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# Delaware Register of Regulations

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Issue Date: MAY 1, 2018

Volume 21 - Issue 11, Pages 825 - 925

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## IN THIS ISSUE:

Regulations:  
Emergency  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 15, 2018.



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## 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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 17	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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

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1795 Midwifery Advisory Council.....	21 <b>DE Reg.</b> 689 (Prop.)
1799 Genetic Counselor Advisory Council.....	21 <b>DE Reg.</b> 644 (Final)
1900 Board of Nursing.....	21 <b>DE Reg.</b> 485 (Prop.)
	21 <b>DE Reg.</b> 735 (Final)
2100 Board of Examiners in Optometry.....	21 <b>DE Reg.</b> 690 (Prop.)
2500 Board of Pharmacy.....	21 <b>DE Reg.</b> 485 (Prop.)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	21 <b>DE Reg.</b> 556 (Prop.)
	21 <b>DE Reg.</b> 812 (Final)
2700 Board of Registration for Professional Land Surveyors.....	21 <b>DE Reg.</b> 35 (Prop.)
	21 <b>DE Reg.</b> 502 (Final)
2930 Council on Real Estate Appraisers.....	21 <b>DE Reg.</b> 244 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	21 <b>DE Reg.</b> 792 (Prop.)
3100 Board of Funeral Services.....	21 <b>DE Reg.</b> 338 (Final)
	21 <b>DE Reg.</b> 559 (Prop.)
3500 Board of Examiners of Psychologists.....	21 <b>DE Reg.</b> 486 (Prop.)

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.....	21 <b>DE Reg.</b> 813 (Final)
3800 Board of Dietetics/Nutrition.....	21 <b>DE Reg.</b> 135 (Prop.)
4400 Delaware Manufactured Home Installation Board.....	21 <b>DE Reg.</b> 738 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	21 <b>DE Reg.</b> 154 (Final)
5300 Board of Massage and Bodywork.....	21 <b>DE Reg.</b> 138 (Prop.)
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3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	21 <b>DE Reg.</b> 815 (Final)
3011 Rules for Certification of Electric Transmission Suppliers.....	21 <b>DE Reg.</b> 691 (Prop.)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Planning and Policy</b>	
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	21 <b>DE Reg.</b> 418 (Prop.)
	21 <b>DE Reg.</b> 585 (Final)
<b>MERIT EMPLOYEES RELATIONS BOARD</b>	
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<b>OFFICE OF MANAGEMENT AND BUDGET</b>	
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4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	21 <b>DE Reg.</b> 284 (Prop.)
	21 <b>DE Reg.</b> 503 (Final)
	21 <b>DE Reg.</b> 645 (Final)
<b>OFFICE OF THE STATE TREASURER</b>	
<b>Division of Debt and Cash Management</b>	
1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds.....	21 <b>DE Reg.</b> 800 (Prop.)

**Symbol Key**

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

**Emergency Regulations**

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

**§ 10119. Emergency regulations.**

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

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
  - (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
  - (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
  - (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
  - (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)
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**DEPARTMENT OF AGRICULTURE  
DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Sections 101(3) & 1011 and 29 Delaware Code, Section 10119 (3 **Del.C.** §§101(3), 1011 and 29 **Del.C.** §10119)  
3 **DE Admin. Code** 402

**SECRETARY'S ORDER  
(Extension of Emergency Order of December 26, 2017)****402 State Forest Regulations****AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the State of Delaware Department of Agriculture adopted on December 26, 2017 emergency amendments to the State Forest Regulations, 3 Delaware Administrative Code §402. These regulations were issued by the Secretary pursuant to the power conveyed by the General Assembly for The Agriculture Secretary by 3 **Del.C.** §101(3), and by the specific authority to devise and promulgate regulations to protect State Forest lands conferred by 3 **Del.C.** §1011.

The above emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. The Department is currently in the process of formally adopting final regulation amendments as it relates to the affected Regulations referenced above. As the 120-day period will expire before such time as it is possible for the Department to finalize its formal adoption of the above regulatory amendments, it is now necessary to renew the emergency order for an additional 60 days, pursuant to 29 **Del.C.** §10119(3), so as to retain its provisions while the amendments are being finalized pursuant to the Administrative Procedures Act.

**REASON FOR RENEWAL OF THE EMERGENCY ORDER**

The portions of the Regulations referenced above relating to firearms were affected by the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC*, issued on December 7, 2017. The decision will have binding effect upon the issuance of a mandate by the Court. The Court found that the existing firearms regulations violated the State of Delaware Constitution, in that they were overly broad in their prohibitions. In the absence of interim regulations, firearms would essentially be unregulated on State Forest lands, including facilities such as education centers, lodges, and offices. A risk of harm from gunfire would be present in these and other areas where visitors gather, including families and children. Law enforcement authorities would lack the ability to screen and check for identification, permits, or credentials of armed visitors to these facilities. The Court recognized that restrictions on firearms are appropriate in limited public areas and facilities; but that licensed and qualified persons must be exempt from such prohibitions. The interim regulations are an effort to strike the balance the Court mandated.

The aforementioned emergency order is being renewed for an additional 60 days since there is insufficient time to finalize the formal adoption of the aforementioned regulatory amendments through the Administrative Procedures Act on or before the expiration of the initial 120-day period, which will be April 25, 2018. This action is being taken to maintain the current interim measures, which the Department has deemed necessary to avoid the risk of harm to public health, safety, and welfare.

Subsequent to the adoption of the emergency regulations on December 26, 2017, the Department began the formal regulatory promulgation process with the publication of its initial proposed regulatory amendments in the January 1, 2018 *Register of Regulations*. Thereafter, the Department held public workshops in each county throughout the State of Delaware in February 2018, and held the public hearing on March 12, 2018. It is anticipated that the formal adoption of the aforementioned regulatory amendments will be finalized prior to the expiration of this 60-day renewal period (on or before June 25, 2018).

**EFFECTIVE DATE OF ORDER**

The renewal of this emergency order shall take effect at 12:01 a.m. on April 26, 2018, and shall remain in effect for no longer than 60 additional days. The Department's formal regulatory amendments, however, shall immediately supersede the interim regulations upon formal approval, pursuant to the Administrative Procedures Act, and 29 **Del.C.** §10115.

**PETITION FOR RECOMMENDATIONS**

Consistent with the requirements of 29 **Del.C.** §10119(4) the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Office of the Secretary, Delaware Department of Agriculture, 2320 South Dupont Highway, Dover, Delaware, 19901.

**ORDER**

It is hereby ordered, the 16<sup>th</sup> day of April, 2018 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 **Del.C.** §10119 and effective as noted above

Michael T. Scuse, Secretary

**402 State Forest Regulations**  
*(Break in Continuity of Sections)*

**8.0 Hunting Rules and Regulations***(Break in Continuity Within Section)*

- 8.8 Target shooting is prohibited. Firearms are allowed for legal hunting only and are otherwise prohibited within designated safe areas on State Forest lands.
- 8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.
- 8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, provided that proper and current credentials shall be produced to Departmental authorities upon request.
- 8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, provided that the permit shall be produced upon request of Departmental authorities.
- 8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.
- 8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.
- 8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

**402 State Forest Regulations**

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

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

**Secretary's Order No. 2018-F-0026**

**3511 Summer Flounder Size Limits; Possession Limits; Season**

**AUTHORITY**

Pursuant to 29 Del.C. §10119, the Department of Natural Resources and Environmental Control is adopting amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Season*, without prior notice or public hearing to ensure that Delaware's recreational Summer Flounder fishery resource avoids unnecessary hardship, benefits from a sustainable harvest liberalization, and remains competitive with similar fishing resources in New Jersey, Maryland and Virginia.

7 Del.C. §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource or habitat involving finfish. It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act.

**REASON FOR THE EMERGENCY ORDER**

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 coast wide 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 is estimated to result in 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board.

The Summer Flounder recreational fishery in Delaware begins imminently in April. The requirements of 29 **Del.C.** §§ 10115 - 10118 do not afford sufficient time to accommodate the amendments before the recreational fishery begins. The emergency provisions of 29 **Del.C.** §10119, as well as 7 **Del.C.** §903(h), which authorizes the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, allow for the adoption of the Emergency Regulation. Emergency Regulation is necessary for Delaware's recreational fishing resources to avoid unnecessary hardship, to benefit from the sustainable harvest liberalization and to remain competitive with similar fisheries in New Jersey, Maryland and Virginia.

**EFFECTIVE DATE OF ORDER**

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act, pursuant to 29 **Del.C.** §10115.

**PETITION FOR RECOMMENDATIONS**

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

**ORDER**

It is hereby ordered, the 13<sup>th</sup> day of April, 2018 that the above referenced amendment to 7 **DE Admin. Code** 3511, *Summer Flounder Size Limits; Possession Limits; Season*, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), and are supported by the evidence contained herein.

Shawn M. Garvin,  
Secretary

**3511 Summer Flounder Size Limits; Possession Limits; Season**

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

*(Break in Continuity of Sections)*

- 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.

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

**3511 Summer Flounder Size Limits; Possession Limits; Season**

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**DIVISION OF FISH AND WILDLIFE AND DIVISION OF PARKS AND RECREATION**

Statutory Authority: 7 Delaware Code, Section 4701(a)(4) and 29 Delaware Code, Sections 8003(7) & 10119 (7 **Del.C.** §4701(a)(4) and 29 **Del.C.** §§8003(7) & 10119)

7 **DE Admin. Code** 3900 and 7 **DE Admin. Code** 9201

**Secretary's Order No. 2018-P-0027**  
**(Extension of Emergency Order 2017-P-0030)**

**3900 Wildlife**  
**9201 Regulations Governing State Parks**

**AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control adopted on December 26, 2017 amendments through emergency order 2017-P-0030 to the *Regulations Governing State Parks*, 7 Delaware Administrative Code §9201, and the *Regulations Governing Land and Waters Administered by the Division of Fish and Wildlife*, 7 Delaware Administrative Code §3900. This action was taken by the Secretary without prior notice or public hearing pursuant to the power conveyed by the General Assembly for DNREC to "[m]ake and enforce regulations relating to the protection, care and use of the areas it administers," 7 **Del.C.** §4701(a)(4), and to "[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State." 29 **Del.C.** §8003(7).

The above emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. The Department is currently in the process of formally adopting final regulation amendments as it relates to the affected Regulations referenced above. As the 120-day period will expire before such time as it is possible for the Department to finalize its formal adoption of the above regulatory amendments, it is now necessary to renew the emergency order for an additional 60 days, pursuant to 29 **Del.C.** §10119(3), so as to retain its provisions while the amendments are being finalized pursuant to the Administrative Procedures Act.

**REASON FOR RENEWAL OF THE EMERGENCY ORDER**

The portions of the Regulations referenced above relating to firearms were affected by the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC*, issued on December 7, 2017. The Court found that the existing firearms regulations violated the State of Delaware Constitution, in that they were overly broad in

their prohibitions. In the absence of interim regulations, firearms would essentially be unregulated within State Parks and on land and waters administered by the Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. A risk of harm from gunfire would be present in these and other areas where visitors gather, including families and children. Law enforcement authorities would lack the ability to screen and check for identification, permits, or credentials of armed visitors to these facilities. The Court recognized that restrictions on firearms are appropriate in limited public areas and facilities; but that licensed and qualified persons must be exempt from such prohibitions. The interim regulations are an effort to strike the balance the Court mandated.

