total Retail Cost of Electricity for the applicable Compliance Year, and shall submit in writing to the Commission its calculations determining whether:
 - 3.2.21.5.1 The Total Cost of Compliance for Solar Renewable Energy during a Compliance Year exceeds 1% of the Total Retail Cost of Electricity during the same Compliance Year;
or
 - 3.2.21.5.2 The Total Cost of Compliance for Renewable Energy during a Compliance Year exceeds 3% of the Total Retail Cost of Electricity during the same Compliance Year.
- 3.2.21.6 If the E&C Director's calculations determine that either subsection 3.2.21.5.1 or 3.2.21.5.2 is met, then in no fewer than 10 days nor more than 30 days the Commission shall conduct at a regularly-scheduled meeting a consultation between the E&C Director and the Commission as to whether a Freeze of the yearly increase in the Minimum Cumulative Percentage from Solar Photovoltaics requirement or a Freeze of the yearly increase in the Minimum Cumulative Percentage from Eligible Energy Resources requirement for CRECs should be instituted as set forth in 26 **Del.C.** §354 (a), (b), (i), and (j).
 - 3.2.21.6.1 Within 20 days after the consultation, the E&C Director or its assigned delegate shall submit to the Commission its written determination, including the bases for that determination, to declare or not declare a Freeze.
 - 3.2.21.6.2 At the next regularly-scheduled Commission meeting the Commission shall consider the determination and issue an Order to the CREC as to whether to institute a Freeze.
- 3.2.21.7 In the event of a Freeze of the yearly increase in the Minimum Cumulative Percentage from Solar Photovoltaics for CRECs, if the E&C Director makes a finding that, consistent with the calculation set forth in subsection 3.2.21.5, the Total Cost of Compliance for Solar Renewable Energy can reasonably be expected to be less than 1% of the Total Retail Cost of Electricity during the next Compliance Year, the E&C Director shall provide written notification of its finding to the Commission.
- 3.2.21.8 In the event of a Freeze of the yearly increase in the Minimum Cumulative Percentage from Eligible Energy Resources for CRECs, if the E&C Director makes a finding that, consistent with the calculation set forth in subsection 3.2.21.5, the Total Cost of Compliance for Renewable Energy can reasonably be expected to be less than 3% of the

Total Retail Cost of Electricity during the next Compliance Year, the E&C Director shall provide written notification of its finding to the Commission.

3.2.21.9 In no fewer than 10 days nor more than 30 days after receipt of written notification from the E&C Director, the Commission shall conduct at a regularly-scheduled meeting a consultation between the E&C Director and the Commission as to whether a Freeze of the yearly increase in the Minimum Cumulative Percentage from Eligible Energy Resources requirement or a Freeze of the yearly increase in the Minimum Cumulative Percentage from Solar Photovoltaics requirement for CRECs should be lifted as set forth in 26 Del.C. §354 (a), (b), (i), and (j).

3.2.21.9.1 Within 20 days after the consultation, the E&C Director or its assigned delegate shall submit to the Commission its written determination, including the bases for that determination, of whether the total cost of compliance can reasonably be expected to be under the thresholds set forth in subsections 3.2.21.7 or 3.2.21.8.

3.2.21.9.2 If the E&C Director determines that the total cost of compliance can reasonably be expected to be under the thresholds set forth in subsection 3.2.21.9.1, the Commission shall consider the determination and issue an Order to the CREC as to whether to resume increasing the Minimum Cumulative Percentage from Eligible Energy Resources or the Minimum Cumulative Percentage from Solar Photovoltaic Resources requirement beginning in the Compliance Year for which the calculations of subsections 3.2.21.7 or 3.2.21.8 were performed. When a CREC is ordered to resume the increase of the Minimum Cumulative Percentage, the requirement shall be that of the Compliance Year immediately following the percentage required when the Freeze was instituted.

(Break in Continuity Within Section)

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of the Compliance Year 2011, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product. Beginning with the Compliance Year 2012, the CREC must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for the Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product according to ~~Section subsection~~ subsection 3.2.3.

3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS or its successor at law, or pursuant to ~~Section subsection~~ subsection 3.1.8.1 of this Regulation.

3.3.3 SRECs or RECs, submitted for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 The three (3) year period referred to in ~~Section subsection~~ subsection 3.3.3 shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in 29 Del.C. §8059.

(Break in Continuity Within Section)

3.3.6 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP or SACP, according to ~~Section subsection~~ subsection 3.3.5 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

(Break in Continuity Within Section)

4.0 Recovery of Costs

- 4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to ~~Section subsection 3.3.5 of these Rules and Regulation~~ shall be recoverable only to the extent authorized by ~~Section subsection 4.2 of this Regulation~~.

(Break in Continuity Within Section)

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

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on April 10, 2018, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 5.3 in the May 1, 2018 *Register of Regulations*.
2. The Commission received no written comments. The Commission held the public comment period open until close of business on May 31, 2018. The Delaware Harness Racing Commission will finalize the regulations at its regularly scheduled monthly meeting on June 12, 2018. Monthly meetings are noticed public meetings.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
4. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from publication of this Order in the *Register of Regulations* on July 1, 2018.

IT IS SO ORDERED this 12th day of June 2018.

Beverly H. Steele, Chairman

Jack Berberian, Commissioner

Patt Wagner, Vice-Chairman

Stephanie Liguori, Commissioner

George P. Staats, Commissioner

501 Harness Racing Rules and Regulations
(Break in Continuity of Sections)

*Please note that no changes were made to the regulation as originally proposed and published in the May 2018 issue of the *Register* at page 845 (21 DE Reg. 845). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

501 Harness Racing Rules and Regulations

HARNES RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 10113(b)(4) and 3 Delaware Code, Section 10005 (29 **Del.C.** §10113(b)(4) & 3 **Del.C.** §10005)
3 DE Admin. Code 501

ORDER

501 Harness Racing Rules and Regulations

The Executive Director of the Delaware Harness Racing Commission hereby gives notice of a technical correction to 3 **DE Admin. Code** 501 relating to Harness Racing Rules and Regulations.

Pursuant to 29 **Del.C.** §10113(b)(4) and 3 **Del.C.** §10005, nonsubstantive changes correcting technical errors in subsections 8.3.5, 8.3.5.1 and 8.3.5.9.6 are hereby adopted.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Executive Director of the Harness Racing Commission does hereby ORDER that the regulations be, and that they hereby are, amended as set forth below. The effective date of this Order is July 11, 2018, in accordance with 29 **Del.C.** §10118(g).

Mark A. Davis

Executive Director

Delaware Harness Racing Commission

June 14, 2018

501 Harness Racing Rules and Regulations
(Break in Continuity of Sections)

8.0 Veterinary Practices, Equine Health Medication

(Break in Continuity Within Section)

8.3 Medications and Foreign Substances. Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances

rules, the Presiding Judge or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the DHRC Uniform Classification Guidelines found in subsection 8.3.1 of this section, and may consider the most recent recommendations by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International. In addition, the Presiding Judge or other designee of the Commission shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The Presiding Judge may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

(Break in Continuity Within Section)

8.3.5 Furosemide (Salix) and ~~Aminocaproic~~ Aminocaproic Acid (Amicar)

8.3.5.1 General. Furosemide (Salix) and ~~Aminocaproic~~ Aminocaproic Acid (Amicar) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Furosemide or Furosemide with ~~Aminocaproic~~ Aminocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a post-race urine sample.

(Break in Continuity Within Section)

8.3.5.9 Bleeder List

(Break in Continuity Within Section)

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 5-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a five (5) day rest period or having to re-qualify provided the horse was on Aminocaproic Acid for thirty ~~(34)~~(30) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

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

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) & Ch. 12 (14 **Del.C.** §122(b); 14 **Del.C.** Ch.12)

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**

Pursuant to 14 **Del.C.** §122(b) and 14 **Del.C.** Ch. 12, Subchapter VII, 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. This regulation is being amended to: (1) eliminate an

incorrect chart related to summative evaluation ratings due to the implementation of equal weighting and (2) to allow flexibility in the length and frequency of observations in the second year of a summative evaluation cycle for experienced teachers to provide an opportunity to streamline the observation process.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from the DPAS II Advisory Committee that suggested changes in the language of the regulation that aligned with amended language as published in the proposed regulation.

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 eliminate an incorrect chart related to summative evaluation ratings due to the implementation of equal weighting and (2) to allow flexibility in the length and frequency of observations in the second year of a summative evaluation cycle for experienced teachers to provide an opportunity to streamline the observation process.

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 21, 2018. 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 21st day of June 2018.

Department of Education

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

Approved this 21st day of June 2018

State Board of Education

Nina L. Bunting, Vice President

Audrey J. Noble, Ph.D.

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

*Please note that no changes were made to the regulation as originally proposed and published in the May 2018 issue of the *Register* at page 847 (21 DE Reg. 847). 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) & Ch. 12 (14 **Del.C.** §122(b); 14 **Del.C.** Ch.12)
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

Pursuant to 14 **Del.C.** §122(b) and 14 **Del.C.** Ch. 12, Subchapter VII, 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. This regulation is being amended to eliminate an incorrect chart related to summative evaluation ratings due to the implementation of equal weighting.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from the DPAS II Advisory Committee that suggested changes in the language of the regulation that aligned with amended language as published in the proposed regulation.

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 eliminate an incorrect chart related to summative evaluation ratings due to the implementation of equal weighting.

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 21, 2018. 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 21st day of June 2018.

Department of Education

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

Approved this 21st day of June 2018

State Board of Education

Nina L. Bunting, Vice President

Audrey J. Noble, Ph.D.

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the May 2018 issue of the *Register* at page 849 (21 DE Reg. 849). 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, Sections 122(a) and 4112 (14 **Del.C.** §§122(a) and 4112)

14 **DE Admin. Code** 601

REGULATORY IMPLEMENTING ORDER

601 Schools and Law Enforcement Agencies

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Title 14 of the Delaware Administrative Code governs Department of Education matters. Under the provisions of 29 **Del.C.** §10113(b)(5) and pursuant to 14 **Del.C.** §§122(a) and 4112, subsection 6.1 of 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies is being amended to be consistent with the mandatory reporting requirements of 14 **Del.C.** §4112(b). Those requirements were changed by House Bill 243 with House Amendments 1 and 2 of the 146th General Assembly, which eliminated offensive touching and terroristic threatening as bases for mandatory reporting. The amendments do not otherwise alter the substance of the regulation.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(5).

II. FINDINGS OF FACTS

The Secretary of Education finds that it is appropriate to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies in order to be consistent with the mandatory reporting requirements of 14 **Del.C.** § 4112(b). Those requirements were changed by House Bill 243 with House Amendments 1 and 2 of the 146th General Assembly, which eliminated offensive touching and terroristic threatening as bases for mandatory reporting.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies subject to the Secretary of Education's approval. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies attached hereto as Exhibit "A"

is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 601 Schools and Law Enforcement Agencies 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 Department pursuant to 14 **Del.C.** §122 on June 15, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of June 2018.