The aforementioned emergency order is being renewed for an additional 60 days since there is insufficient time to finalize the formal adoption of the aforementioned regulatory amendments through the Administrative Procedures Act on or before the expiration of the initial 120-day period, which will be April 25, 2018. This action is being taken to maintain the current interim measures, which the Department has deemed necessary to avoid the risk of harm to public health, safety, and welfare.

Subsequent to the adoption of the emergency regulations on December 26, 2017, the Department began the formal regulatory promulgation process with the publication of its initial proposed regulatory amendments in the January 1, 2018 *Register of Regulations*. Thereafter, the Department held public workshops in each county throughout the State of Delaware in February 2018, and held the public hearing on March 12, 2018. It is anticipated that the formal adoption of the aforementioned regulatory amendments will be finalized prior to the expiration of this 60-day renewal period (on or before June 25, 2018).

#### **EFFECTIVE DATE OF ORDER**

The renewal of this emergency order shall take effect at 12:01 a.m. on April 26, 2018, and shall remain in effect for no longer than 60 additional days. The Department's formal regulatory amendments, however, shall immediately supersede the interim regulations upon formal approval, pursuant to the Administrative Procedures Act, and 29 **Del.C.** §10115.

#### **PETITION FOR RECOMMENDATIONS**

Consistent with the requirements of 29 **Del.C.** §10119(4) the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Office of the Secretary, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware, 19901.

#### **ORDER**

It is hereby ordered, the 16<sup>th</sup> day of April, 2018 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 **Del.C.** §10119 and effective as noted above

Shawn M. Garvin  
Secretary

#### **3900 Wildlife**

##### ***(Break in Continuity of Sections)***

#### **8.0 General Rules and Regulations Governing Land and Waters Administered by the Division**

##### ***(Break in Continuity Within Section)***

#### **8.3 Hunting and Firearms.**

##### ***(Break in Continuity Within Section)***

#### **8.3.4 Firearms on Division Areas.**

8.3.4.1 It shall be unlawful for any person to possess a firearm ~~on lands or waters~~ within designated areas administered by the Division ~~from March 1 through August 31~~, except as authorized by the Director in writing.

***(Break in Continuity Within Section)***

8.3.4.6 Designated areas shall include Division offices, visitor centers, nature centers, educational facilities, and maintenance shops, and shall be identified by appropriate signage.

8.3.4.7 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.

8.3.4.8 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, provided that proper and current credentials shall be produced upon request of Division authorities.

8.3.4.9 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, provided that the permit shall be produced upon request of Parks authorities.

8.3.4.10 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

8.3.4.11 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

8.3.4.12 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

**3900 Wildlife**

**9201 Regulations Governing State Parks**

***(Break in Continuity of Sections)***

**21.0 Hunting, Fishing and Wildlife Management - Environmental D Violation**

21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment ~~upon lands or waters~~ within designated areas administered by the Division, except with prior written approval of the Director.

21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums, museums, zoos, stables, educational facilities, dormitories, group camping areas, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.

21.1.2 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.

21.1.3 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, upon showing proper and current credentials to Parks authorities.

21.1.4 Delaware residents holding an active current license to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, upon showing the license to Parks authorities.

21.1.5 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

21.1.6 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

21.1.7 Any person possessing a firearm shall display identification upon entry and upon request, sufficient to enable a law enforcement officer to undertake a background check.

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

**9201 Regulations Governing State Parks**

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## Symbol Key

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

## Proposed Regulations

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

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### DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

#### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "trainer rules" for clarity by simplifying some language, adding definitions, and specifically stating that all trainers of a horse are responsible for its fitness.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on April 6, 2018, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On April 10, 2018, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publicly noticed open meetings. Subsequent to the initial 30-day comment period from May 1 to 31, 2018 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on June 12, 2018 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB June 1, 2018. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

**\*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/may2018/proposed/21 DE Reg 845RFA 05-01-18.pdf>

#### 501 Harness Racing Rules and Regulations

# PROPOSED REGULATIONS

## 1.0 Definitions

*(Break in Continuity Within Section)*

**"Principal Trainer"** is the trainer listed on the race program.

*(Break in Continuity Within Section)*

**"Trainer"** is an individual who receives any compensation, either directly or indirectly, for training the horse or who performs any of the criteria in subsections 5.3.1.3.1 through 5.3.1.3.5. The trainer(s) is (are) the person or persons to whom trainer-related penalties shall apply in the event of a rule violation. In addition, there is a presumption that domestic partners that are individually licensed by the Commission will both be considered as trainer.

**"Tubing"** is the administration of any substance via a naso-gastric tube.

*(Break in Continuity of Sections)*

## 5.0 Licensees

*(Break in Continuity Within Section)*

### 5.2 Owners

*(Break in Continuity Within Section)*

#### 5.2.2 Licensing Requirements for Multiple Owners

*(Break in Continuity Within Section)*

5.2.2.6 The written appointment of a managing owner or authorized agent shall be filed with the United States Trotting Association or Canadian Trotting Association and with the Commission.

*(Break in Continuity Within Section)*

### 5.3 Trainers

#### 5.3.1 Eligibility

5.3.1.1 A person shall not train horses, ~~or be programmed as trainer of record at extended meetings,~~ without first having obtained a trainer license from the Commission valid for the current year by meeting the standards for trainers, as laid down established by the United States Trotting Association, and being licensed by the Commission. ~~The "trainer of record" shall be any individual who receives compensation for training the horse. The holder of a driver's license issued by the United States Trotting Association is entitled to all privileges of a trainer and is subject to all rules respecting trainers.~~

*(Break in Continuity Within Section)*

5.3.1.3 If more than one person performs any of the criteria in subsections 5.3.1.3.1 through 5.3.1.3.5 or receives any form of compensation, directly or indirectly, for training or managing the horse, then the principal trainer or that person must also obtain a trainer's license from the Commission valid for the current year by meeting the standards for trainers, must be listed as "trainer of record" established by the United States Trotting Association. It shall be a violation for the principal trainer or trainer of a horse to fail to disclose that an unlicensed person is acting as a trainer. In addition, the Commission may deny a license to any person who prior to having been granted a trainers of a horse not license is determined by the judges or Commission to be listed have acted as a "trainer of record". The principal trainer and, if such unlisted principal any other trainer(s) or trainers are licensees of the Commission, then he, she or they shall be liable for all rule violations and subject to a fine and/or suspension including revocation of license for such violation. In addition, it shall be a violation for a person who is not the principal trainer of the horse to be listed as "trainer of record", and such person shall be subject to a fine and/or suspension for such violation. Principal trainers and programmed trainers shall be equally liable for all rule violations. For purposes of this rule, the Steward and judges shall use the following criteria in determining the identity of the principal trainer(s) or trainers of a horse:

*(Break in Continuity Within Section)*

5.3.1.3.5 The identity of the person who communicates on behalf of the owner with the ~~Steward~~, judges and other Commission personnel regarding the horse, including regarding any questions concerning the location or condition of the horse, racing or medication violations, etc.

## 5.3.2 Trainer Responsibility

5.3.2.1 A trainer is responsible for the condition of horses entered in an official race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. If there is a principal trainer and one or more additional trainer(s) for a horse, all shall be responsible for any rules violations with respect to the horse. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a principal trainer of a horse names a substitute trainer for program purposes due to his inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive.

***(Break in Continuity Within Section)***

## 6.0 Types of Races

***(Break in Continuity Within Section)***

### 6.6 Delaware Owned or Bred Races

***(Break in Continuity Within Section)***

6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which he covered a book of mares or a horse whose dam was a wholly-owned Delaware brood mare at the time of breeding as shown on the horse's United ~~State~~ States Trotting Association registration or electronic eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 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:**

**501 Harness Racing Rules and Regulations**

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## 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

### PUBLIC NOTICE

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

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

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

Pursuant to 14 **Del.C.** 122(b) and 14 **Del.C.** Ch. 12, Subchapter VII, the Secretary of Education intends 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 4, 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](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address 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 does not address students' receipt of an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation does not address students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended 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/may2018/proposed/21 DE Reg 847RFA 05-01-18.pdf](http://regulations.delaware.gov/register/may2018/proposed/21%20DE%20Reg%20847RFA%2005-01-18.pdf)

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

**3.0 Appraisal Cycle**

- 3.1 Experienced Teachers who have earned a rating of "Highly Effective" or "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation each year within the summative cycle and either an additional Announced or Unannounced Observation or the equivalent of observed time (30 minutes) through three (3) Short Observations with a Summative Evaluation at least once every two (2) years.

*(Break in Continuity of Sections)*

## 6.0 Summative Evaluation Ratings

*(Break in Continuity Within Section)*

- 6.2 The Summative Evaluation rating shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

*(Break in Continuity Within Section)*

- 6.2.5 Experienced Teachers receiving a Summative Evaluation every two years in accordance with subsection 3.1 above shall earn an overall Student Improvement Component rating on the Summative Evaluation in accordance with the following chart in the DPAS II Revised Guide for Teachers:

Year 1 or 2	Year 1 or 2	Rating
Exceeds	Exceeds	Highly Effective
Exceeds	Satisfactory	Effective
Exceeds	Unsatisfactory	Effective
Satisfactory	Satisfactory	Effective
Satisfactory	Unsatisfactory	Needs Improvement
Unsatisfactory	Unsatisfactory	Ineffective

The first two columns above indicate the rating combinations earned in a two-year Summative Evaluation cycle, regardless of the order in which they were earned.

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

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

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### 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

### PUBLIC NOTICE

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

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

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. 122(b) and 14 Del.C. Ch. 12, Subchapter VII, the Secretary of Education intends 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 4, 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](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the State of Delaware's Registrar of Regulation's website located at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not address 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 does not address students' receipt of an equitable education.

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended 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/may2018/proposed/21 DE Reg 849RFA 05-01-18.pdf](http://regulations.delaware.gov/register/may2018/proposed/21%20DE%20Reg%20849RFA%2005-01-18.pdf)

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

### 6.0 Summative Evaluation Ratings

*(Break in Continuity Within Section)*

6.2 The Summative Evaluation rating shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".

*(Break in Continuity Within Section)*

- 6.2.5 Experienced Specialists receiving a Summative Evaluation every two years in accordance with subsection 3.1 above shall earn an overall Student Improvement Component rating on the Summative Evaluation in accordance with the following chart in the DPAS II Revised Guide for Specialists:

Year 1 or 2	Year 1 or 2	Rating
Exceeds	Exceeds	Highly Effective
Exceeds	Satisfactory	Effective
Exceeds	Unsatisfactory	Effective
Satisfactory	Satisfactory	Effective
Satisfactory	Unsatisfactory	Needs Improvement
Unsatisfactory	Unsatisfactory	Ineffective

The first two columns above indicate the rating combinations earned in a two year Summative Evaluation cycle, regardless of the order in which they were earned.

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

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

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**OFFICE OF THE SECRETARY**

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

**PUBLIC NOTICE**

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

**610 Limitations on Use of Seclusion and Restraint**

**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

The Secretary of Education intends to amend 14 DE Admin. Code 610 Limitations on Use of Seclusion and Restraint. This regulation is being amended to align with House Bill 142 of the 149<sup>th</sup> General Assembly which requires the regulation be amended to include improved guidelines for school districts 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 to update this regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 4, 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](mailto: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](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, Finance Office located at the address listed above.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address 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 is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to help ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements 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? Per the statute, there is no expected cost to implementing this amended regulation as existing resources are to be used.

**\*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/may2018/proposed/21\\_DE\\_Reg\\_851RFA\\_05-01-18.pdf](http://regulations.delaware.gov/register/may2018/proposed/21_DE_Reg_851RFA_05-01-18.pdf)

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

### 2.0 Definitions

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

#### (Break in Continuity Within Section)

**“Mechanical restraint”** means the application of any device or object that restricts a student’s freedom of movement or normal access to a portion of the body that the student cannot easily remove. “Mechanical restraint” does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

- ~~restraints~~ Restraints for medical immobilization;
- ~~adaptive~~ Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
- ~~vehicle~~ Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- ~~instruction~~ Instruction and use of restraints as part of a criminal justice or other course; or
- ~~notwithstanding~~ Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(Authority: 14 Del.C. §4112F(a)(2))

“Parent” means:

- a A biological or adoptive parent of a child;
- a A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- ~~an~~ An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver’s School Authorization executed in compliance with 14 Del.C. §202(f)(1) is on file;
- ~~an~~ An individual who is otherwise legally responsible for the child's welfare; or
- a A surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926,19.0 or Section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 Del.C. §3110)

“Physical restraint” means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. “Physical restraint” does not include physical contact that:

- ~~helps~~ Helps a student respond or complete a task;
- ~~is~~ is needed to administer an authorized health-related service or procedure; or
- ~~is~~ is needed to physically escort a student when the student does not resist or the student’s resistance is minimal.

(Authority: 14 Del.C. §4112F(a)(3))

***(Break in Continuity Within Section)***

“Public school personnel” means an employee or contractor of a public school district or charter school. “Public school personnel” does not include the following:

- a A law enforcement officer as defined in § 9200(b) of Title 11; unless the law enforcement officer meets the definition of a School Resource Officer/SRO; or
- ~~an~~ An employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility.(Authority: 14 Del.C. §4112F(a)(4))

**“School Resource Officer (SRO)”** means a contractor, subcontractor or employee of a public school district or charter school who is a sworn law enforcement officer as defined in 11 Del.C. §9200.

***(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:

- 9.1.1 Training which is consistent with that which is required of other public school personnel within their school district or charter school for disability awareness and behaviors that may manifest as a result of disabilities;
- 9.1.2 Best practices for de-escalation techniques utilized in the school setting;
- 9.1.3 Current information on the intervention decisions and techniques used by school personnel within the school setting;
- 9.1.4 Such other training as is necessary to protect the health and well-being of students with disabilities which shall include basic awareness training specific to Individualized Education Programs (IEP), functional behavior assessments and Behavior Support Plans;

# PROPOSED REGULATIONS

- 9.1.5 A SRO shall participate in the annual SRO training provided by the Delaware State Police or equivalent training provided by the police agency employing the SRO.
- 9.2 The training outline in this regulation shall include reference to how it relates to the duties and responsibilities of a SRO as outlined in the Memorandum of Agreement between the school district or charter school and the police agency employing the SRO as required under Regulation 601.
- 9.3 Prior to the start of each school year, or as soon as practical, but no later than 30 calendar days after the first student day of school, a representative of each school building shall meet with the SRO assigned to that school in order to be familiarized with behaviors related to disabilities that may occur in the school and typical responsive actions that may be taken by school personnel in that school.
- 9.4 Nothing within this regulation or contained within 14 Del.C. §4112F shall be interpreted as creating any additional restrictions on the sworn authority of law enforcement officers or their ability to carry out their required sworn duty.

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

**610 Limitations on Use of Seclusion and Restraint**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 303(a) (14 Del.C. §§122(b) and 303(a))  
14 DE Admin. Code 1007

### PUBLIC NOTICE

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

### 1007 DIAA Sportsmanship

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 DE Admin. Code 1007 DIAA Sportsmanship. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 DE Admin. Code 1007. The amendments include adding definitions for the terms "DIAA" and "Executive Director" to subsection 1.1; striking the terms Administrative Head of School, "Department," "Guardian or Legal Guardian," "Individualized Education Program or IEP," "Legally in attendance," and "State Board" from subsection 1.1 as those terms do not appear elsewhere in the regulation; and revising subsection 2.3, which concerns penalties for sportsmanship violations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 4, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, which is found at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to interscholastic athletics and does not directly 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 is related to interscholastic athletics and does not help to ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation helps to ensure that all students' legal rights are respected.
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 decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is not a less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards for complying with the 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/may2018/proposed/21 DE Reg 854RFA 05-01-18.pdf>

## 1007 DIAA Sportsmanship

### 1.0 Definitions and Sportsmanship

#### 1.1 Definitions

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

~~“Administrative Head of School” means the chief or head individual in charge of the school traditionally referred to or generally known as the principal or headmaster.~~

“Board” means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Chapter 3.

~~“Department” means the Delaware Department of Education.~~

“DIAA” means the Delaware Interscholastic Athletic Association.

“Executive Director” means the Executive Director of the Delaware Interscholastic Athletic Association.

~~“Guardian or Legal Guardian” means an individual who legally has responsibility for the care and management of the student during the student’s minority. The relationship is a legal one and shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.~~

# PROPOSED REGULATIONS

~~“Individualized Education Program” or “IEP” means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.~~

~~“Legally in attendance” means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.~~

~~“Member school School” means a full or associate member school of the DIAA Delaware Interscholastic Athletic Association.~~

~~“Principal” or “Headmaster” means the Administrative Head of School and includes but is not limited to chief or head individual in charge of a school who is traditionally referred to or generally known as the principal or headmaster, including Head of School, Administrator, Executive Director, or Charter Head.~~

~~“School day(s) Days” shall mean actual school attendance days during the regular academic school year including a partial day that children are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.~~

~~“State Board” means the State Board of Education of the State of Delaware pursuant to 14 Del.C. §104.~~

## 1.2 Sportsmanship

- 1.2.1 ~~Member schools Schools~~ are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

*(Break in Continuity Within Section)*

## 2.0 Processing Violations

### 2.1 Procedures

*(Break in Continuity Within Section)*

- 2.1.2 Within twenty calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a ~~member school~~ Member School or by the Executive Board of an officials’ association.

*(Break in Continuity Within Section)*

- 2.1.3 The Executive Director shall transmit a copy of the report to the ~~principal~~ Principal or ~~headmaster~~ Headmaster or official designee of the school(s) involved.

- 2.1.4 Each ~~principal~~ Principal or ~~headmaster~~ Headmaster concerned shall investigate and provide such information or answers to the report as are appropriate.

- 2.1.5 The Executive Director shall provide ~~member schools~~ Member Schools and officials’ associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

*(Break in Continuity Within Section)*

- 2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DIAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of ~~member schools~~ Member Schools may be imposed by the Sportsmanship Committee.

*(Break in Continuity Within Section)*

### 2.2 Policies

- 2.2.1 The basis for the following policy statement is that a ~~Member school~~ School shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

- 2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

***(Break in Continuity Within Section)***

- 2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 ~~school days~~ School Days, or

- 2.2.1.1.3 Having the entire school disciplined by DIAA.

- 2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the ~~principal~~ Principal, ~~headmaster~~ Headmaster, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 ~~school days~~ School Days.

***(Break in Continuity Within Section)***

- 2.2.1.4 Member Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DIAA.

- 2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

***(Break in Continuity Within Section)***

- 2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 ~~school days~~ School Days, or

- 2.2.1.5.3 Having the entire school disciplined by DIAA.

- 2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

- 2.2.1.6.1 He or she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

- 2.2.1.6.2 He or she argues with the official or indicates with gestures or other physical actions ~~his/her~~ his or her dislike for a decision, or

- 2.2.1.6.3 He or she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

- 2.2.1.6.4 He or she makes disparaging or unprofessional remarks about another school's personnel.

- 2.2.1.7 All actions by a Member ~~school~~ School resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director or the Sportsmanship Committee.

## 2.3 Penalties

### ~~2.3.1 Game Ejection~~

- ~~2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA or a conference may impose. During the suspension, the coach or player may not be present at any game at any level of competition in that sport involving his school. In addition, the coach or player may not be present at any game-related activities immediately before the contest, during the intermission, or immediately after the contest. The coach or player must be "out of sight and sound" of the game and game-related activities regardless of whether the coach or player is physically on school premises. If the offending coach or player is present at a game or game-related activity during the suspension in any capacity, including but not limited to: manager, statistician, site worker, spectator, etc., the individual will be suspended for one additional game at that level of competition.~~

## PROPOSED REGULATIONS

- 2.3.1.1.1 ~~A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next complete contest at that level of competition and all other complete or suspended contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.~~
- 2.3.1.2 ~~A disqualified player or coach may not be physically present at any contest in that sport during the suspension.~~
- 2.3.1.3 ~~If a coach is disqualified from the final contest of the season, the suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.~~
- 2.3.1.3.1 ~~Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.~~
- 2.3.1.3.2 ~~Seniors shall fulfill their penalty in the post season all star game in that sport. If not chosen to participate in the all star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his high school career, the Member school is requested to take appropriate administrative action to discipline the offending student.~~
- 2.3.1.4 ~~A player or coach ejected for a second time during the same season shall be subjected to a two game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by the principal or designee and, in the case of an athlete, by the coach.~~
- 2.3.1.5 ~~Appeal of a contest suspension resulting from a game ejection.~~
- 2.3.1.5.1 ~~A coach or player may appeal a contest suspension resulting from a game ejection to the DIAA Executive Director. Contest suspensions that may be appealed include suspensions from game ejections under the individual sport playing rules, other DIAA policies, or a suspension under section 2.3.1.1 or 2.3.1.1.1. The Executive Director may decide the appeal or in his discretion refer it to the Sportsmanship Committee or subcommittee.~~
- 2.3.1.5.2 ~~If the Executive Director is unable to make a decision before the next contest, the suspension remains in effect. The Executive Director's, or Sportsmanship Committee's, or subcommittee's decision to uphold or rescind the suspension resulting from a game ejection is final and may not be appealed.~~
- 2.3.2 ~~Unless otherwise limited, the Executive Director and Sportsmanship Committee may impose any penalties as deemed necessary based on the particular circumstances. The following are examples of possible penalties and represent degrees of discipline in enforcing the Sportsmanship Rule:~~
- 2.3.2.1 ~~Reprimand, a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.~~
- 2.3.2.2 ~~Probation, probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:~~
- 2.3.2.2.1 ~~Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he or she or the school files with DIAA a plan indicating the measures that shall be taken to alleviate the problem which caused him or her or the school to be placed on probation, or~~
- 2.3.2.2.2 ~~Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned~~

~~events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.~~

~~2.3.2.3 Suspension, a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DIAA sanctioned interscholastic competition.~~

2.3.1 Unless otherwise limited, the Executive Director and Sportsmanship Committee may impose penalties on a Member School, a particular team of a Member School, a particular athlete, coach, or administrator of a Member School, an official, or a spectator, as deemed necessary based on the particular circumstances. The following are examples of possible penalties and represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.1.1 Reprimand: a reprimand is official written notice that an unethical or unsportsmanlike action has occurred and that such an occurrence must not be repeated. A reprimand is a matter of record.