Department of Education

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

Approved this 15th day of June 2018.

601 Schools and Law Enforcement Agencies

1.0 Purpose

The purpose of this regulation is to ensure that effective communication and working relationships exist between public schools and law enforcement agencies.

2.0 Definitions

"**Alternative Program**" mean a program established pursuant to 14 **Del.C.** Chapter 16.

"**School Employee**" for purposes of this regulation shall mean all persons 18 years of age or older hired by a school district, attendance zone, or charter school; subcontractors such as bus drivers or security guards; employees of an Alternative Program provider; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property. This definition shall be consistent with 14 **Del.C.** §4112.

3.0 Written Policy and Memorandum of Agreement (MOA)

- 3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a Memorandum of Agreement (MOA) with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.
- 3.2 The Department shall review the Model MOA and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.

4.0 Training Component

- 4.1 Any school administrator responsible for reporting school crimes or reporting school conduct incidents to law enforcement and to the Department of Education; or any school administrator responsible for reporting suspension and expulsion data to the Department; or any school administrator responsible for any disciplinary process involving staff or students shall complete Department of Education approved training and any such additional training the Department of Education may prescribe from time to time.

- 4.2 The approved training shall be primarily provided by staff at the Department of Education. The training may be provided by a school administrator at the district, charter school, or Alternative Program who is qualified to provide such training by having completed the Department of Education approved training within the last twenty-four (24) months. The district, charter school, or Alternative Program shall provide the name(s) of the trainer(s) conducting the training and the name(s) of those school administrator(s) attending the training if such training was provided by the district, charter school, or Alternative Program.
- 4.3 Each school district, charter school, and Alternative Program shall, at the time of hiring and at the beginning of each school year thereafter, advise each School Employee of his/her duty to report school crimes and the penalty for failure to so report as prescribed in 14 **Del.C.** §4112 (e).

5.0 Reporting of Crimes to the Delaware Department of Education

- 5.4 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 **Del.C.** §4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

6.0 Reporting Specific Incidents of Misconduct

- 6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 **Del.C.** §4112, the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1 through 6.1.14. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.
- 6.1.1 Pornography, possession and production
 - 6.1.2 Criminal mischief (vandalism)
 - 6.1.3 Tampering with public records
 - 6.1.4 Alcohol, possession and use
 - 6.1.5 Felony theft
 - 6.1.6 Bullying (allegations and substantiated incidents)
 - ~~6.1.7 Offensive Touching (student or employee victim)~~
 - ~~6.1.8 Terroristic Threatening (student or employee victim)~~
 - ~~6.1.96.1.7~~ Sexual Harassment
 - ~~6.1.106.1.8~~ Fighting
 - ~~6.1.116.1.9~~ Inhalants
 - ~~6.1.126.1.10~~ Drug Paraphernalia
 - ~~6.1.136.1.11~~ Teen Dating Violence
 - ~~6.1.146.1.12~~ Unlawful Drug Use/Influence

7.0 Compliance Component

A school that fails to comply with the reporting mandates as set forth herein shall be subject to identification as a "Persistently Dangerous School" as this term is defined in 14 **DE Admin. Code** 608. A school identified as Persistently Dangerous will retain that designation for the entire fiscal year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 4112F(c) (14 **Del.C.** §4112F(c))
14 **DE Admin. Code** 610

REGULATORY IMPLEMENTING ORDER

610 Limitations on Use of Seclusion and Restraint

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §4112F(c), the Secretary of Education intends to amend 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. This regulation is being amended to align with recent amendments to 14 **Del.C.** §4112F, which requires the regulation include improved guidelines for school districts and charter schools regarding the training of School Resource Officers (SRO) and their duties when interacting with students with disabilities. In accordance with the statute, the Department of Education collaborated with the Governor's Advisory Council for Exceptional Citizens (GACEC) to update this regulation.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on May 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from the GACEC and the State Council for Persons with Disabilities (SCPD). Several of the comments received from the GACEC were similar to those received during the drafting process. These include: (1) adding a time period or duration for training of at least eight hours; (2) describing what "awareness level training" means for the purposes of this regulation; (3) requiring School Resource Officers (be updated not only at the beginning of the school year but also when new students with Individualized Education Plans (IEPs) start school through the year or when IEPs change that are relevant to behavioral interventions. The GACEC and SCPD commonly have similar comments, which is the case with this regulation.

The Department of Education (DOE) reviewed the comments and clarified 9.1.4 to include language regarding students with IEPs who enroll after the beginning of the school year. Otherwise, the DOE determined that the balance of the language of the regulation provides the necessary guidance for implementation by school districts and charter schools.

As a part of technical assistance for the implementation of this regulation, the DOE will continue to work with GACEC on identifying appropriate awareness level training.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint in order to include improved guidelines for school districts regarding the training of School Resource Officers and their duties when interacting with students with disabilities.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint 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** 610 Limitations on Use of Seclusion and Restraint amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 610 Limitations on Use of Seclusion and Restraint 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, 2018. 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 2018.

Department of Education

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

Approved this 15th day of June 2018

610 Limitations on Use of Seclusion and Restraint (Break in Continuity of Sections)

9.0 School Resource Officer (SRO) Training

9.1 A SRO shall annually receive the following awareness level training from the school district or charter school in which they are assigned:

(Break in Continuity Within Section)

9.1.4 Such other training as is necessary to protect the health and well-being of students with disabilities[, including students with Individualized Education Programs (IEP) who enroll after the beginning of the school year,] which shall include basic awareness training specific to ~~Individualized Education Programs (IEP) IEPs~~, functional behavior assessments and Behavior Support Plans:

*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2018 issue of the *Register* at page 851 (21 DE Reg. 851). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

610 Limitations on Use of Seclusion and Restraint

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) and 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1006

REGULATORY IMPLEMENTING ORDER

1006 Delaware Interscholastic Athletic Association (DIAA)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Delaware Department of Education ("Department") is amending 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). The Delaware Interscholastic Athletic Association ("DIAA") is a unit of the Department. Under the provisions of 29 **Del.C.** §10113(b)(2), subsection 3.2 of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) is being amended. Subsection 3.2 provides rules of practice and procedure concerning committees of the DIAA Board of Directors.

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

II. FINDINGS OF FACTS

The Department finds that the proposed amendments to the regulation provide rules of practice and procedure concerning committees of the DIAA Board of Directors. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 15th day of June, 2018.

Department of Education

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

Approved this 15th day of June, 2018.

1006 Delaware Interscholastic Athletic Association (DIAA) (*Break in Continuity of Sections*)

3.0 DIAA Board of Directors

3.1 Conflict of Interest: Any member of the Board of Directors who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse himself or herself from consideration of the matter and shall not vote on that appeal or waiver request. The Chairperson of the Board is responsible for maintaining the integrity of the decision making process.

3.2 Committees of the DIAA Board of Directors

~~3.2.1 DIAA Board standing committees include: Rules and Regulations, Officials, Sports Medicine; Sportsmanship and one for each DIAA recognized sport. The Chairperson of the DIAA Board may appoint additional short term committees with specific assignments when deemed necessary.~~

3.2.1 Standing Committees

~~3.2.1.1 The committee for each DIAA recognized sport shall have, in writing, procedures for determining tournament berths and selecting tournament sites. Such procedures shall be on file with the Executive Director and sent to the administrative head of each member school.~~

3.2.1.1 The Board has established the following standing committees:

3.2.1.1.1 The recognized sport committees are:

3.2.1.1.1.1 Baseball

3.2.1.1.1.2 Boys' Basketball

3.2.1.1.1.3 Boys' Lacrosse

3.2.1.1.1.4 Boys' Soccer

- 3.2.1.1.1.5 Cross Country
- 3.2.1.1.1.6 Field Hockey
- 3.2.1.1.1.7 Football
- 3.2.1.1.1.8 Girls' Basketball
- 3.2.1.1.1.9 Girls' Lacrosse
- 3.2.1.1.1.10 Girls' Soccer
- 3.2.1.1.1.11 Golf
- 3.2.1.1.1.12 Softball
- 3.2.1.1.1.13 Swimming and Diving
- 3.2.1.1.1.14 Tennis
- 3.2.1.1.1.15 Track and Field
- 3.2.1.1.1.16 Volleyball
- 3.2.1.1.1.17 Wrestling

3.2.1.1.2 The other committees are:

- 3.2.1.1.2.1 Officials
- 3.2.1.1.2.2 Rules and Regulations
- 3.2.1.1.2.3 Sports Medicine Advisory Committee
- 3.2.1.1.2.4 Sportsmanship
- 3.2.1.1.2.5 Unified Sports®

3.2.1.2 The Board may appoint additional committees to assist in the performance of its duties.

3.3 Committee Membership

- ~~3.3.1 The Chairperson of the DIAA Board of Directors and the Executive Director shall be ex officio members of all committees. Committee membership shall be geographically representative and committee membership may include administrators, athletic directors, coaches, local school board members, officials and public members.~~
- ~~3.3.2 The Chairperson of the DIAA Board of Directors shall appoint individuals to serve as committee chairpersons. The individuals appointed shall serve for an indefinite period of time. The Chairperson of the Board, however, with the advice of the Executive Director, in his or her discretion, may remove a committee chairperson.~~
- ~~3.3.3 The Committee Chairperson, with the advice and consent of the Executive Director, shall appoint individuals to serve on the committee. The individuals so appointed shall serve for an indefinite period of time. The Committee Chairperson, however, with the advice and consent of the Executive Director, may, in his or her discretion, remove individuals from the committee.~~

3.2.2 Committee Membership

- 3.2.2.1 Committees shall consist of no less than 10 and no more than 15 committee members in addition to the Board's Chairperson or his or her designee and the Executive Director or his or her designee.
- 3.2.2.1.1 The Board's Chairperson or his or her designee and the Executive Director or his or her designee shall be voting, ex officio committee members of each committee.
- 3.2.2.1.2 The Coordinator of Interscholastic Athletics or his or her designee shall be a voting, ex officio committee member of the Sportsmanship Committee.
- 3.2.2.1.3 Each recognized sport committee, as provided in subsection 3.2.1.1.1, shall consist of at least one athletic director.
- 3.2.2.2 Committee members shall have expertise in the committee's subject matter.
- 3.2.2.3 Committee membership shall be geographically representative of the three counties and may include administrators, athletic directors, coaches, local school board members, officials, public members, and licensed sports medicine professionals.
- 3.2.2.4 The Executive Director shall make a call for applications to fill vacancies on committees. Prospective committee members shall submit a DIAA Committee Application to the DIAA

- Office. The Executive Director and the committee's chairperson shall review the applications and make recommendations to the Board for approval and appointment.
- 3.2.2.5 The Board's Chairperson, with the advice of the Executive Director, shall appoint a committee member to serve as the committee's chairperson. The committee chairperson shall preside over all meetings of the committee. The committee may elect a vice chairperson who shall serve in the capacity of the committee chairperson in the committee chairperson's absence.
- 3.2.2.6 Committee members shall serve staggered 3-year terms.
- 3.2.2.7 Prior to the expiration of a committee member's term, the Executive Director shall verify the committee member's continued interest in serving on the committee. The Executive Director shall submit the names of the committee members who are interested in serving another term to the Board for reappointment.
- 3.2.2.8 Committee members who miss 3 consecutive meetings shall be reported to the Board, which may appoint replacement committee members.
- 3.2.2.9 The Board may remove a committee member whose actions are contradictory to the committee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Board shall appoint a replacement committee member.
- 3.2.3 Committee Reports and Recommendations
- 3.2.3.1 The recognized sport committees, as provided in subsection 3.2.1.1.1, shall provide a report to the Board at the conclusion of the state tournament for their sport. The other committees, as provided in subsection 3.2.1.1.2, shall provide a progress report to the Board after each meeting.
- 3.2.3.1.1 Committees shall submit the report in writing to the DIAA Office or designate at least one committee member to deliver the report in writing at the Board's next regularly scheduled meeting.
- 3.2.3.2 Recommendations to the Board from committees shall be submitted in writing to the DIAA Office at least one week prior to the Board's next regularly scheduled meeting. The committee shall designate at least one committee member to attend the Board's meeting and present the committee's recommendation to the Board.