2.3.1.2 Probation: probation is a more severe penalty and may be expressed in one of the following ways:

2.3.1.2.1 Conditional probation wherein the offending individual or Member School may participate in regular season contests, sanctioned events, and conference and state championships provided he, she, or the school files with the DIAA office a plan indicating the measures that shall be taken to alleviate the problem which caused him or her or the school to be placed on probation; or

2.3.1.2.2 Restrictive probation wherein a Member School or a particular team of a Member School may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.1.3 Suspension: a suspension means that the offending individual or Member School shall not attend or participate in any DIAA sanctioned interscholastic competition and may also include tryouts.

2.3.2 Game Ejection

2.3.2.1 A player or coach disqualified before, during, or after a contest for an unsportsmanlike act shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA may impose.

2.3.2.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.2.2 A disqualified player or coach shall not be physically present at any contest in that sport during the suspension.

2.3.2.2.1 The coach or player shall not be present at any game-related activities immediately before the contest, during the intermission, or immediately after the contest. The coach or player must be "out of sight and sound" of the game and game-related activities regardless of whether the coach or player is physically on school premises.

2.3.2.2.2 If the offending coach or player is present at a game or game-related activity during the suspension in any capacity, including but not limited to: manager, statistician, site worker, spectator, etc., the coach or player shall be suspended for one additional game at that level of competition.

2.3.2.3 If a coach or athlete is disqualified from the final contest of the season, the suspension shall carry over to the next year in that sport.

2.3.2.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.

# PROPOSED REGULATIONS

- 2.3.2.3.2 Athletes who do not fulfill their penalty in the same sport or who do not retain eligibility shall be disqualified for the appropriate length of time in their next sport.
- 2.3.2.3.2.1 Seniors shall fulfill their penalty in another sport during the same season or another sport during a subsequent season.
- 2.3.2.3.2.2 When a senior is disqualified from the last game of his or her high school career, the Member School shall take appropriate administrative action to discipline the offending student, which may include withdrawing the student from a post-season all-star game. The Member School shall report the action taken to the Sportsmanship Committee.
- 2.3.2.4 A player or coach ejected for a second time during the same season shall be subjected to a two game suspension and shall meet, in a timely fashion, with the Sportsmanship Committee accompanied by the Principal or his or her designee and, in the case of an athlete, by the coach.
- 2.3.2.5 Appeal of a contest suspension resulting from a game ejection
- 2.3.2.5.1 A coach or player may appeal a contest suspension resulting from a game ejection to the DIAA Executive Director. Contest suspensions that may be appealed include suspensions from game ejections under the individual sport playing rules, other DIAA policies, or a suspension under subsections 2.3.1.1 or 2.3.1.1.1. The Executive Director may decide the appeal or, in his or her discretion, refer it to the Sportsmanship Committee or a subcommittee that may include the Board's Chairperson, the Sportsmanship Committee's Chairperson, the committee chairperson of the applicable recognized sports committee, the State rules interpreter for the applicable sport, a representative of the applicable officials' association, and any other individuals the Executive Director deems necessary.
- 2.3.2.5.2 If the Executive Director is unable to make a decision before the next contest, the suspension remains in effect. The Executive Director's, Sportsmanship Committee's, or subcommittee's decision to uphold or rescind the suspension resulting from a game ejection may not be appealed to the Board.

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

**1007 DIAA Sportsmanship**

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

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

### PUBLIC NOTICE

#### Long Term Care Medicaid

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 Long Term Care Medicaid, specifically, *to add additional application methods*.

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

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19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2018. Please identify in the subject line: Long Term Care Medicaid.

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 Long Term Care Medicaid, specifically, to add additional application methods.

### 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

### 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.

### Summary of Proposal

#### *Purpose*

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

#### *Summary of Proposed Changes*

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, specifically, to add additional application methods.

#### *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 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

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

**\*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/may2018/proposed/21 DE Reg 860RFA 05-01-18.pdf](http://regulations.delaware.gov/register/may2018/proposed/21%20DE%20Reg%20860RFA%2005-01-18.pdf)

AMENDED

## 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 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 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 will act on behalf of the patient.

It is not the responsibility of DSS 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 § 435.603(f), or family, as defined in section 36B(d)(1) of the Code, 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.

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 **Del.C.** §122(3)u.1)  
**16 DE Admin. Code 4458A**

**PUBLIC NOTICE**

**4458A Cottage Food Regulations**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Cottage Foods. On May 1, 2018, the Division of Public Health plans to publish as "proposed" revised Cottage Food Regulations. The revisions include requirements related to food allergens, the length of time permits are valid for and other technical corrections.

Copies of the proposed regulations are available for review in the May 1, 2018 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Elisabeth Scheneman by Friday, June 8, 2018, at:

Elisabeth Scheneman  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Elisabeth.scheneman@state.de.us](mailto:Elisabeth.scheneman@state.de.us)  
Phone: (302) 744-4951

\*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/may2018/proposed/21 DE Reg 863RFA 05-01-18.pdf](http://regulations.delaware.gov/register/may2018/proposed/21%20DE%20Reg%20863RFA%2005-01-18.pdf)

## 4458A Cottage Food Regulations

*(Break in Continuity of Sections)*

### 2.0 Definitions

*(Break in Continuity Within Section)*

"Major Food Allergen" means milk, egg, fish (such as bass, flounder, cod and including crustacean shellfish such as crab, lobster or shrimp), tree nuts (such as almonds, pecans or walnuts), wheat, peanuts and soybeans. This definition includes food ingredients that contain milk, egg, fish, tree nuts, wheat, peanuts and soybeans.

*(Break in Continuity Within Section)*

### 3.0 Registration

#### 3.1 Fees, Registration and Limitations

3.1.1 Annual registration fees will be in the amount of \$30.00 per CFE.

3.1.2 Registrations shall remain effective only during a calendar year beginning April 1 and ending March 31 or any remaining portion of the calendar year beginning on the date the registration is issued and ending March 31.

#### ~~3.1.23.1.3~~ Limitations

~~3.1.2.13.1~~ CFE operating under these regulations are limited to gross annual sales of \$25,000 or less.

~~3.1.2.23.1.3.2~~ CFE are only permitted to engage in direct sales with consumers in the State of Delaware.

~~3.1.2.33.1.3.3~~ Online sales are not permitted. Online advertising and marketing are permitted.

~~3.1.2.43.1.3.4~~ Wholesale or other sales to resellers or food establishments are not permitted by a CFE.

~~3.1.2.53.1.3.5~~ A CFE shall only produce those specific food products listed on their registration. This registration shall be displayed at farmers markets, craft fairs, charitable organization or other approved venues/functions where cottage foods are sold.

*(Break in Continuity of Sections)*

### 7.0 Facility Requirements

*(Break in Continuity Within Section)*

#### 7.4 Animals

7.4.1 No animals/pets shall be permitted in the CFE during the preparation, packaging, or handling of any cottage food products. ~~Poisonous and Toxic Materials.~~

*(Break in Continuity Within Section)*

### 8.0 Product Requirements

*(Break in Continuity Within Section)*

#### 8.2 Labeling

*(Break in Continuity Within Section)*

8.2.3 Labels shall include the name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.

- ~~8-2-38.2.4~~ Labels shall include the following statement "This food is made in a Cottage Food Establishment and is NOT subject to routine Government Food Safety Inspections".
- ~~8-2-48.2.5~~ Labels shall be printed in at least 10-point type in a color that provides a clear contrast to the background label.
- ~~8-2-58.2.6~~ Additional information as required by the Division must be made available for review upon request from the consumer.

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

**4458A Cottage Food Regulations**

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

Statutory Authority: 29 Delaware Code, Section 8503(7) and 19 Delaware Code, Section 105(8)  
29 **Del.C.** §8503(7) & 19 **Del.C.** §105(8))  
19 **DE Admin. Code** 1322

**PUBLIC NOTICE**

**1322 Prevailing Wage Regulations**

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §10111(1).

**HOW TO COMMENT ON THE PROPOSED REGULATION**

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be fifteen (15) days after the public hearing is held on these regulations on May 21, 2018. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Anthony DeLuca, Division of Industrial Affairs, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8317. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. DeLuca at the address of the Delaware Department of Labor as set forth above. Written comments must be received on or before June 5, 2018.

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

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

**STATUTORY BASIS AND LEGAL AUTHORITY TO ACT**

29 Delaware Code, §8503(7); 19 Delaware Code, §105(8); 29 Delaware Code, §6960(a).

## OTHER REGULATIONS AFFECTED

None.

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

<http://regulations.delaware.gov/register/may2018/proposed/21 DE Reg 865RFA 05-01-18.pdf>

## 1322 Prevailing Wage Regulations

Pursuant to 29 **Del.C.** §8503(7), the Department of Labor, State of Delaware, hereby promulgates the following rules and regulations to implement the provisions of 29 **Del.C.** §6960, "Wage provisions in public construction contracts." These regulations supersede ~~Regulations PW101, entitled "Regulations Concerning Apprentices and Supportive Service Program Trainees Employed on State Projects" (adopted April 11, 1978 and repealed April 5, 1992) and the "Delaware Prevailing Wage Regulations" (adopted April 5, 1992 as amended September 15, 1993 November 1, 2015).~~

### *(Break in Continuity of Sections)*

## 3.0 Concepts and Definitions

3.1 This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

3.1.1 Activity Covered. 29 **Del.C.** §6960 The prevailing wage law applies to every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting or decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers.

### *(Break in Continuity Within Section)*

3.1.4 Apprentices and Supportive Service Program Trainees.

### *(Break in Continuity Within Section)*

3.1.4.2 Employment of Apprentices and SSP Trainees on State Projects.

3.1.4.2.1 Apprentices and SSP Trainees will be permitted to work as such on State contracts in excess of ~~\$100,000~~ \$500,000 for new construction or ~~\$15,000~~ \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction only when they are registered with the Department of Labor or an approved SSP Training Program.

### *(Break in Continuity Within Section)*

3.1.10 Fringe Benefits. Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. ~~As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would not be considered fringe benefits. The only fringe benefits which the Delaware Department of Labor will recognize are health benefits, welfare benefits, retirement benefits, annuities, vacation pay, holiday pay, sick leave pay, and education benefits involving reimbursement for the expense of training the employee to perform the work for which they are currently employed, including apprenticeship programs. The employer must have a signed authorization from the employee for each fringe benefit it intends to apply as a deduction from the prevailing wage rate obligation. Vehicle-related benefits of any sort are never considered valid fringe benefits. Bonuses and profit-sharing plans are never considered valid fringe benefits.~~

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "**Irrevocable**" means that

~~the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees. The employee must be 100% vested in the benefit as soon as administratively possible.~~

The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits. The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays \$160 for the employee's health insurance for the month. The value of the benefit is \$1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

***(Break in Continuity of Sections)***

**7.0 Enforcement**

- 7.1 The authority to enforce the prevailing wage rates derives from 29 **Del.C.** §6960(b) which states: "The Department of Labor shall investigate all claims that the prevailing wage rates as provided for under this section are not being or have not been paid."

***(Break in Continuity Within Section)***

- 7.1.2 Investigation. A complaint may be filed with the Department by any employee upon a public project or any interested party. The complaint shall be in writing. Upon receipt of a complaint or upon its own motion the Department shall initiate an investigation.
- 7.1.2.1 The Department shall notify the employer by certified and First Class mail that a complaint has been filed and/or that an investigation has been initiated. The Department may request (or subpoena, if necessary) records, documents, or testimony necessary to make a determination as to the validity of the complaint or the employer's compliance with the law.
- 7.1.2.2 ~~Upon finding that an employer has not paid or is not paying the correct prevailing wage rates, If the Department of Labor shall notify the employer of the violations by certified mail and make an effort to obtain compliance. is unable to obtain voluntary compliance, the Department shall notify the employer by certified and First Class mail that it has made a final determination that the employer is in violation and that the employer has the right to appeal the final determination to the Secretary (the "Final Notice"). All appeals of a Final Notice to the Secretary shall be in writing and must be received by the Secretary within fifteen (15) days from the receipt of the Final Notice. For purposes of determining "receipt," the failure to accept certified mail, combined with the lack of return of First Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service. The Secretary shall acknowledge receipt of appeals within twenty (20) days and propose a schedule to determine the appeal. The Secretary may designate a neutral third party to preside over an appeal. Final Determinations shall be reviewable for an abuse of discretion or clear error of law.~~
- 7.1.2.3 ~~Upon failure to obtain compliance within fifteen (15) days of receipt of said certified mail, Consistent with the prevailing wage law, the Department may direct the contracting agency and/or the prime contractor to withhold payments to the employer (in an amount equal to the prevailing wage deficiencies, as determined by the Department) which are to be remitted to the Department for distribution upon resolution of the matter. The~~

## PROPOSED REGULATIONS

determination of when a matter shall be resolved shall be at the sole discretion of the Department. In addition, the Secretary may terminate all rights of the employer to proceed with the work under the contract and the employer shall be responsible for all damages resulting therefrom.

- 7.1.2.4 ~~If the dispute between the Department and the employer pertains to the classification of workers as determined by the Office of Labor Law Enforcement, the determination shall be reviewable by the Secretary or his/her designee and shall be reversed only upon a finding of abuse of discretion. Such appeals from the Office of Labor Law Enforcement's decision must be made in writing and must be received by the Secretary within fifteen (15) days from receipt of the Department's certified letter. Employers may request, in writing, expedited treatment of an investigation and/or an appeal to the Office of the Secretary. In such cases, the employers shall state with particularity the reason for the request and provide all information requested by the Department. The Department shall respond to requests for expedition within seven (7) days. If expedited relief is granted, the Department shall make every effort to expedite the investigation and/or appeal to the Secretary or his/her designee. The Department shall have sole discretion to grant or deny requests for expedition and such decisions are not reviewable.~~
- 7.1.3 Hearings. A hearing shall be held ~~only~~ in cases involving the termination of rights to proceed with the work under the public construction contract. A hearing shall also be held in cases involving classification disputes. However, any such party's appeal request must be received by the Department of Labor within fifteen (15) days of said party's receipt of the final decision of the Office of Labor Law Enforcement. For purposes of determining "receipt," the failure to accept certified mail, combined with the lack of return of First Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service.  
A hearing otherwise required by this subsection may be voluntarily waived at the request of the employer.
- 7.1.4 Hearing Practices and Procedures.
- 7.1.4.1 Scope of Rules. These rules shall govern the conduct of prevailing wage hearings ~~initiated held~~ by the Department of Labor pursuant to ~~29 Del.C. §6960(d) to terminate all rights of the contractor or subcontractor to proceed with work under a public construction contract for failure to pay prevailing wage rates.~~
- 7.1.4.2 Initiation of Hearing. The Secretary of Labor ~~may~~ shall initiate a hearing by notifying the contractor or subcontractor by registered mail that said contractor or subcontractor is alleged to have violated ~~29 Del.C. §6960~~ the prevailing wage law. The notice shall give 20 days prior notice from receipt to all parties as follows:
- (Break in Continuity Within Section)***
- 7.1.4.2.5 The notice shall inform the parties that the Department will reach its decision based upon the evidence received.  
For purposes of determining "receipt," the failure to accept certified mail, or the lack of return of First Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service.
- 7.1.4.3 Conduct of Hearing.
- 7.1.4.3.1 The hearing ~~may~~ shall be conducted by the Secretary of Labor or by a hearing officer designated for that purpose by the Secretary.
- 7.1.4.3.2 In connection with such hearing, the Secretary or hearing officer ~~may~~ shall:
- (Break in Continuity Within Section)***
- 7.1.4.3.3 ~~The conduct of hearing shall not be bound by technical rules of evidence pursuant to 49 Del.C. 105(8). The rules of evidence applied in civil cases by the courts of the State of Delaware shall not be strictly followed. The Secretary or hearing officer may~~

allow evidence not admissible under these rules of evidence where, in his or her judgment, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs. Hearsay may be admissible in administrative hearings, but may not constitute the sole basis for the Secretary or hearing officer's determination upon the factual issue addressed by the hearsay evidence.

7.1.4.3.3.1 All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

***(Break in Continuity Within Section)***

7.1.4.3.6 A party's failure to appear at a hearing that has been duly noticed shall not mandate the continuance of the hearing. At the discretion of the Secretary or hearing officer, the hearing shall proceed in the party's absence, which shall be noted on the record.

7.1.4.3.7 If a party, or counsel to a party, engages in conduct in violation of an order of the independent reviewer, or other disruptive conduct during an oral hearing, the independent reviewer may impose non-monetary sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the hearing; (ii) striking briefs from the record; (iii) providing that certain facts shall be taken to be established for purposes of the appeal; or (iv) providing for such other relief as is just and equitable under the circumstances.

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

**1322 Prevailing Wage Regulations**

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## DEPARTMENT OF STATE

### DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

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

#### PUBLIC NOTICE

### 902 Curation Fee For Archaeological Collections

**Title:**

Curation Fee for Archaeological Collections

**Brief Synopsis:**

The purpose of these proposed regulations is to establish a fee structure to help offset the ever-rising costs associated with the long-term care, management and conservation of the State's preexisting and future archaeological 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.

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 defines the Division as a qualified repository for the State's archeological collections (7 Del.C. §5311). To care for Delaware's 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 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 statutory authority through which these proposed regulations are created are 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 purpose under the chapter, Archaeological Resources in the State. New archaeological collections accepted by the Division will be subject to the curation fee established here, unless waived by the Division Director. This fee will be applied in its entirety to the long-term care, management and conservation of the State's preexisting and future archaeological collections and associated documents.

**Statutory Basis or Legal Authority to Act:**

7 **Del.C.** Ch. 53, 7 **Del.C.** §5302, 29 **Del.C.** §8705

**Other Regulations that may be affected by the Proposal:**

None

**Notice of Public Comment:**

**PLEASE TAKE NOTICE**, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes regulations pursuant to its authority under 7 **Del.C.** Ch. 53, 7 **Del.C.** §5302, 29 **Del.C.** §8705. The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of a Curation Fee for Archaeological Collections. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is May 31, 2018. Anyone wishing to obtain a copy of the proposed rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

**\*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/may2018/proposed/21 DE Reg 869RFA 05-01-18.pdf](http://regulations.delaware.gov/register/may2018/proposed/21%20DE%20Reg%20869RFA%2005-01-18.pdf)

**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 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 long-term care, management, and conservation of the archaeological collections and associated documents.

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## 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. §5311 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" 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" 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 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 to perform professional archaeological services.

"Curation" means the preservation, care, and management of a collection according to professional standards.

"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.

"Flat" means a box container (measuring 21 by 20 by 3 inches) made of archival-quality plastic or acid-free cardboard used in the curation of artifacts.

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

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# PROPOSED REGULATIONS

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"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 by 10 inches) made of archival-quality plastic or acid-free cardboard used in the curation of artifacts and associated documents.

## **4.0 Fee for Artifact Curation and Associated Documents**

### **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.

### **4.3 Rates to be charged**

4.3.1 The rate for a flat or standard box of artifacts, full or partially full, is \$350.

4.3.2 The rate per standard box of documents is \$400.

4.3.3 The rate per half-standard box of documents is \$200.

4.3.4 The rate per oversized artifact or per 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 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 Collection and Use of Fee**

### **6.1 Collection of Fee**

6.1.1 The archaeological curation fee shall be paid prior to or at the time an archaeological collection is hand-delivered to the approved curatorial facility.

6.2 Methods of Fee Collection

6.2.1 The archaeological curation fee shall be paid by check or electronic payment, including debit and credit card.

6.2.1.1 Checks shall be made payable to the State of Delaware.

6.2.1.2 Checks may be mailed or hand-delivered to the Division office prior to curation.

6.2.1.3 Checks may be hand-delivered to the approved curatorial facility at the same time that the archaeological collection is hand-delivered.

6.2.1.4 Electronic payment shall be accepted only at the Division office.

6.3 Use of fee

6.3.1 The Division shall retain the revenue received from the archaeological curatorial fee.

6.3.2 The Division shall use this revenue to maintain and conserve the archaeological collections and associated documents.

6.3.3 The Division shall use this revenue only for the operational, equipment or personnel costs directly associated in the maintenance and conservation of the archaeological collections and associated documents.

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**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.

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**DELAWARE STATE FIRE PREVENTION COMMISSION**

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

**FINAL ORDER ADOPTING REGULATION CHANGES****710 Ambulance Service Regulations**

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

Regulation 710, Sections 14.2 and 14.3 by clarifying that Delaware certified EMTs are required to obtain and maintain National Registry of Emergency Medical Technicians certification and providing a path for recertification for out of state EMTs.

Following publication in the Delaware *Register of Regulations* on January 1, 2018 a public hearing was held on February 20, 2018. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and as Board Exhibit 2, documentation of publication of the notice of the public hearing in the *Delaware State News*. During the written public comment period, no comments were received. During the public hearing, no comments were received.

**Summary of the findings of fact**

Pursuant to discussions held during open public Commission meetings, it was determined that Regulation 710 needed to be revised to clarify that Delaware certified EMTs are required to obtain and maintain National Registry of Emergency Medical Technicians certification. The Commission further determined that there should be a clear path provided for in the regulation for recertification for out of state EMTs. These changes were completed at the behest of the Director of the Fire School.

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## Decision of the Board

The Commission received no public comment regarding the proposed regulations. Therefore, the Commission adopts the regulations as proposed, as reflected in Exhibit A.

IT IS SO ORDERED this 20<sup>th</sup> day of March, 2018 by the Delaware State Fire Commission. The regulation changes will go into effect ten days after final publication of this Order in the *Register of Regulations*.