4.0 Responsibilities of the Executive Director

(Break in Continuity Within Section)

- 4.2 The Executive Director may decide issues between meetings of the Board of Directors. The Executive Director shall initiate a review of or fully investigate an alleged violation of the Rules and Regulations that he/she has seen, heard or read about, or which has been reported to him/her. The Executive Director may also refer investigations to committees referenced in ~~3.2.4~~ subsection 3.2.1.2 or employ special investigators as necessary to conduct such investigations. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a player, team, coach or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.
- 4.3 The Executive Director shall carry on the business of the DIAA Board and DIAA between meetings: Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board of Directors. No school or individual shall be penalized in any case in which the DIAA Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the day to day operation of the organization.
- 4.4 In the event that the Executive Director is unavailable to perform his or her duties due to a conflict of interest or otherwise, and a matter requires immediate action, the Executive Director may delegate the matter to a subordinate, the Sportsmanship Committee, special committees referenced in ~~3.2.4~~ subsection 3.2.1.2, or to the Chairperson or Vice Chairperson of the DIAA Board of Directors. In such a case, the action shall be treated as the action of the Executive Director under the DIAA rules and regulations.

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

1006 Delaware Interscholastic Athletic Association (DIAA)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) & 303(a) (14 **Del.C.** §§122(b) & 303(a))
14 **DE Admin. Code** 1008

REGULATORY IMPLEMENTING ORDER

1008 DIAA Junior High and Middle School Interscholastic Athletics

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Delaware Department of Education ("Department") is amending 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA") is a unit of the Department. Under the provisions of 29 **Del.C.** §10113(b)(5), subsection 2.3.3 of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics is being amended to be consistent with 14 **Del.C.** Sections 407 and 506. The amendments do not otherwise alter the substance of the regulation.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(5).

II. FINDINGS OF FACTS

The Department finds that the regulation is being amended to be consistent with 14 **Del.C.** Sections 407 and 506 and that the amendments do not otherwise alter the substance of the regulation. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 15th day of June, 2018.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education
Approved this 15th day of June, 2018.

1008 DIAA Junior High and Middle School Interscholastic Athletics (Break in Continuity of Sections)

2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if the Student Does Not Meet the Following Requirements

(Break in Continuity Within Section)

2.3 Eligibility, Enrollment and Attendance

(Break in Continuity Within Section)

2.3.3 ~~A student who is participating in the Delaware School Choice Program, as authorized by 14 Del.C. Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two years and subsequently returns to their home school, the student must receive a release from the choice district in order to legally enroll at their home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics. Enrollment Requirements for the School District Enrollment Choice Program:~~

2.3.3.1 Pursuant to 14 Del.C. §407(a)(2), a student who is enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program shall remain enrolled in the school for a minimum of two years. A waiver request is not required and the student is not ineligible under this subsection if one of the exceptions as provided in 14 Del.C. §407(a)(2) applies or the student's enrollment in the school is terminated as provided in 14 Del.C. §407. Even if a waiver request is not required and the student is not ineligible under this subsection, a waiver request may be required and the student may be ineligible under subsection 2.4 of this regulation.

2.3.3.2 Pursuant to 14 Del.C. §506(d), a student who is in his or her first year of attendance at a charter school shall remain enrolled in the charter school for a minimum of one year. A waiver request is not required and the student is not ineligible under this subsection if good cause exists as provided in 14 Del.C. §506(d).

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) & 303(a) (14 Del.C. §§122(b) & 303(a))
14 DE Admin. Code 1009

REGULATORY IMPLEMENTING ORDER

1009 DIAA High School Interscholastic Athletics

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. Sections 122(b) and 303(a), the Delaware Department of Education ("Department") is amending 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA") is a unit of the Delaware Department of Education. Under the provisions of 29 Del.C.

§10113(b)(5), subsection 2.3.4 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics is being amended to be consistent with 14 **Del.C.** Sections 407 and 506. The amendments do not otherwise alter the substance of the regulation.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(5).

II. FINDINGS OF FACTS

The Department finds that the regulation is being amended to be consistent with 14 **Del.C.** Sections 407 and 506 and that the amendments do not otherwise alter the substance of the regulation. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics. Therefore, pursuant to 14 **Del.C.** §§122(b) and 303(a), 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 15th day of June, 2018.

Department of Education

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

Approved this 15th day of June, 2018.

1009 DIAA High School Interscholastic Athletics (Break in Continuity of Sections)

2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if the Student Does Not Meet the Following Requirements

(Break in Continuity Within Section)

2.3 Eligibility, Enrollment and Attendance

(Break in Continuity Within Section)

- 2.3.4 ~~A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to their home school, the student must receive a release from the "choice district" in order to legally enroll at their home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics. Notwithstanding this section, the transfer regulation still applies to all students participating in the Delaware School Choice Program who~~

~~transfer to another school regardless of whether they are released by the sending school or are not released.~~ Enrollment Requirements for the School District Enrollment Choice Program:

- 2.3.4.1 Pursuant to 14 **Del.C.** §407(a)(2), a student who is enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program shall remain enrolled in the school for a minimum of two years. A waiver request is not required and the student is not ineligible under this subsection if one of the exceptions as provided in 14 **Del.C.** §407(a)(2) applies or the student's enrollment in the school is terminated as provided in 14 **Del.C.** §407. Even if a waiver request is not required and the student is not ineligible under this subsection, a waiver request may be required and the student may be ineligible under subsection 2.4 of this regulation (the High School Transfer Rule), including subsection 2.4.7 (Transfers under the School District Enrollment Choice Program).
- 2.3.4.2 Pursuant to 14 **Del.C.** §506(d), a student who is in his or her first year of attendance at a charter school shall remain enrolled in the charter school for a minimum of one year. A waiver request is not required and the student is not ineligible under this subsection if good cause exists as provided in 14 **Del.C.** §506(d).

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

1009 DIAA High School Interscholastic Athletics

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1511

REGULATORY IMPLEMENTING ORDER

1511 Issuance and Renewal of Continuing License

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. The regulation concerns the requirements for issuance and renewal of a continuing license for educators pursuant to 14 **Del.C.** Ch. 12. Proposed changes to make the regulations consistent with amendments to 14 **Del.C.** Ch. 12 were initially published on September 1, 2017. Thereafter, the Board made additional substantive changes to the definitions in Section 2.0 and the professional development options. The proposed changes in this regulation included the changes that were initially published on September 1, 2017 and the additional changes to Sections 2.0 and 13.0.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2018. The Professional Standards Board did not receive written comments regarding the proposed regulation.

On May 3, 2018, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License.

FINAL REGULATIONS

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License 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 Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on May 17, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 17th day of May 2018.

Department of Education

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

Approved this 17th day of May, 2018.

State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

Dr. Audrey J. Noble (absent)

Wali W. Rushdan, II

Barbara B. Rutt (absent)

Hon. Liane M. Sorenson (absent)

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the April 2018 issue of the *Register* at page 774 (21 DE Reg. 774). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1511 Issuance and Renewal of Continuing License

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1565

REGULATORY IMPLEMENTING ORDER

1565 World Language Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1565 World Language Teacher. The regulation concerns the requirements for a Standard Certificate for World Language Teacher. The proposed

amendments include adding defined terms to Section 2.0; clarifying the requirements for issuing a standard certificate in Section 3.0; specifying the knowledge, skill, and education requirements for obtaining a first and second or subsequent Standard Certificate for World Language Teacher in Section 4.0; specifying the application requirements in Section 5.0; adding Sections 6.0 and 7.0, which concern validity and revocation of a standard certificate; and adding Section 8.0, which concerns local school districts' requests for the Secretary of Education to review standard certificate applications.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2018. The Professional Standards Board did not receive written comments regarding the proposed regulation.

On May 3, 2018, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1565 World Language Teacher for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1565 World Language Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1565 World Language Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1565 World Language Teacher attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1565 World Language Teacher adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1565 World Language Teacher 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 Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on May 17, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 17th day of May 2018.

Department of Education

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

Approved this 17th day of May 2018.

State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

Dr. Audrey J. Noble (absent)

Wali W. Rushdan, II

Barbara B. Rutt (absent)

Hon. Liane M. Sorenson (absent)

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the April 2018 issue of the *Register* at page 776 (21 DE Reg. 776). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1565 World Language Teacher

FINAL REGULATIONS

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 20101, 20103, and 14100

ORDER

Long Term Care Medicaid

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Delaware Social Services Manual (DSSM) regarding Long Term Care Medicaid, specifically, to add additional application methods. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the May 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after July 12, 2018, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend sections 20101, 20103, and 20103.1.2 of the Delaware Social Services Manual (DSSM) regarding Long Term Care Medicaid.

Background

Current policy and practice requires a face to face interview when an individual applies for Long Term Care Medicaid. Additionally, current practice requires the application process to be completed by the applicant, their family member or their legal representative. The proposed policy change removes this restriction and allows the applicant the choice of who can apply for Long Term Care Medicaid on their behalf and removes the face-to-face interview requirement for applying for Long Term Care Medicaid. The proposed application process leaves the choice of the type of application method to the individual applying e.g. electronic, face-to-face interview, mail, fax, telephone.

Statutory Authority

- 42 CFR 435.906
- 42 CFR 435.908
- 42 CFR 435.907(a)
- 42 CFR 435.930(a)
- 1902(a)(8)&(19) Social Security Act

Purpose

The purpose of this proposed regulation is to add additional application methods for Long Term Medicaid.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on May 31, 2018.

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact to the agency as a result of this proposed clarification of policy.

Summary of Comments Received with Agency Response and Explanation of Changes

Several commenters offered the following summarized observations:

Summarized Comment: The proposed rule allows "someone acting responsibly" to apply for long term care Medicaid on behalf of an applicant who is either a minor or incapacitated. This term is not defined in the Delaware regulations although it appears in other places in the federal regulations. More than one commenter recommend that this term be defined to exclude individuals or entities who may have a conflict of interests or at least require that any entity or individual acting as "someone acting responsibly" has an obligation to act in the best interest of the applicant.

Agency Response: DMMA appreciates the recommendation to include a definition for the term "someone acting responsibly". Title 42 CFR § 435.907(a) allows for "someone acting responsibly for the applicant" to file on behalf of an individual who is a minor or incapacitated. DMMA also appreciates the concern where an individual is "not acting responsibly for the applicant." However, these are issues that would be a basis for denial later in the application process. Additionally, 42 CFR § 435.907(f) requires that all initial applications be signed under penalty of perjury. So, someone "acting responsibly for the applicant" is also subjecting themselves to potential prosecution if he or she commits perjury. The final regulation will be revised as follows:

20101 Application Process - Long Term Care Services

...If the patient is not competent, the family or ~~legal representative~~ someone acting responsibly [as defined in 42 CFR 435.907(a)] will act on behalf of the patient...

Summarized Comment: There was a suggestion to add the full CFR citation for the definition of household.

Agency Response: DMMA agrees with the suggestion. The final regulation will be revised as follows:

20103 Financial Eligibility Determination

... In accordance with section 1413(b)(1)(A) of the Affordable Care Act, the agency must accept an application from the applicant, an adult who is in the applicant's household, as defined in [42 CFR] §435.603(f), or family, as defined in section 36B(d)(1) of the [Code United States Code (U.S.C.)], an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant, and any documentation required to establish eligibility -...

DMMA is appreciative of the opportunity to receive public comments and greatly appreciates the thoughtful input given. DMMA is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Long Term Care Medicaid, specifically, to add additional application methods, is adopted and shall be final effective July 12, 2018.

6/18/18

Kara Odom Walker, MD, MPH, MSHS
Secretary, DHSS

FINAL

20101 Application Process - Long Term Care Services

The application process is twofold. Applicants for Medicaid must be medically and financially eligible to receive coverage. Referrals for Medicaid may come from many sources: the applicant, the family of the applicant, persons in the community, hospital social workers, etc. The potential nursing facility or Home and Community Based Waiver patient may be in an adult foster care home, in his own home, in the hospital or in a nursing facility as a private pay patient.

Rarely does the applicant himself initiate the referral. This means it is extremely important in the case of the mentally competent patient that the **[DSS Division of Medicaid and Medical Assistance (DMMA)]** nurse determine initially if the patient is aware that a referral for nursing facility admission or Home and Community Based Waiver has been made. The person must be willing to enter a nursing facility or accept Waiver services, otherwise placement or referral cannot be made. The **[DSS DMMA]** nurse and social worker may assist the family or others in helping the patient to accept the need for nursing facility or Waiver care, but the main responsibility belongs to the family or persons acting as family.

If the patient is not competent, the family or legal representative someone acting responsibly **[as defined in 42 CFR 435.907(a)]** will act on behalf of the patient.

It is not the responsibility of **[DSS DMMA]** to find a nursing facility placement for a patient although they may give assistance when they have knowledge of available, Medicaid certified beds.

20103 Financial Eligibility Determination

This is the second step in the application process. A referral is passed to the LTC financial eligibility unit within two days of being referred to the Medicaid PAS unit.

~~An application for Medicaid is made only when an interview is held with the applicant or his family member who is applying on the applicant's behalf. Should anyone hold Power of Attorney or Guardianship over the applicant, he also must attend the interview along with the applicant/family member, unless his attendance is waived by the supervisor. In addition, the application form must be signed listing those individuals for whom Medicaid coverage is being sought. The applicant or his representative must sign the Application, Affidavit of Citizenship, and Responsibility Statement. The application date is considered to be the date of the interview unless the interview requirement is waived. The interview can only be waived if the applicant is medically unable to come in for the interview and there is no family member, POA agent or Guardian medically able to come in for the interview or other good cause exists. The unit Supervisor must approve the waiving of the interview requirement.~~

~~For cases in which the interview is waived, the application must be date stamped when it is received in the Division of Medicaid and Medical Assistance office. The stamped date sets the base for the timeliness of determination.~~

In accordance with section 1413(b)(1)(A) of the Affordable Care Act, the agency must accept an application from the applicant, an adult who is in the applicant's household, as defined in [42 CFR] §435.603(f), or family, as defined in section 36B(d)(1) of the [Code United States Code (U.S.C.)], an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant, and any documentation required to establish eligibility -

- (1) Through commonly available electronic means;
- (2) By telephone;
- (3) Via mail;
- (4) In person

The Application, Affidavit of Citizenship and Responsibility Statement must be signed by the individual or a representative of their choice. For individuals who are minors or incapacitated a signature is required by someone acting responsibly on the applicant's behalf. The date of application is the date the application is received by LTC Medicaid Office.

42 CFR 435.906; 42 CFR 435.907(a) and Social Security Act 1943(b)

20103.1.2 Timely Documentation

The DMMA Medicaid worker must explain this 90-day time standard to the applicant or representative, ~~during the initial interview.~~ It must be emphasized ~~during the interview to the applicant or their representative,~~ that all documentation needed for the worker to determine Medicaid eligibility must be received by the date indicated on the "Request for Verification" letter (Form 415) or the application will be denied. In cases where verification is incomplete, the worker will give the applicant 15 days to return the information on the initial "Request for Verification" letter (Form 415). The date by which all documentation must be received must be clearly noted on this form.

14100.3 Interview Requirement for Some Eligibility Groups

An in-person interview is not required for any eligibility group subject to the modified adjusted gross income (MAGI)-based methodologies described in Section 16000.

An in-person interview is not required for ~~some~~ Long Term Care eligibility determinations. SEE SECTION 20101 - Application Process - Long-Term Care Services.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1305 (24 Del.C. §1305)

24 DE Admin. Code 1300

ORDER

1300 Board of Examiners of Private Investigators & Private Security Agencies

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on March 1, 2018 (Vol. 21, Issue 9). Following notice and a public hearing on the proposed adoption of amendments to Rule 3.0 Baton, Inflammatory Agent sprays, Chemical Sprays and Handcuffs, 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 place the oversight of the certifications/re-certification on the individuals and agencies, and to eliminate the approval of those instructors by Professional Licensing.

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 place the oversight of the certifications/re-certification on the individuals and agencies, and to eliminate the approval of those instructors by Professional Licensing.
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 place the oversight of the certifications/re-certification on the individuals and agencies, and to eliminate the approval of those instructors by Professional Licensing.

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. Section 1304 et seq. and, in particular, 24 Del.C. Section 1304(b)(3).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 Del.C. Section 1304 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. Section 1304(b)(3) and guidelines of 29 Del.C. Section 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, 2018.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 12th day of April 2018.

Lt. Colonel Monroe B. Hudson, Jr., Chairman (Major Robert Hudson, proxy)	Ms. Kelly R. Jansen
Director Robert J. Irwin	Vacant
Mrs. Sandra C. Taylor	Vacant
Mr. Mark W. Rainford	Vacant
Mr. Wayne A. Keller	

***Please note that no changes were made to the regulation as originally proposed and published in the March 2018 issue of the *Register* at page 679 (21 DE Reg. 679). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1300 Board of Examiners of Private Investigators & Private Security Agencies

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

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on March 1, 2018 (Vol. 21, Issue 9). Following notice and a public hearing on the proposed adoption of amendments to:

- rule 1.0 Licensing;
- rule 6.0 Baton, Inflammatory Agent Sprays, Chemical Sprays and Handcuffs;
- rule 8.0 Canine, and
- rule 9.0 Minimum Training Standards and In-Service Training,

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 how the MMPI or PAI proof is provided to Professional Licensing;
 - place the oversight of the certifications/re-certification on the entities and to eliminate the approval of those instructors by Professional Licensing, and
 - clarify who may attend the Constable Academy

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 the 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 how the MMPI or PAI proof is provided to Professional Licensing;
 - place the oversight of the certifications/re-certification on the entities and to eliminate the approval of those instructors by Professional Licensing, and
 - clarify who may attend the Constable Academy
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 how the MMPI or PAI proof is provided to Professional Licensing;
 - place the oversight of the certifications/re-certification on the entities and to eliminate the approval of those instructors by Professional Licensing, and
 - clarify who may attend the Constable Academy

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 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 this amendment pursuant to 10 **Del.C.** §2702(b) 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, 2018.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 24th day of May 2018.

Lt. Colonel Monroe B. Hudson, Jr.

Chief William E. Bryson

Ralph K. Durstein, III, Esquire (absent)

Mr. John F. Tharan

Captain Diane Smith (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the March 2018 issue of the *Register* at page 681 (21 DE Reg. 681). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2400 Board of Examiners of Constables

FINAL REGULATIONS

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 7 Delaware Code, Section 5302 (7 **Del.C.** §5302)

ORDER

902 Curation Fee For Archaeological Collections

In accordance with 7 **Del.C.** Ch. 53, 7 **Del.C.** §5302, and 29 **Del.C.** §8705, for the reasons set forth herein, the Delaware Department of State, Division of Historical and Cultural Affairs enters this Order adopting and establishing a Curation Fee for Archaeological Collections.

NATURE OF THE PROCEEDINGS

Pursuant to its authority under 7 **Del.C.** §5301, the Department of State has charged the Division of Historical and Cultural Affairs with the duties relative to archaeology in the state (7 **Del.C.** Ch. 53, and 29 **Del.C.** §8705) and authorizes the Division to formulate and adopt regulations as it deems necessary for the effective execution of these duties (7 **Del.C.** §5302). The Division is defined as a qualified repository for the State's archeological collections (7 **Del.C.** §5310), and is responsible for the long-term curation of Delaware's archaeological artifacts and associated documents. The purpose of these proposed regulations is to establish a fee structure to help offset the ever-rising costs associated with the long-term preservation, care, and management of the State's pre-existing and future archaeological collections. These collections are generated through federally-mandated regulation, municipal directive, and by professional, semi-professional, and avocational endeavors within the State. Archaeological collections are regarded as an irreplaceable, non-renewable resource. To care for these archaeological collections, the Division adheres to modern professional practices and collection standards. Foremost of these are the federal regulations defined in Title 36 CFR Part 79, Curation of Federally-owned and Administered Archaeological Collections. These regulations provide methods to fund curatorial services (36 CFR §79.7) and specify, in general, that charging costs for curatorial activities is a reasonable means of funding long-term care of collections.