Alan Robinson, Jr., Chairman

Ron Marvel, Vice-Chairman

Ted Walius

David J. Roberts

Marvin C. Sharp (absent)

Lynn Truitt (absent)

Tom DiCristofaro

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 529 (21 DE Reg. 529). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**710 Ambulance Service Regulations**

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## DEPARTMENT OF AGRICULTURE

### DELAWARE FOREST SERVICE

Statutory Authority: 3 Delaware Code, Sections 101(3) and 1011 and 29 Delaware Code, Section 8103(8) (3 **Del.C.** §§101(3) and 1011 and 29 **Del.C.** §8103(8))  
3 **DE Admin. Code** 402

### SECRETARY'S ORDER

**RE: Approving Final Regulations to Amend 3 DE Admin. Code 402: *State Forests***

**Date of Issuance: April 16, 2018**

**Effective Date of the Amendment: May 11, 2018**

### 402 State Forest Regulations

Under the authority vested in the Secretary of the Delaware Department of Agriculture ("Department", "DDA") pursuant to 3 **Del.C.** §§101(3) and 1011, 29 **Del.C.** §8103(8), and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

### Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 3 **DE Admin. Code** 402: *State Forests*, necessitated as a result of the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State Wildlife areas. Delaware State Parks and State Wildlife areas are under the jurisdiction of the Department of Natural Resources and Environmental Control ("DNREC"), while State Forests are under DDA jurisdiction.

In the *Bridgeville* decision, the Court found that portions of existing firearm regulations of both DNREC and DDA violated the Delaware Constitution, in that they were overly broad in their prohibitions. Without valid regulations, firearms would essentially be unregulated (1) within Delaware's State Forest lands, including facilities such as education centers, lodges and offices; (2) within Delaware's State Parks; and (3) on land and waters administered by the Department's Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. Thus, on December 26, 2017, pursuant to 29 **Del.C.** §10119, both DNREC and DDA adopted emergency regulation amendments to those portions of each agency's existing regulations affected by the *Bridgeville* decision.

The emergency regulations of DNREC and DDA, as published in the Delaware *Register of Regulations* on January 1, 2018, are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulation amendments pursuant to the Administrative Procedures Act ("APA"), within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. Once finalized and adopted, the formal regulatory Amendments of both DNREC and DDA will immediately supersede the emergency regulations, pursuant to both the APA and 29 **Del.C.** §10115.

With the aforementioned emergency regulations in effect, both DNREC and DDA then began the formal adoption of the proposed regulations, so as to comply with the *Bridgeville* decision. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 3 **Del.C.** §§101(3) and 1011, and 29 **Del.C.** §8003(7).

The commencement of the formal regulatory development process was begun by both DNREC and DDA with the publication of each agency's proposed regulation Amendments in the February 1, 2018 Delaware *Register of Regulations*. Thereafter, public workshops were held jointly by both agencies in each county throughout the State of Delaware in February 2018. The joint public hearing in this matter was held on March 12, 2018, where the aforementioned proposed Amendments were then presented and thoroughly vetted to members of the public. All proper notification and noticing requirements concerning this matter were met by both DNREC and DDA. Proper notice of the hearing was provided as required by law.

The joint hearing held on March 12, 2018 was heavily attended by members of the public, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on March 27, 2018, with additional public comment having been received by the Department during the post-hearing phase of this formal promulgation.

After the comment period formally closed, the Department performed a thorough review of the record, including, but certainly not limited to, all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes those from members of the public, as well as from other contributors such as the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center.

These proposed regulatory Amendments were necessitated by the Delaware Supreme Court's decision in *Bridgeville*, and the resulting need for the existing firearms regulations of both DNREC and DDA to comply with the same. The Court has drawn the lines to delineate how State agencies may regulate firearms, and DNREC and DDA believe that they have respected those limits with these proposed regulatory Amendments.

In *Bridgeville*, the Court specifically described the types of areas within which firearms could be restricted. The proposed regulatory Amendments limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and dormitories, family campgrounds, bathhouses, playgrounds, recreational facilities, and guarded beaches. In adhering to the Court's guidance, only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other "designated areas." The limits on firearms in crowded areas on State lands are consistent with the statutory limits on the use of deadly force. Moreover, the proposed regulatory Amendments specifically state that "[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448." This language is found in all three sets of the proposed regulation amendments, specifically, 3 **DE Admin. Code** 402 at Section 8.8.4; 7 **DE Admin. Code** 3900 at Section 8.3.4.10; and 7 **DE Admin. Code** 9201 at Section 21.1.5.

Hearing Officer Vest prepared a Hearing Officer's Report dated April 9, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 3 **DE Admin. Code** 402: *State Forests* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department's experts fully developed the record to support adoption of these regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its proposed amendments to 3 **DE Admin. Code** 402: *State Forests*, pursuant to 3 **Del.C.** §§101(3) and 1011, and 29 **Del.C.** §8103(8);
2. The Department has jurisdiction under its statutory authority, pursuant to 3 **Del.C.** §101(3), to issue an Order adopting its proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on March 12, 2018, and held the record open through close of business on March 27, 2018, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;
4. Promulgation of the proposed regulatory Amendments will enable the Department to comply with the Delaware Supreme Court's decision in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State wildlife areas;
5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B1" concerning same, as these proposed regulatory Amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as published in the February 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 3 **DE Admin. Code** 402: *State Forests*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Michael T. Scuse  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2018 issue of the *Register* at page 604 (21 DE Reg. 604). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**402 State Forest Regulations**

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## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 and 1205(b))  
14 **DE Admin. Code** 1521

### REGULATORY IMPLEMENTING ORDER

**1521 Elementary 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** 1521 Elementary Teacher. The

regulation concerns the requirements for a Standard Certificate for Elementary 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 Elementary 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 March 1, 2018. The Professional Standards Board did not receive written comments regarding the proposed regulation.

On April 12, 2018, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1521 Elementary 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** 1521 Elementary Teacher.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1521 Elementary Teacher subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1521 Elementary Teacher attached hereto as Exhibit "A" is hereby amended.

## IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1521 Elementary Teacher adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1521 Elementary 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 April 19, 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 19<sup>th</sup> day of April, 2018.

### Department of Education

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

Approved this 19<sup>th</sup> day of April, 2018.

### State Board of Education

Dennis L. Loftus, Ed.D., President

Nina Lou Bunting, Vice President

Dr. Audrey J. Noble

Wali W. Rushdan, II

Barbara B. Rutt

Hon. Liane M. Sorenson

Terry M. Whittaker, Ed.D. (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 669 (21 DE Reg. 669). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1521 Elementary Teacher**

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 5000

### ORDER

#### Managed Care Hearings

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual regarding Managed Care Hearings, specifically, to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule. 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 February 2018 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 2, 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 January 1, 2018 Delaware Health and Social Services/ Division of Medicaid and Medical Assistance proposes to amend the Division of Social Services Manual section 5304.3 regarding Managed Care Hearings, specifically, to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule.

#### Background

The Center for Medicaid Services (CMS) has regulated Medicaid managed care since the 1970s. Recent Medicaid managed care regulatory changes have stemmed from intermittent changes in law, including: the Balanced Budget Act of 1997, the Deficit Reduction Act of 2005, and the Affordable Care Act of 2010. On May 6, 2016, CMS published the Medicaid Managed Care Final Rule to comprehensively modernize Medicaid managed care through delivery system reform, improvements to the quality of care, strengthening beneficiary experiences, improving accountability and transparency, and aligning Medicaid managed care with other health coverage programs.

Over the past year, Delaware has thoroughly analyzed the Final Rule and identified Medicaid managed care contract and state operational changes necessary to come into compliance with the provisions of the Final Rule. DMMA moved forward with implementation of the majority of the provisions of the Final Rule effective as of January 1, 2018, with the exception of Managed Care Hearings. DMMA intends to amend the DSSM consistent with all of the applicable requirements including Managed Care Hearings which addresses the time frame for MCO internal appeals and to clarify that MCOs are responsible for the initial level of appeal.

#### Statutory Authority

- 42 CFR 438.400
- 42 CFR 438.402
- 42 CFR 438.410
- 42 CFR 438.208(f)
- 42 CFR 438.3
- 81 FR 27497 - 27901, May 6, 2016; Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability Final Rule

#### Purpose

The purpose of this proposed regulation is to amend the Managed Care Hearings section to reflect recent

changes in the Federal Code of Regulations as a result of the Medicaid Managed Care Final Rule.

#### *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 March 2, 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 or minimal fiscal impact as the changes in regulation are only clarification of internal policy.

#### **Summary of Comments Received with Agency Response and Explanation of Changes**

Several commenters offered the following summarized observations:

**Summarized Comment:** The amendment to §5304.3 makes clear that a recipient can request a state fair hearing only after they have received notice from the MCO of an appeal resolution that remains adverse, or when the MCO has failed to adhere to the notice and timing requirements associated with the internal appeal process found in 42 CFR §438.408.

**Agency Response:** DMMA appreciates the commenters perspective on the intent of the amendments to §5304.3 to align with changes the Medicaid Managed Care Final Rule (the Rule) made to 42 CFR §438, Subpart F, Grievance and Appeal System. The Rule requires that a member exhaust the MCO's one level of appeal before requesting a state fair hearing.

**Summarized Comment:** Amendment 5304.3 adds language that "the rules do not prevent the MCO from offering one level of appeal" prior to the state fair hearing. Existing language allows the MCO to offer conciliation services. It is unclear, even with regard to conciliation services, 1) that a recipient can decline an offer of conciliation services; 2) that the MCO cannot delay the issuance of their decision in the appeal while they make this offer or engage in conciliation; and 3) that these processes do not act as a stay on the fair hearing process. There is a provision in the new regulations for obtaining an External Medical Review (42 CFR 438.402(c)(B) which is instructive. This regulation does not clarify that the process is at the option of the enrollee and does not delay or otherwise impact the timing of the appeal or the right to file a state fair hearing request.

**Agency Response:** DMMA appreciates the comments on this subject. The purpose of the proposed amendments is to align the DSSM with changes from the Rule. The changes to §5304.3 do not impact members' existing ability to either accept or decline conciliation services, nor do they impact the requirement that MCOs must resolve appeals within a certain timeframe, regardless of whether conciliations are made. Notably, the Rule reduced the amount of time an MCO is allowed for resolution of appeals from 45 to 30 days, which is reflected in the proposed changes to §5304.3. With regard to external medical review, 42 CFR 438.402(c)(B) is optional to states under the Medicaid Managed Care Rule and DMMA did not adopt it. With regard to the fair hearing process, the Rule requires that an individual exhaust an MCO's one level of appeal before requesting a state fair hearing. This change does not act as a stay on the state fair hearing process. DMMA will work with members and advocates to ensure members can access the full grievance, appeal, and state fair hearing processes.

**Summarized Comment:** There is the prohibition in the federal regulation regarding multiple levels of appeal. The proposed language appears to suggest that the MCO can offer an additional level of appeal after they have issued an appeal resolution upholding an adverse benefit determination. 42 CFR 438.402(b) very clearly states that an MCO can only have one level of appeal for enrollees. It must be made plain that the service is voluntary and cannot delay the fair hearing process.

**Agency Response:** The proposed changes to §5304.3 reflect the "one level of appeal" required under the Rule. The proposed changes to §5304.3 do not impact the requirement that the MCO meet appeal resolution timeframes, regardless of conciliation services, nor do they impact members' existing ability to accept or decline conciliation services.