The Division gave notice of its intent to adopt the proposed revised regulation in the May 1, 2018 issue of the Delaware *Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The Division solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with Delaware law, public notice regarding the establishment of the proposed Curation Fee for Archaeological Collections regulation was published in the Delaware *Register of Regulations*. The public comment period was open from May 1, 2018 through May 31, 2018, and the Division received written comments.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Division received written comments from the Delaware Department of Transportation (DelDOT), RGA Cultural Resource Consultants, and the University of Delaware, Department of Anthropology. The Division of Historical and Cultural Affairs has reviewed and considered each comment, summarized below, and responds as follows:

First, Public Access: The Division received written comments from DelDOT indicating that they hoped that additional funding from the new fee will allow greater access to the collections by both researchers and the public benefiting all Delawareans.

Division Response: In reference to DelDOT's interest in greater public access to the collections, the Division recognizes that with the added revenue generated by the Curation Fee for Archaeological Collections it will be possible to rehouse, conserve, and even make collections available on-line to allow for greater public and professional access.

Second, Pro-rating and Fee Waiving: The Division received written comments from DeIDOT inquiring about a need for "Checks and Balances" in regard to agencies or entities who may apply political pressure to pro-rate and waive fees in Section 4.2.1

Division Response: In reference to Pro-rating and Fee Waiving and "Checks and Balances" the Division addressed this concern in Section 4.2.1 of the regulation by adding that pro-rating or waiving the fee waiving requires approval by the State Collections Committee.

Third, Culling and Discard Policy: The Division received written comments from DeIDOT encouraging the Division to implement a Culling and Discard Policy in conjunction with proposed curation fees to ensure sustainable curation practices while maintaining the quality of archaeology projects. They offered that the implementation of culling guidelines prior to curation can aid all phases of the archaeology project and ensure integrity of the overall archaeology.

Division Response: In reference to the Culling and Discard Policy the Division currently has informal guidance on culling and discard, and will adopt a formal policy in consultation with DeIDOT, State Historic Preservation Office, the Curator of Archaeology and others interested parties as appropriate following the enactment of this regulation.

Fourth, Digital Curation: The Division received written comments from DeIDOT regarding the move to digital curation within the Cultural Resource Management field related to efficiently transitioning between fieldwork and lab phases of projects. They indicated they expect the submission of more digital records, and that the need to provide digital storage in perpetuity, may be potentially costly. They hope that the Division recognizes this and that the revenue will go to enhancing digital storage solutions.

Division Response: In reference to Digital Curation the Division recognizes the significant need for potentially costly digital storage, in perpetuity, for archaeological digital data and the Curation Fee for Archaeological Collections can help offset these costs.

Fifth, Reallocation of Curation Fees: The Division received written comments from DeIDOT stating that they hope that the intent of the Division is to utilize the revenue to supplement the current budget instead of being used to cover current costs and reallocate the current funding sources to other projects.

Division Response: In reference to Reallocation of Curation Funds the Division will not reallocate or replace funds already dedicated to archaeological curation with the revenue generated by the Curation Fee for Archaeological Collections or use it for purposes other than those stated in 6.4 of the regulation.

Sixth, Support of Curation Fees: The Division received written comments from DeIDOT indicating that they fully support the use of the revenue to support all aspects of archaeology curation. DeIDOT recognized that Delaware is the only state in the Middle Atlantic region that currently does not charge a fee, and they support the need to implement a curation fee to support the long-term care and management of Delaware archaeology collections.

Division Response: The Division thanks DeIDOT for its support of this proposed regulation, Curation Fee for Archaeological Collections.

Seventh, Definitions, Curation: The Division received written comment from RGA Cultural Resource Consultants regarding the lack of a definition of professional standards within the term Curation in Section 3.0 of the proposed regulation.

Division Response: The professional standards by which the Division adheres are addressed in Section 1.0 of the regulation and do not need to be expanded in Section 3.0.

Eighth, Definitions, Qualified Repository: The Division received written comment from RGA Cultural Resource Consultants regarding the lack of a definition of Qualified Repository in Section 3.0.

Division Response: The Division definition of the term Qualified Repository in Section 3.0 is used verbatim from 7 Del.C. §5310.

Ninth, Definitions, Adding "Orphaned or Abandoned Collections:" The Division received written comment from RGA Cultural Resource Consultants regarding the need for including in 3.0 Definitions the term "Orphaned or Abandoned Collections."

Division Response: The Division finds that adding a definition for orphaned or abandoned collections is not necessary, as such collections would be subject to the same provisions as any collection considered for curation by the State. Under 5.1.2 of the proposed regulations, the fee is not applicable to collections derived from fieldwork that was initiated prior to the effective date of the fee. After the effective date, the Division would first determine if it will accept the collection in accordance with its Collections Policy, and if so then determine if the fee will be pro-rated or waived by the provisions of Section 4.2 of the regulation.

Tenth, Applicability: The Division received written comment from RGA Cultural Resource Consultants asking if

Section 4.1, and subsequent sub-sections (4.1.1 through 4.1.4), identifies the entirety of the individuals and/or entities to which the fees will be applied or collection types that will not be charged a fee, such as "Orphaned or Abandoned collections."

Division Response: The Division finds that Section 4.1 of the regulation adequately identifies instances where a fee is to be charged, and that Section 4.2 provides an opportunity to pro-rate or waive fees if an entity not defined in 4.1.4 seeks to curate a collection with the Division. The Division finds that adding a specific reference to orphaned or abandoned collections is not necessary (see response to Ninth comment).

Eleventh, Process/Guidance for Pro-rating and Waiving of Fee: The Division received written comment from RGA Cultural Resource Consultants regarding Section 4.2 Pro-rating and waiving of fee, suggesting the addition of subsequent sub-section(s) that included guidelines and process for pro-rating or waiver process.

Division Response: The Division amended Section 4.2.1 and added Section 4.2.2 to clarify the avenue by which the Division Director will consider pro-rating and waiving of fee. Further criteria will be outlined in the anticipated update to the Guidelines and Standards for the Curation of Archaeological Collections.

Twelfth, Responsibility for Payment of Fee: The Division received written comment from RGA Cultural Resource Consultants regarding Section 6.0 Responsibility, Collection, and Use of Fee indicating that the regulation does not specify who shall be responsible for remitting the curation fee to the state of Delaware.

Division Response: The Division has added a new Section 6.1 and 6.1.1 to clarify who is to pay the fee at the time of curation.

Thirteenth, Applicability to the University of Delaware: The Division received written comment from the University of Delaware, Department of Anthropology asking to what extent the fee applies to the University of Delaware.

Division Response: The Division does not intend for this fee to apply to the University of Delaware's "qualified repository." Language was added to Sections 1.4 and 6.0 to clarify this within the regulation.

FINDINGS OF FACT

The public was given the required notice of the Division's intention to establish the Curation Fee for Archaeological Collections regulation and was given opportunity to provide the Division with comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. Public comments were received. The Division has responded to the public comments in the Summary of Comments Received with Agency Response and Explanation of Changes. Thus, the Division finds that the proposed regulation, which adds subsections 4.2.2 and 6.1.1, and adds a definition for "Fee" and deletes the definition for the "National Register of Historic Places" or "National Register" in Section 3.0 should be adopted in the best interest of the general public of the State of Delaware. Additionally, some grammatical amendments and edits were made to the proposed regulations.

THEREFORE, IT IS SO ORDERED, this 12th day of June 2018 that the proposed Division of Historical and Cultural Affairs Curation Fee for Archaeological Collections Regulation 902 is adopted and shall become effective ten (10) days from the date of its publication in the July 2018 Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(e) and (g).

Jeffery Bullock
Secretary of State

902 Curation Fee For Archaeological Collections

1.0 Introduction

- 1.1 The Division of Historical and Cultural Affairs is responsible for the [long-term] curation of Delaware's archaeological [artifact] collections [and associated documents]. These collections are generated through federally-mandated regulation, municipal directive, and by professional, semi-professional[,] and avocational endeavors within the State. Archaeological collections are regarded as an irreplaceable, non-renewable resource.
- 1.2 Most new archaeological collections are accessioned into Delaware's qualified repositories as a result of investigations conducted for compliance with provisions of the National Historic Preservation Act of

1966 and as amended in Title 54 United States Code, Subtitle III - National Preservation Programs, Division A - Historic Preservation (54 USC §§306108, 306101) governing federal and federally-assisted construction projects.

- 1.3 To care for Delaware's ~~[preexisting pre-existing]~~ and future archaeological collections, the Division adheres to modern professional practices and collections standards. Foremost of these are the federal regulations defined in Title 36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections. These regulations provide for methods to fund curatorial services (36 CFR §79.7) and specify, in general, that charging costs for curatorial activities is a reasonable means of funding the long-term care of collections.
- 1.4 ~~[This fee will be applied in its entirety, to~~ The Division will charge, collect, retain, and use the fee for] the long-term ~~[preservation,] care, [and] management~~~~[, and conservation]~~ of ~~[the pre-existing and future State-owned]~~ archaeological collections ~~[and associated documents].~~

2.0 Statutory Authority

- 2.1 These regulations are created pursuant to 7 Del.C. §5302 which authorizes the Division, with the approval of the Department of State, to promulgate regulations as it deems necessary for the effective execution of its purposes under the chapter, Archaeological Resources in the State.
- 2.2 7 Del.C. Ch. 53 defines the Department's duties relative to archaeology in the State.
- 2.3 29 Del.C. §8705 delegates the Department's responsibility for 7 Del.C. Ch. 53, thus relating archaeological resources and activities in the State to the Division.
- 2.4 7 Del.C. §~~5344~~ 5310] defines the Division as a qualified repository for the State's archaeological collections.

3.0 Definitions

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

"**Archaeological ~~[artifacts artifact(s)]~~**" means man-made objects, such as, but not limited to, fragments of glass and ceramic vessels or stone tools, found on archaeological sites, and providing information on the function and time period of a site.

"**Archaeological ~~[collections collection(s)]~~**" means the objects, material remains[,] and artifacts recovered from an archaeological context, along with the associated documents, that are curated by the Division. These collections document the pre-history, history[,] and material culture of the people of Delaware.

"**Archaeological investigation**" means any surface collection, subsurface tests, excavation, or other activity that result in the disturbance, removal, or collection of archaeological resources.

"**Archaeological resource**" means any artifact or material remains of past human life or activities which are at least 50 years old and are of archaeological interest, including but not limited to pottery, basketry, whole or fragmentary tools, implements, containers, weapons, weapon projectiles, by-products resulting from manufacture or use of man-made or natural materials, surface or subsurface structures or portions thereof, earthworks, fortifications, ceremonial structures or objects, cooking pits, refuse pits, hearths, kilns, post molds, middens, and shipwrecks; the site, location, or context in which such artifacts or material remains are situated; and any portion or piece of any of the foregoing.

"**Associated documents**" means the original paper, photographic[,] and digital ~~[documents records]~~ generated in the evaluation, testing, excavation, mapping, analysis, synthesis, and reporting on an archaeological investigation.

"**Cultural resource management firms**" means private companies that are hired ~~[by various clients]~~ to perform professional archaeological services.

["**Curated**" or] "**Curation**" means the ~~[long-term]~~ preservation, care, and management of a collection according to professional standards.

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"Data recovery" means an archaeological treatment of a threatened site involving the detailed excavation and analysis of a National Register-listed or eligible site, based on a research design developed as a result of an evaluation-level survey.

"Department" means the Department of State.

"Director" means the Director of the Division of Historical and Cultural Affairs of the Department of State.

"Division" means the Division of Historical and Cultural Affairs of the Department of State.

"Evaluation-level survey" means an investigation to determine the eligibility of an archaeological site or property for listing in the National Register of Historic Places.

["Fee" means a monetary amount, based on the specified rates, to be charged for the curation of archaeological collections at the Division's qualified repository; as well as the total revenue generated by these charges.]

"Flat" means a box container (measuring ~~[24 20]~~ by 20 by 3 inches) made of archival-quality plastic or acid-free cardboard used in the curation of [archaeological] artifacts.

"Half-standard box" means a box container (measuring ~~[16 by 8 6 by 15]~~ by 10 inches) made of archival-quality plastic or acid-free cardboard used in the curation of [associated] documents.

"Identification-level survey" means an investigation to locate and identify archaeological sites. This level of investigation provides a preliminary assessment of a site's integrity, horizontal boundaries, and possibly, its data potential.

~~["National Register of Historic Places" or "National Register" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Chapter 3021 of the National Historic Preservation Act of 1966, as amended (54 USC § 300101 et seq.).]~~

"Oversized artifact" means an artifact that does not fit into a flat or standard box due to its size or weight.

"Qualified repositories" means the University of Delaware and the Division of Historical and Cultural Affairs, which are designated as properly qualified repositories within the meaning of 7 Del.C. Ch. 53.

"Specialized storage" means curating an artifact in a location or environment that is different than the general artifact collection.

"Standard box" means a box container (measuring ~~[16 by 13 12 by 15]~~ by 10 inches) made of archival-quality plastic or acid-free cardboard used in the curation of [archaeological] artifacts and associated documents.

4.0 Fee for ~~[Artifact Curation and Associated Documents]~~ Curation of Archaeological Collections

4.1 Applicability[.]

4.1.1 Federal agencies and state agencies, acting on behalf of the federal government, which recover archaeological artifacts and create associated documents through an archaeological investigation in the State, will be charged a [curation] fee.

4.1.2 State agencies, municipalities, universities, colleges, schools, museums, historical societies, for-profit, non-profit, semi-professional, and avocational[,] organizations or companies, which recover archaeological artifacts and create associated documents through an archaeological investigation in the State, will be charged a [curation] fee.

4.1.3 Individuals and cultural resource management firms, acting on behalf of an individual, organization[,] or company, which recover archaeological artifacts and create associated documents through an archaeological investigation in the State, will be charged a [curation] fee.

4.1.4 Individuals that seek to donate archaeological artifacts and associated documents collected in the State through curiosity or hobby, will not be charged a [curation] fee.

4.2 Pro-rating and waiving of fee[.]

4.2.1 The Division Director may pro-rate or waive the fee[, with approval of the State Collections Committee].

[4.2.2 A written request must be submitted to the Division Director for consideration to pro-rate or waive the fee.]

4.3 Rates to be charged[.]

4.3.1 The rate ~~[for a per]~~ flat or standard box of **[archaeological]** artifacts, full or partially full, is \$350.

4.3.2 The rate per standard box of **[associated]** documents is \$400.

4.3.3 The rate per half-standard box of **[associated]** documents is \$200.

4.3.4 The rate per oversized **[archaeological]** artifact or per **[archaeological]** artifact requiring specialized storage is \$500.

4.4 Fee Increase[.]

4.4.1 Fee rates will increase by 5% every five years from the effective date, but are not to exceed \$1000.

5.0 **Implementation of Fee**

5.1 Effective date[.]

5.1.1 This fee schedule is to take effect on July 1, 2018.

5.1.2 This fee shall not apply to **[archaeological]** collections derived from investigations for which the associated phase of fieldwork (identification-level survey, evaluation-level survey[,] or data recovery) started prior to the effective date.

6.0 **[Responsibility,] Collection[, and Use of Fee**

[6.1 Responsibility for paying the fee.

6.1.1 The agency, organization, company, or individual (as referenced in subsection 4.1 of this regulation) that is submitting the archaeological collection for curation with the Division is responsible for paying the fee.]

~~**6.[42]** Collection of [Fee fee.]~~

~~6.[42].1 The **[archaeological curation]** fee shall be paid prior to or at the time an archaeological collection is hand-delivered to the ~~**[approved curatorial facility]**~~ **Division's qualified repository for curation].**~~

~~**6.[23]** Methods of [Fee Collection fee collection.]~~

~~6.[23].1 The **[archaeological curation]** fee shall be paid by check or electronic payment, including debit and credit card.~~

~~6.[23].1.1 Checks shall be made payable to the State of Delaware.~~

~~6.[23].1.2 Checks may be mailed or hand-delivered to the Division office prior to curation.~~

~~6.[23].1.3 Checks may be hand-delivered to the ~~**[approved curatorial facility]**~~ **Division's qualified repository]** at the same time that the archaeological collection is hand-delivered **[for curation].**~~

~~6.[23].1.4 Electronic payment shall be accepted only at the Division office.~~

~~**6.[34]** Use of fee[.]~~

~~6.[34].1 The Division shall retain the revenue received from ~~**[the archaeological curatorial this]**~~ fee.~~

~~6.[34].2 The Division shall use this revenue ~~**[to maintain and conserve the for the long-term preservation, care, and management of pre-existing and future State-owned]**~~ archaeological collections ~~**[and associated documents].**~~~~

~~6.[34].3 The Division shall use this revenue only for the operational, equipment[, or personnel costs directly associated in the ~~**[maintenance and conservation long-term preservation, care, and management]**~~ of ~~**[the pre-existing and future State-owned]**~~ archaeological collections ~~**[and associated documents].**~~~~

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 **DE Admin. Code** 3000

ORDER

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

NATURE AND STAGE OF THE PROCEEDINGS

On April 8, 2018, the Delaware Board of Mental Health and Chemical Dependency Professionals published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 10. This notice further indicated that written comments would be accepted by the Board for thirty days, 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 April 25, 2018 at a regularly scheduled meeting of the Delaware Board of Mental Health and Chemical Dependency Professionals to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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*; and

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 April 28, 2018. No written comments were received by the Board during the initial thirty-day or second 15 day public comment periods.

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 first written public comment period, or the public hearing. There was one public comment submitted following the hearing that supported the regulations as proposed.
3. Pursuant to 24 **Del.C.** §3006(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 bring the regulations into conformity with current law and remove outdated, redundant, and inconsistent provisions. The proposed regulations also clarify what is acceptable supervision to the Board and creates regulations for licensed art therapists and licensed associate art therapists pursuant to 24 **Del.C.** §§3060-3064.
5. The Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

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, effective July 11, 2018. The exact text of the regulations, as amended, are attached to this order as Exhibit A.

SO ORDERED this 23rd day of May, 2018.

BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Dr. Todd Grande, LCDP, President

Mary Caroselli, LMFT, Secretary

Irvin Bowers, Public Member (absent)

Dr. Julius Mullen, LPCMH (absent)

Dr. Rosemary Madl-Young, LCDP Vice President

Daniel Cooper, LPCMH

Ruth Banta, Public Member

Margaret Prouse, Ed.D., Public Member

*Please note that no changes were made to the regulation as originally proposed and published in the April 2018 issue of the *Register* at page 792 (21 DE Reg. 792). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

**DIVISION OF PROFESSIONAL REGULATION
CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

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

ORDER

Uniform Controlled Substances Act Regulations

Pursuant to 16 **Del.C.** §4731(a), the Secretary of State ("Secretary") has the statutory authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State.

The proposed changes to Section 1.0 of the rules and regulations of the Delaware Uniform Controlled Substance Act facilitate the operation and effectiveness of the Controlled Substance Advisory Committee ("Committee"). Most importantly, the revisions to subsection 1.7 ensure that a registrant who has violated laws pertaining to controlled substances is not insulated from discipline due to possible conflicts of interest with Committee members.

The Secretary finds that these changes are in the best interest of the public and hereby accepts the Committee's Recommendation, attached hereto and incorporated herein, to adopt the proposed rules and regulations as set forth in the Delaware *Register of Regulations* on March 1, 2018, to be effective 10 days following publication of this Final Order in the *Register of Regulations*. The revised rules and regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 24th day of May, 2018
Jeffrey Bullock, Secretary of State

NATURE OF THE PROCEEDINGS

After due notice in the Delaware *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 28, 2018 at a scheduled meeting of the Delaware Controlled Substance Advisory Committee ("Committee") to receive comments regarding proposed amendments to the Uniform Controlled Substance Act ("UCSA") rules and regulations. The proposed revisions address Section 1.0, pertaining to the composition and operation of the Committee. Section 1.0 has been revised to state that Committee members may serve up to three terms of three years each. Further, proposed changes specify that Committee officers may serve for up to two one year terms, and all Committee members are appointed by the Secretary of State. Subsection 1.7, pertaining to quorum, currently provides that in disciplinary matters, at least one member of the quorum must be from the same profession as the practitioner who is the subject of the proceeding. This requirement can pose significant difficulties in hearing disciplinary matters in the event that a Committee member has a conflict requiring recusal. In that scenario, the Committee may be precluded from taking action with the result that a registrant who has violated laws and regulations pertaining to controlled substances may be insulated from discipline. The Committee has proposed that Section 1.7 be revised to remove this problematic language.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 21, Issue 9, on March 1, 2018. Notice of the March 28, 2018 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was April 12, 2018, 15 days following the public hearing. The Committee deliberated on the proposed revisions at its regularly scheduled meeting on May 23, 2018.

Summary of the Evidence

The following exhibits were made a part of the record:

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

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

There was no testimony given at the public hearing on March 28, 2018. Further, no written comments were received by the Committee.

Findings of Fact and Conclusions

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

Having received no public comment, the Committee recommends that the Secretary of State adopt the rules and regulations as published in the March 1, 2018 *Register of Regulations*.

IT IS SO RECOMMENDED this 23rd day of May, 2018.

Kirsten Opalach PA-C

Joseph Parise, D.O.

Linda Ciavarelli, D.P.M.

Alex Zarrow, R.Ph.

Herbert Von Goerres, R.Ph.