**Summarized Comment:** The amendment changes the time that the MCO must issue a decision to 72 hours, not 3 working days, making clear that decisions may have to be rendered over weekends and holidays if necessary.

**Agency Response:** Agency Response: DMMA appreciates this feedback. DMMA is appreciative of 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 February 2018 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Managed Care Hearings, specifically, to align DMMA Medicaid Managed Care Policy with the new Federal Requirement, Medicaid Managed Care Final Rule is adopted and shall be final effective May 11, 2018.

Kara Odom Walker, MD, MPH, MSHS  
Secretary, DHSS  
4/16/18

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2018 issue of the *Register* at page 606 (21 DE Reg. 606). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[Managed Care Hearings](#)

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 314, and 526A (18 Del.C. §§311, 314, & 526A)  
18 DE Admin. Code 303

### REGULATORY IMPLEMENTING ORDER

#### 303 Supplement to Annual Statement of Property or Casualty Insurers

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Insurance (Department) gave notice in the Delaware *Register of Regulations* at 21 DE Reg. 674 (03/01/2018) of the proposed repeal of existing Regulation 303 Supplement to Annual Statement of Property or Casualty Insurers. The Department's docket number is DOI Docket No. 3711-2018.

As stated in the proposal, Regulation 303 implements 18 Del.C. §526A by setting forth the information that is to be reported in the supplement to the statement that property and casualty insurers are required to file annually. The Department has determined that the information required by Regulation 303 is not needed, and has therefore determined to repeal Regulation 303, as permitted by 18 Del.C. §526A(h).

The Department did not hold a public hearing on the proposed repeal. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 2<sup>nd</sup> day of April, 2018, which was thirty days from the date of publication.

#### II. FINDINGS OF FACTS

The Department received no comments on the proposed repeal.

The Commissioner therefore finds that it is appropriate to repeal 18 DE Admin. Code 303 for the reasons set forth above and in the proposal.

#### III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to repeal 18 DE Admin. Code 303, as discussed in the above Findings of Fact.

**IV. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 314, and 526A on April 15, 2018. The effective date of this Order and the repeal of Regulation 303 shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

**IT IS SO ORDERED.**

The 16<sup>th</sup> day of April, 2018.  
Trinidad Navarro Commissioner  
Delaware Department of Insurance

\*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 674 (21 DE Reg. 674). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**303 Supplement to Annual Statement of Property or Casualty Insurers**

**DEPARTMENT OF JUSTICE****VICTIMS' COMPENSATION ASSISTANCE PROGRAM**

Statutory Authority: 11 Delaware Code, Section 9006(7) (11 **Del.C.** §9006(7))  
1 DE Admin. Code 301

**ORDER****301 Victims' Compensation Assistance Program Rules and Regulations**

The Delaware Department of Justice Victims' Compensation Assistance Program (VCAP), pursuant to 11 **Del.C.** §9006(7), proposed to revise Regulation 301 by adding Rule 24.5 to help provide the agency with the assurance that the victims it serves are receiving appropriate care by appropriately supervised therapists. The VCAP Advisory Council determined that this was an appropriate balance to ensure that all victims are able to access mental health services and that if those mental health services are provided by unlicensed therapists, that those individuals are sufficiently supervised. VCAP further proposed to add Rule 29.4 regarding victims who have Medicaid or Medicare benefits. If the victim's chosen provider is not paneled with Medicaid or Medicare, VCAP will only pay the provider at the rate that Medicaid or Medicare would pay. A payment at this rate shall be payment in full. The VCAP Advisory Council determined that this enables VCAP to control costs and ensure that the victims it serves are able to see providers of their choice for their health or mental health care needs.

Proposed changes were publicly discussed and approved for publication by the VCAP Advisory Council during the January 17, 2018 meeting.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 21, Issue 9, on March 1, 2018, and a written comment period was held open for thirty days. During the written public comment period, written public comments were received from the following:

In a March 28, 2018 letter, Jamie Wolfe, Chairperson, State Council for Persons with Disabilities, endorsed the proposed change to Rule 29.4. In addition, she inquired as to whether reducing the reimbursement rate for private providers to the Medicaid or Medicare rate will lead to fewer available providers for Medicaid and Medicare recipients, with longer wait times.

In a similar letter, dated April 3, 2018, Dafne A. Carnright, Chairperson, Governor's Advisory Council for Exceptional Citizens, endorsed the proposed change to Rule 29.4. She also inquired as to whether reducing the reimbursement rate for private providers to the Medicaid or Medicare rate will lead to fewer available providers for Medicaid and Medicare recipients, with longer wait times.

A copy of these comments are available by contacting the Department.

**Summary of the findings of fact**

The Department received two positive comments on the proposed revisions. Inquiries made do not warrant an

amendment. The Department finds that it is appropriate to adopt proposed changes to Regulation 301.

## Decision and Order

Having found that the proposed changes to the regulations are necessary as outlined herein, and having received no adverse public comment on the proposed regulations, the Department finds that the regulations shall be adopted as final in the form set forth in Exhibit A attached hereto. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

IT IS SO ORDERED this 16<sup>th</sup> day of April, 2018 by the Delaware Department of Justice Victims' Compensation Assistance Program.

Paige J. Schmittinger  
Executive Director, Victims' Compensation Assistance Program

**\*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 678 (21 DE Reg. 678). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**301 Victims' Compensation Assistance Program Rules and Regulations**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

### AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1114

Secretary's Order No.: 2018-A-0022

RE: FINAL EXEMPT ORDER: 7 DE Admin. Code 1114: *Visible Emissions*

Date of Issuance: April 13, 2018

Effective Date of the Amendment: May 11, 2018

### 1114 Visible Emissions

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 29 **Del.C.** §10113(b)(4), DNREC hereby revises Section 1114 of Title 7 of the Delaware Administrative Code to correct all referencing errors concerning 7 **DE Admin. Code** 1123, as the Department recently repealed 7 **DE Admin. Code** 1123 (as set forth previously in Secretary's Order No. 2018-A-0004 issued February 1, 2018, and as previously published in the March 1, 2018 edition of the State of Delaware *Register of Regulations*).

## Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

## Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I

hereby ORDER that the revisions to 7 DE Admin. Code 1114: *Visible Emissions*, be adopted and promulgated as follows, to wit:

1. Section 1.1 shall be corrected to delete the following phrase, "...except electric arc furnaces and their associated dust handling equipment as set forth in 2.2 of this regulation", so that the Section shall now read: "The purpose of this regulation is to control the emissions of visible air contaminants from all stationary sources"; and

2. Section 2.2 shall be deleted in its entirety.

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Shawn M. Garvin  
Secretary

### 1114 Visible Emissions

11/11/2013

#### 1.0 General Provisions

- 1.1 The purpose of this regulation is to control the emissions of visible air contaminants from all stationary sources ~~except electric arc furnaces and their associated dust handling equipment as set forth in 2.2 of this regulation.~~
- 1.2 Measurements of air contaminant visibility shall be in accordance with accepted practices of Ringelmann values or opacity percentages.
- 1.3 The provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.

#### 2.0 Requirements

- ~~2.1~~ No person shall cause or allow the emission of visible air contaminants or smoke from a stationary or mobile source, the shade or appearance of which is greater than 20% opacity for an aggregate of more than three minutes in any one hour or more than 15 minutes in any 24 hour period. For guideline purposes only, Shade Number 1 of the Ringelmann Smoke Chart coincides with the regulatory limit of 20% opacity, when observing black smoke.
- ~~2.2~~ The requirements of 2.1 of this regulation shall not apply to electric arc furnaces, and their associated dust handling equipment, with a capacity of more than 100 tons which are governed by 7 DE Admin. Code 1123.

07/17/1984

#### 3.0 Alternate Opacity Requirements

- 3.1 Whenever the Secretary determines that a source complies with an applicable mass emission standard and demonstrates that the opacity of the complying emissions is more restrictive than the requirements of 2.1 of this regulation, the Secretary will make an appropriate adjustment to the opacity standard for the affected source.
- 3.2 Whenever an owner or operator can establish compliance with an applicable mass emission standard and fails to comply with 2.1 of this regulation, the owner or operator may petition the Secretary setting forth the results of the emission testing or evaluation and request the Secretary to make an appropriate adjustment to the opacity standard for the affected source.
- 3.3 The Secretary may grant such a petition as outlined in 3.2 of this regulation upon a demonstration by the owner or operator that the affected source and associated air pollution control equipment was operated and maintained during the mass emission test in a manner to minimize the opacity of emissions during emission testing or evaluation that the mass emissions testing was performed in accordance with procedures approved by the Department; and that the affected source and associated

air pollution control equipment is incapable of continuously meeting applicable opacity standards as set forth in 2.1 of this regulation.

- 3.4 The Secretary may establish an opacity standard for the affected source at a level at which the source will be able to meet the adjusted opacity standard at all times during which the source is meeting the applicable mass emission rate standard. The Secretary will make the adjusted opacity standard a part of the operating permit in the form of an operating condition.
- 3.5 Any action by the Secretary pursuant to the provisions of 3.0 of this regulation shall be incorporated in the State Implementation Plan.

07/17/1984

## 4.0 Compliance with Opacity Standards

For purposes of this regulation, compliance with opacity standards shall be in accordance with 1.5.3 of 7 DE Admin. Code 1120.

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### DIVISION OF AIR QUALITY AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1117

Secretary's Order No.: 2018-A-0023

RE: FINAL EXEMPT ORDER: 7 DE Admin. Code 1117: *Source Monitoring, Record Keeping and Reporting*

Date of Issuance: April 13, 2018

Effective Date of the Amendment: May 11, 2018

### 1117 Source Monitoring, Record Keeping And Reporting

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 29 Del.C. §10113(b)(4), DNREC hereby revises Section 1117 of Title 7 of the Delaware Administrative Code to correct all referencing errors concerning 7 DE Admin. Code 1123, as the Department recently repealed 7 DE Admin. Code 1123 (as set forth previously in Secretary's Order No. 2018-A-0004 issued February 1, 2018, and as previously published in the March 1, 2018 edition of the State of Delaware *Register of Regulations*).

### Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

### Decision and Order Concerning the Regulation

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 7 DE Admin. Code 1117: *Source Monitoring, Record Keeping and Reporting*, be adopted and promulgated as follows, to wit:

1. Section 3.2 shall be corrected to change the reference contained therein from "3.5" to "3.4", so that Section 3.2 shall now read: "Fuel Burning Equipment - Fuel burning equipment except as provided in 3.2 through 3.4 of this regulation...";
  2. Section 3.5 shall be deleted in its entirety.
-

The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Shawn M. Garvin  
Secretary

**1117 Source Monitoring, Record Keeping And Reporting**  
*(Break in Continuity of Sections)*

07/17/1984

**3.0 Minimum Emission Monitoring Requirements for Existing Sources**  
*(Break in Continuity Within Section)*

3.2 Fuel Burning Equipment - Fuel burning equipment except as provided in 3.2 through ~~3.5~~ 3.4 of this regulation, with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements:

*(Break in Continuity Within Section)*

~~3.5 Electric arc furnaces - See 7 **DE Admin. Code** 1123.~~

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

**1117 Source Monitoring, Record Keeping And Reporting**

**DIVISION OF FISH AND WILDLIFE**

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

Secretary's Order No.: 2018-F-0024

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3301,  
Non-Tidal Finfish: *Definitions***

Date of Issuance: April 13, 2018  
Effective Date of the Amendment: May 11, 2018

**3300 Non-Tidal Finfish  
3301 Definitions**

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

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 3301, Non-Tidal Finfish: *Definitions*. To expand recreational freshwater trout angling opportunities, this action proposes to amend Delaware's non-tidal finfish regulation by formally defining that portion of Red Clay Creek from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road as a designated trout stream.