Michael Kremer, D.M.D. (absent)

Jo Ann Baker, D.N.P., F.N.P.

Mark Hanna (absent)

Danielle Downs, D.V.M.

***Please note that no changes were made to the regulation as originally proposed and published in the March 2018 issue of the *Register* at page 691 (21 DE Reg. 691). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Uniform Controlled Substances Act Regulations

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 203E and 209(a) (26 **Del.C.** §§203E and 209(a))

ORDER NO. 9223

3011 Rules for Certification of Electric Transmission Suppliers

IN THE MATTER OF DELAWARE PUBLIC
SERVICE COMMISSION STAFF TO ESTABLISH
REGULATIONS FOR CERTIFYING
NEW ELECTRIC TRANSMISSION UTILITIES
IN THE STATE OF DELAWARE
(OPENED March 13, 2018)

PSC DOCKET 18-0148

AND NOW, this 22nd day of May 2018, the Delaware Public Service Commission ("Commission") determines

and orders the following:

WHEREAS, on February 14, 2018, House Bill 127, as amended by House Amendment No. 1 ("HB 127") (81 **Del. Laws** ch. 205) became law. HB 127 amended Chapter 1, Subchapter II, Title 26 of the Delaware Code by adding "§203E Certificate of public convenience and necessity for new electric transmission utilities." Section 203E provides the Commission authority to evaluate these applications and promulgate regulations prescribing the form of an applications for a certificate of public convenience and necessity ("CPCN"); and

WHEREAS, on March 6, 2018, Commission Staff ("Staff") filed its petition ("Petition") requesting that the Commission open a regulation docket for the purposes promulgating regulations establishing CPCN requirements for entities seeking to begin the business of an electric transmission utility in the State of Delaware; and

WHEREAS, on March 13, 2018, the Commission met at its regularly-scheduled meeting and, after consideration, granted Staff's Petition in Order No. 9193, which opened the docket, ordered the publishing of preliminary regulations ("Proposed Regulation 3011"), and requested public comments through April 30, 2018. As directed, those preliminary regulations were published in the April *Register of Regulations*; and

WHEREAS, Northeast Transmission Development, LLC, an affiliate of LSP Transmission Holdings, LLC, and a member of the LS Power Group (collectively "LS Power") submitted comments. LS Power's comments asserted the following: (i) Proposed Regulation 3011's definition and use of "Business Day" should be deleted as inconsistent with 26 **Del.C.** §203E; (ii) Proposed Regulation 3011's subsection 2.2.32.3 adds a third potential basis for determining "good case" to revoke a CPCN and should be deleted as inconsistent with 26 **Del.C.** §203E, which includes only two bases; thus, the additional third basis is inconsistent with the General Assembly's exclusively defining that "good cause shall consist of"; and (iii) Proposed Regulation 3011's subsection 2.2.18 should be narrowed to information regarding a CPCN applicant's business as an electric transmission utility, as opposed to the broader inquiry into violations of a state's law, rules, or regulations;

WHEREAS, Staff submitted its Memorandum ("Staff's Memo"), incorporated herein by reference, in which Staff found each of LS Power's three assertions persuasive. Staff's Memo sets forth its analysis and agreement to revise Proposed Regulation 3011 consistent with LS Power's comments; and

WHEREAS, Staff Memo memorializes the Acting Executive Director's authority for determining that the revisions are not substantive; and

WHEREAS, Staff requests that approve the Final Proposed Regulation 3011, for final publication with the *Register of Regulations*;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:

1. The Commission finds and determines that Final Proposed Regulation 3011 attached hereto as "Exhibit A" contains no substantive changes to the Proposed Regulations approved for publication in the Delaware *Register of Regulations* under Commission Order No. 9193 dated March 13, 2018.

2. The Final Proposed Regulation 3011 is hereby approved as final, and the Commission Secretary is directed to publish the Final Proposed Regulation 3011 in the Delaware *Register of Regulations*, with an effective date of July 12, 2018.

3. There is no requirement to re-propose Final Proposed Regulation 3011 because the changes were not substantive; accordingly, the public comment period shall not be extended by 15 days under 29 **Del.C.** §10118(a) and Final Proposed Regulation 3011 is not subject to the notice requirements of 29 **Del.C.** §10115.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai C. Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

3011 Rules for Certification of Electric Transmission Suppliers**1.0 Definitions**

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

"Applicant" means a person or entity seeking to obtain an Electric Transmission Supplier Certificate.

~~**"Business Day"** means any calendar day except Saturdays, Sundays, or legal holidays as defined in 1 Del.C. §501.~~

"Commission" means the Delaware Public Service Commission.

"Delmarva" or **"DPL"** means Delmarva Power & Light Company or its successor(s).

"DPA" means the Delaware Division of the Public Advocate.

"Electric Transmission Facility" or **"Transmission facility"** means electric facilities that are located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts, and used to transmit and deliver electricity to customers, including any customers taking electric service under interruptible rate schedules as of December 31, 1998, up through and including the point of physical connection with electric facilities owned by DPL.

"Electric Transmission Supplier Certificate" means a certificate of public convenience and necessity under 26 Del.C. §203E granted by the Commission to an Applicant which fulfilled the Commission's certification requirements and which authorizes the Applicant to construct, operate, own and maintain transmission facilities. The Commission Order approving an Applicant's application for certification as an Electric Transmission Utility shall serve as the Electric Transmission Supplier Certificate.

"Electric Transmission Utility" means a person or entity granted an Electric Transmission Supplier Certificate by the Commission, or otherwise exempt under 26 Del.C. §203A(a)(3), which owns and/or physically operates an Electric Transmission Facility in Delaware.

"Person" means a natural person, a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent, or employee of such agency.

"PJM Interconnection, L.L.C." or **"PJM"** means the Regional Transmission Organization ("RTO") with functional control over Electric Transmission Facilities throughout a multi-state area including Delaware, or its successor(s).

"Public Utility" means every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale, or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in §1001 of this title), water, wastewater (which shall include sanitary sewer charge), telecommunications, (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

"Regional Transmission Expansion Plan" or **"RTEP"** means the process by which PJM approves new transmission projects.

"Regulations" means the Commission's Regulations for Certification of an Electric Transmission Utility. (26 DE Admin. Code 3011, *et seq.*)

"Secretary" means the Secretary of the Commission, or any employee of the Commission designated as such by the Secretary and authorized by the Executive Director.

"Staff" means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

"State" means the State of Delaware.

2.0 Certification of Electric Transmission Suppliers

- 2.1 Before an Applicant may begin the business of providing Electric Transmission Facilities, such Applicant must obtain an Electric Transmission Supplier Certificate from the Commission.
- 2.2 Certification Requirement. All Applicants shall file with the Commission an original and five (5) copies of an application for an Electric Transmission Supplier Certificate or comply with the electronic filing requirements of 26 DE Admin. Code 1001. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws. Applications shall contain at least the following information:
- 2.2.1 Identifying Information. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant or its Affiliated Interests have previously done business in Delaware;
- 2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
- 2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ninety (90) days of filing, that the Applicant is legally authorized and qualified to do business in the State;
- 2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 Del.C. §401, within the State upon whom service of any notice, order or process may be made;
- 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
- 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
- 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicants and the regulatory contact person responsible for the Applicant's Delaware operations;
- 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
- 2.2.9 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Applicant's and its Agent's activities in the State;
- 2.2.10 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution.
- 2.2.11 Project Description. A complete description of any projects that the Applicant intends to develop in Delaware to include:
- 2.2.11.1 A detailed description of the Electric Transmission Facilities for which the applicant seeks a Certificate
- 2.2.11.2 One-line diagrams showing all Electric Transmission Facilities to be constructed
- 2.2.11.3 A description of the construction design to include a pictorial representation of design type;
- 2.2.11.4 An aerial map showing the proposed location and route of planned Electric Transmission Facilities;
- 2.2.11.5 A cost estimate for the project;
- 2.2.11.6 Copies of any analysis undertaken by the Applicant or of which Applicant is aware that demonstrates the reliability-based or economics-based need for the Electric Transmission

FINAL REGULATIONS

Facilities and any impacts on electricity costs, including transmission, energy, capacity, and ancillary services charges within Delaware.

- 2.2.12 Entity Designation. A copy of documentation certifying the Applicant as the PJM entity designated to construct new Electric Transmission Facilities. If the Applicant is not a PJM designated entity, the Applicant must submit additional information under subsections 2.2.13, 2.2.14 and 2.2.15.
- 2.2.13 Financial Information. If the Applicant is not a PJM Designated Entity, evidence of long-term financial viability of the Applicant to provide service in the State, including:
- 2.2.13.1 If publicly traded, the Applicant's: (1) certified financial statements current within twelve (12) months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website);
 - 2.2.13.2 If not publicly traded, the Applicant's accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns or other indicia of financial capability, or, if applicable, the certified financial statements of a publicly traded parent;
 - 2.2.13.3 Applicants submitting European-style financial statements shall include a statement of similarity;
 - 2.2.13.4 Staff may request other indicia of financial capability.
- 2.2.14 Bankruptcy. If the Applicant is not a PJM Designated Entity, the Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months;
- 2.2.15 Operational Experience. If the Applicant is not a PJM Designated Entity, evidence of technical and operational fitness to construct and operate Electric Transmission Facilities, including:
- 2.2.15.1 A description of the entity's experience:
 - 2.2.15.1.1 A description of the entity's experience in constructing and operating electric transmission facilities in other states and an assessment of its long-term viability as an Electric Transmission Utility; and
 - 2.2.15.1.2 A description of the entity's experience with any transmission project in the PJM region.
 - 2.2.15.2 Documentation on the need for and the impact of the proposed transmission facility on the safe, adequate and reliable operation or delivery of electric supply services; and
 - 2.2.15.3 Detailed information on the engineering and technical design of the proposed transmission facility.
 - 2.2.15.4 Staff may request other indicia of technical or operational fitness.
- 2.2.16 Economic Impact. The Applicant's assessment of the impact of granting the Electric Transmission Supplier Certificate on the State's economy and the benefits to the State's ratepayers.
- 2.2.17 The Applicant's assessment of the impact of granting the Certificate of Public Convenience and Necessity on the health, safety and welfare of the general public.
- 2.2.18 Other Proceedings.
- 2.2.18.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
 - 2.2.18.1.1 Been denied approval to construct or operate electric transmission;
 - 2.2.18.1.2 Been found to be in violation of a state's laws, rules, or regulations [related to the provision of electric transmission service];
 - 2.2.18.1.3 Had its electric transmission authority revoked, modified, or suspended; or
 - 2.2.18.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of electric transmission, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and

- 2.2.18.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past five years concerning its electric transmission construction or operation in which the entity agreed to pay a civil penalty, provide any restitution, or make changes to operations:
- 2.2.19 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.18;
- 2.2.20 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in electric transmission projects;
- 2.2.21 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.2.22 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.2.23 Notice. Each Applicant shall publish notice of the filing of its application in two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application.
- 2.2.24 Application Fee. An Applicant for a Certificate of Public Convenience and Necessity to operate as a Public Utility shall submit a non-refundable application fee of \$750 with the application.
- 2.2.25 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.2.26 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 Del.C. §1001 et seq.
- 2.2.27 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny a Certificate of Public Convenience and Necessity to an Applicant where it finds that doing so is in the public interest. The application may be denied if the Commission finds the applicant is unwilling or unable to provide safe, adequate and reliable services.
- 2.2.28 Timing of Application Decision. The Commission shall act on an application within ninety (90) **[Business]** days of the submission of a completed application as defined by PSC Staff. At Commission discretion, the application time period may be extended an additional ninety (90) **[Business]** days.
- 2.2.29 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted to the time the Commission considers the application. The failure to provide such notice within ten (10) Business Days after the change may be grounds for rejection of the application.
- 2.2.30 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of the application. Nothing in this section shall preclude the Commission or the State of Delaware from undertaking any action to address the provision of false information in an application.
- 2.2.31 Terms of Electric Transmission Supplier Certificate are valid until revoked by the Commission or relinquished by the Applicant after the requisite notice to the Commission.

- 2.2.31.1 The transfer of an Electric Transmission Supplier Certificate to other than a Delaware approved Public Utility is prohibited. Any requested transfer to a Delaware approved Public Utility requires application, notice and approval of the Commission.
- 2.2.31.2 No Electric Transmission entity shall cease operation of its facilities within the State without providing at least sixty (60) days Written Notice to the Commission.
- 2.2.32 Revocation or Suspension. The Commission may, for good cause, undertake to suspend or revoke an Electric Transmission Supplier Certificate held by an Electric Transmission Utility. Good cause includes:
- 2.2.32.1 Material noncompliance by the holder of the Certificate with any conditions imposed by the Commission or any Commission order or rule; or
- 2.2.32.2 A finding by the Commission that the holder of the Certificate failed in a material manner to provide safe, adequate and reliable transmission service; or
- ~~2.2.32.3 A finding by the Commission that the Certificate is resulting in material adverse impacts on the State's economy, ratepayers, health, safety, or welfare.~~

3.0 Reports to be Provided to the Commission and DPA

If an Applicant is granted an Electric Transmission Supplier Certificate, the Applicant shall provide semi-annual reports to the Commission and the DPA regarding the status of construction of the Applicant's projects in the State of Delaware until such projects are placed in service. Such updates shall include budgeted vs. actual costs and the expected in-service date of the project.

4.0 Other General Rules

These regulations shall not be construed to require any public utility to secure an Electric Transmission Supplier Certificate for any construction, modifications, upgrades, or extensions within the perimeter of any territory already served by it.

DELAWARE GENERAL ASSEMBLY OFFICE OF THE CONTROLLER GENERAL

Statutory Authority: 80 Delaware Laws, Chapter 413, Section 2 (80 **Del. Laws**, c. 413, §2)

NOTICE

Effective Date of House Bill 211 of the 148th General Assembly

MEMORANDUM

To: Michael Morton, Controller General
From: Victoria Brennan, Senior Legislative Analyst
Subject: House Amendment 1 to House Bill 211 of the 148th General Assembly
An Act to amend Title 10 of the Delaware Code relating to Juvenile Delinquency Proceedings and the use of restraints on a child.
Date: June 5, 2018

House Amendment 1 to House Bill 211 of the 148th General Assembly made the Act of removing restraints from a juvenile during court appearances mandatory effective 180 days after the Controller General made notice and such notice was published in the Register of Regulations stating an appropriation was made.

According to the Department of Services for Children, Youth and Their Families, due to the decreased census numbers statewide of juveniles in custody, the Department has implemented the Act without the need for the additional appropriation.

In the Fiscal Year 2019 Governor's Recommended Budget, 29.0 FTE's were provided to Youth Rehabilitative Services, Secure Care (37-05-50). The Joint Finance Committee approved the addition of these positions on May 22, 2018. In the event of an increase in the census of juveniles in custody, the Department reports the ability to continue to absorb the costs initially outlined in the Fiscal Note.

In Summary, the Controller General's Office has determined House Amendment 1 to House Bill 211 of the 148th General Assembly to have no fiscal impact to the State.

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF EDUCATION PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, July 19, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE PUBLIC NOTICE Medicaid Recovery Audit Contractors Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on July 31, 2018. Please identify in the subject line: Medicaid Recovery Audit Contractors Program.

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

DIVISION OF SOCIAL SERVICES PUBLIC NOTICE Temporary Assistance for Needy Families (TANF)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) is proposing to amend the Division of Social Services Manual regarding Temporary Assistance for Needy Families (TANF), specifically, to revise the requirements of the Contract of Mutual Responsibility (CMR).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on July 31, 2018. Please identify in the subject line: Temporary Assistance for Needy Families (TANF).

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF FISH AND WILDLIFE PUBLIC NOTICE

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

This action is to adopt provisions consistent with the federal measures proposed for the recreational Black Sea Bass fishery in compliance with Addendum XXX to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup [and] Black Sea Bass. Specifically, the proposed action will eliminate Delaware's September 22 through October 21 closure and set the open season from May 15 through December 31 for the recreational Black Sea Bass fishery.

Black Sea Bass are cooperatively managed by the ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) through the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide 2018 recreational harvest limit (RHL) for Black Sea Bass of 3.66 million pounds. Addendum XXX uses a combination of exploitable biomass information from the latest stock assessment and historical harvest to allocate the coastwide RHL between three regions. The ASMFC's Black Sea Bass Management Board approved measures that require the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for Black Sea Bass consistent with those measures required for federal waters. The MAFMC's recommended federal measures for the recreational fishery include a 15-fish possession limit, a 12.5-inch minimum size limit and an open season from May 15 through December 31. These measures, when combined with measures being implemented in the other regions (Massachusetts through New York and New Jersey), are predicted to constrain recreational Black Sea Bass landings at or below the 2018 coastwide RHL.

The hearing record on the proposed amendments to **7 DE Admin. Code 3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas** will open July 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held in conjunction with a public hearing on proposed amendments to **7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Season** on July 26, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, August 10, 2018.

DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE

3511 Summer Flounder Size Limits; Possession Limits; Season

This action is to adopt a minimum recreational summer flounder size limit of 16.5 inches (formerly 17 inches), consistent with Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass. The Department previously amended **7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Season** to accommodate this change through an emergency action (Secretary's Order 2018-F-0026) pursuant to **29 Del.C. §10119** and **7 Del.C. §903(h)** to assure that Delaware's recreational summer flounder fishery resource avoided unnecessary hardship, benefited from a sustainable harvest liberalization and remained competitive with similar fishing resources in New Jersey, Maryland and Virginia.

The Atlantic States Marine Fisheries Commission (ASMFC) and Mid Atlantic Fisheries Management Council extended the regional approach to recreational summer flounder management outlined in Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass through 2018. Addendum XXVIII allows states or regions to develop measures that will achieve the coastwide recreational harvest limit (RHL) of 4.42 M pounds. Based on summer flounder stock status, states or regions may liberalize their 2017 recreational summer flounder regulations to allow for up to a 17% harvest increase in 2018.

By extending the provisions of Addendum XXVIII, Delaware continues to be grouped in a region (DelMarVa) with Maryland and Virginia. The DelMarVa region submitted an analysis to the ASMFC Summer Flounder Technical Committee for a four (4) fish possession limit, a 365-day season and a 16.5-inch minimum size limit that was estimated to result in 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board.

The hearing record on the proposed changes to **7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Season** will open July 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held in conjunction with a public hearing on proposed amendments to **7 DE Admin. Code 3507 Black Sea Bass Size Limit;**

Trip Limits, Seasons; Quotas on July 26, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, August 10, 2018.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DELAWARE COUNCIL ON POLICE TRAINING
PUBLIC NOTICE

801 Regulations of the Delaware Council on Police Training

The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404(a)(14), proposes to revise its regulations. The proposed amendments, which were voted on in a Special Meeting by the COPT on May 23, 2018, seek to update, clarify and provide more detailed information regarding minimum training requirements, firearms training and qualifications for instructors.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the Department of Safety and Homeland Security Attn: Christopher Klein, Public Safety Building Suite 220, P.O. BOX 818, Dover, Delaware 19903-0818 or e-mail Christopherm.klein@state.de.us. Any written submission in response to this notice and the relevant proposed regulations must be received by the Department of Safety and Homeland Security no later than 4:30 p.m. (EST) on July 31, 2018. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
300 BOARD OF ARCHITECTS
PUBLIC NOTICE

The Delaware Board of Architects, pursuant to 24 **Del.C.** §306(a)(1), proposes to revise its regulations in order to clarify the education requirements for applicants; change the name of the NCARB training program from Intern Development Program to Architectural Experience Program; clarify that the continuing education requirements apply to calendar years; and allow licensees to seek pre-approval of continuing education units.

The Board will hold a public hearing on the proposed regulation change on September 5, 2018 at 1:30 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Jennifer Witte, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until September 20, 2018 pursuant to 29 **Del.C.** §10118(a).

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") has proposed revisions to its rules and regulations.

A public hearing will be held on August 21, 2018 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 or to karen.carn@state.de.us.

The Board's proposed amendments add a requirement that licensees must timely update their addresses with the Division of Professional Regulation. Licensure requirements for speech/language pathologists, pertaining to the clinical practicum and the clinical fellowship, are updated to be consistent with the American Speech-Language-Hearing Association's standards. The new Section 11.0 adds disclosure requirements in connection with the fitting and sale of hearing aids. Audiologists and hearing aid dispensers must notify the prospective purchaser of the operation and benefits of telecoil technology, which is used to increase access to telephones and communication with businesses and the community. Finally, the list of substantially related crimes has been revised to include updated drug offenses.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be September 5, 2018, 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.

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

The Delaware Public Service Commission, in compliance with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML, and pursuant to 26 **Del.C.** §362(b), proposes to revise its regulations for the limited purpose of complying with the Memorandum Opinion, issued December 30, 2016, in *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, C.A. N15A-12-002 AML; that is, specifically to promulgate regulations to amend 26 **DE Admin. Code** 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 **Del.C.** §354(i) and (j).

You can review the proposed revised Rules in the July 2018 issue of the Delaware *Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system DelaFile at <http://delafile.delaware.gov/> and for docket # input "Reg. 56." If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Written comments can be filed electronically in DelaFile at <http://delafile.delaware.gov/> by filling out the Public Comment Form located under Public Links. Written comments can also be mailed to Pamela Knotts, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904 or via email to pamela.knotts@state.de.us, with the subject line "Regulation Docket No. 56." Written comments will be accepted until Tuesday, July 31, 2018, pursuant to 29 **Del.C.** §10118(a).