Trout stream stocking provides an important recreational fishing opportunity in a densely populated area of the State, which has few other freshwater fishing opportunities. Red Clay Creek was formerly included as a designated

trout stream, but fish tissue contamination resulting from industrial discharges precluded stocking since 1986. Research trout stockings conducted in Red Clay Creek by the Department in 2011 and 2016 demonstrated that trout once again can be safely stocked and consumed as a result of improving water quality.

Waters designated as trout streams are closed to all fishing 14 days prior to the first Saturday in April to provide for stocking time and fair access, as well as to deter poaching. Such designation also requires an annual trout stamp to fish from the first Saturday in April through June 30, and the first Saturday in October through November 30. No environmental impact is expected as the result of the proposed amendment. The proposed amendment will increase angling opportunities for Delaware's trout anglers and it is anticipated that the return of trout fishing to Red Clay Creek will better distribute trout angling pressure.

The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §103(b). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice #2017-16 (November 27, 2017). The Department published its initial proposed regulation Amendments in the February 1, 2018 Delaware *Register of Regulations*. The aforementioned proposed Amendments were then presented and thoroughly vetted by the Department at the public hearing on February 22, 2018.

Only one member of the public attended the February 22, 2018 public hearing. No formal public comment was received by the Department with regard to this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Vest prepared a Hearing Officer's Report dated March 27, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 3301, Non-Tidal Finfish: *Definitions* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3301, Non-Tidal Finfish: *Definitions*, pursuant to 7 **Del.C.** §103(b);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60 to issue an Order adopting these proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on February 22, 2018, and held the record open through close of business on March 9, 2018, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;
4. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 3301, Non-Tidal Finfish: *Definitions*, will enable the Department to (1) formally define that portion of Red Clay Creek from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania to the bridge at Yorklyn Road as a designated trout stream; (2) increase angling opportunities for Delaware's trout anglers; and (3) better distribute trout angling pressure in Delaware with the return of trout fishing to Red Clay Creek;
5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as published in the February 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not

arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3301, Non-Tidal Finfish: *Definitions*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2018 issue of the *Register* at page 613 (21 DE Reg. 613). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3300 Non-Tidal Finfish; 3301 Definitions**

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 103 and 29 Delaware Code, Section 8003(7) (7 **Del.C.** §103 and 29 **Del.C.** §8003(7))  
7 **DE Admin. Code** 3900

**Secretary's Order No.: 2018-F-0028**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3900: *Wildlife***

**Date of Issuance: April 16, 2018**

**Effective Date of the Amendment: May 11, 2018**

**3900 Wildlife**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §103(b), 7 **Del.C.** §§6006 and 6010, 29 **Del.C.** §8003(7), and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 3900: *Wildlife*, necessitated as a result of the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State Wildlife areas. Delaware State Parks and State Wildlife areas are under DNREC jurisdiction, while State Forests are under the jurisdiction of the Delaware Department of Agriculture ("DDA").

In the *Bridgeville* decision, the Court found that portions of existing firearm regulations of both DNREC and DDA violated the Delaware Constitution, in that they were overly broad in their prohibitions. Without valid regulations, firearms would essentially be unregulated (1) within Delaware's State Forest lands, including facilities such as education centers, lodges and offices; (2) within Delaware's State Parks; and (3) on land and waters administered by the Department's Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. Thus, on December 26, 2017, pursuant to 29 **Del.C.** §10119, both DNREC and DDA adopted emergency regulation amendments to those portions of each agency's existing regulations affected by the *Bridgeville* decision.

The emergency regulations of DNREC and DDA, as published in the Delaware *Register of Regulations* on January 1, 2018, are intended as interim measures, necessary to avoid the risk of harm to public health, safety,

and welfare, pending the formal adoption of regulation amendments pursuant to the Administrative Procedures Act ("APA"), within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. Once finalized and adopted, the formal regulatory Amendments of both DNREC and DDA will immediately supersede the emergency regulations, pursuant to both the APA and 29 **Del.C.** §10115.

With the aforementioned emergency regulations in effect, both DNREC and DDA then began the formal adoption of the proposed regulations, so as to comply with the *Bridgeville* decision. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §103(b) and 29 **Del.C.** §8003(7).

The commencement of the formal regulatory development process was begun by both DNREC and DDA with the publication of each agency's proposed regulation Amendments in the February 1, 2018 Delaware *Register of Regulations*. Thereafter, public workshops were held jointly by both agencies in each county throughout the State of Delaware in February 2018. The joint public hearing in this matter was held on March 12, 2018, where the aforementioned proposed Amendments were then presented and thoroughly vetted to members of the public. All proper notification and noticing requirements concerning this matter were met by both DNREC and DDA. Proper notice of the hearing was provided as required by law.

The joint hearing held on March 12, 2018 was heavily attended by members of the public, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on March 27, 2018, with additional public comment having been received by the Department during the post-hearing phase of this formal promulgation.

After the comment period formally closed, the Department performed a thorough review of the record, including, but certainly not limited to, all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes those from members of the public, as well as from other contributors such as the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center.

These proposed regulatory Amendments were necessitated by the Delaware Supreme Court's decision in *Bridgeville*, and the resulting need for the existing firearms regulations of both DNREC and DDA to comply with the same. The Court has drawn the lines to delineate how State agencies may regulate firearms, and DNREC and DDA believe that they have respected those limits with these proposed regulatory Amendments.

In *Bridgeville*, the Court specifically described the types of areas within which firearms could be restricted. The proposed regulatory Amendments limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and dormitories, family campgrounds, bathhouses, playgrounds, recreational facilities, and guarded beaches. In adhering to the Court's guidance, only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other "designated areas." The limits on firearms in crowded areas on State lands are consistent with the statutory limits on the use of deadly force. Moreover, the proposed regulatory Amendments specifically state that "[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448." This language is found in all three sets of the proposed regulation amendments, specifically, 3 **DE Admin. Code** 402 at Section 8.8.4; 7 **DE Admin. Code** 3900 at Section 8.3.4.10; and 7 **DE Admin. Code** 9201 at Section 21.1.5.

Hearing Officer Vest prepared a Hearing Officer's Report dated April 9, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

## Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 3900: *Wildlife* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department's experts fully developed the record to support adoption of these regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its proposed amendments to 7 **DE Admin. Code** 3900: *Wildlife*, pursuant to 7 **Del.C.** §103(b) and 29 **Del.C.** §8003(7);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting its proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on March 12, 2018, and held the record open through close of business on March 27, 2018, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory Amendments will enable the Department to comply with the Delaware Supreme Court's decision in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State wildlife areas;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B1" concerning same, as these proposed regulatory Amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as published in the February 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3900: *Wildlife*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2018 issue of the *Register* at page 614 (21 DE Reg. 614). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3900 Wildlife**

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### DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Section 4701(a)(4) and 29 Delaware Code, Section  
8003(7)  
(7 **Del.C.** §4701(a)(4) and 29 **Del.C.** §8003(7))  
7 **DE Admin. Code** 9201

Secretary's Order No.: 2018-P-0029

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 9201: *Regulations Governing State Parks***

Date of Issuance: April 16, 2018

Effective Date of the Amendment: May 11, 2018

**9201 Regulations Governing State Parks**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §4701(a)(4), 7 **Del.C.** §§6006 and 6010, 29 **Del.C.** §8003(7), and

all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

## Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 9201: *Regulations Governing State Parks*, necessitated as a result of the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State Wildlife areas. Delaware State Parks and State Wildlife areas are under DNREC jurisdiction, while State Forests are under the jurisdiction of the Delaware Department of Agriculture ("DDA").

In the *Bridgeville* decision, the Court found that portions of existing firearm regulations of both DNREC and DDA violated the Delaware Constitution, in that they were overly broad in their prohibitions. Without valid regulations, firearms would essentially be unregulated (1) within Delaware's State Forest lands, including facilities such as education centers, lodges and offices; (2) within Delaware's State Parks; and (3) on land and waters administered by the Department's Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. Thus, on December 26, 2017, pursuant to 29 **Del.C.** §10119, both DNREC and DDA adopted emergency regulation amendments to those portions of each agency's existing regulations affected by the *Bridgeville* decision.

The emergency regulations of DNREC and DDA, as published in the Delaware *Register of Regulations* on January 1, 2018, are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulation amendments pursuant to the Administrative Procedures Act ("APA"), within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. Once finalized and adopted, the formal regulatory Amendments of both DNREC and DDA will immediately supersede the emergency regulations, pursuant to both the APA and 29 **Del.C.** §10115.

With the aforementioned emergency regulations in effect, both DNREC and DDA then began the formal adoption of the proposed regulations, so as to comply with the *Bridgeville* decision. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 **Del.C.** §4701(a)(4) and 29 **Del.C.** §8003(7).

The commencement of the formal regulatory development process was begun by both DNREC and DDA with the publication of each agency's proposed regulation Amendments in the February 1, 2018 Delaware *Register of Regulations*. Thereafter, public workshops were held jointly by both agencies in each county throughout the State of Delaware in February 2018. The joint public hearing in this matter was held on March 12, 2018, where the aforementioned proposed Amendments were then presented and thoroughly vetted to members of the public. All proper notification and noticing requirements concerning this matter were met by both DNREC and DDA. Proper notice of the hearing was provided as required by law.

The joint hearing held on March 12, 2018 was heavily attended by members of the public, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on March 27, 2018, with additional public comment having been received by the Department during the post-hearing phase of this formal promulgation.

After the comment period formally closed, the Department performed a thorough review of the record, including, but certainly not limited to, all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes those from members of the public, as well as from other contributors such as the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center.

These proposed regulatory Amendments were necessitated by the Delaware Supreme Court's decision in *Bridgeville*, and the resulting need for the existing firearms regulations of both DNREC and DDA to comply with the same. The Court has drawn the lines to delineate how State agencies may regulate firearms, and DNREC and DDA believe that they have respected those limits with these proposed regulatory Amendments.

In *Bridgeville*, the Court specifically described the types of areas within which firearms could be restricted. The proposed regulatory Amendments limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and dormitories, family campgrounds, bathhouses, playgrounds,

recreational facilities, and guarded beaches. In adhering to the Court's guidance, only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other "designated areas." The limits on firearms in crowded areas on State lands are consistent with the statutory limits on the use of deadly force. Moreover, the proposed regulatory Amendments specifically state that "[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448." This language is found in all three sets of the proposed regulation amendments, specifically, 3 **DE Admin. Code** 402 at Section 8.8.4; 7 **DE Admin. Code** 3900 at Section 8.3.4.10; and 7 **DE Admin. Code** 9201 at Section 21.1.5.

Hearing Officer Vest prepared a Hearing Officer's Report dated April 9, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

### Reasons and Conclusions

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

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its proposed amendments to 7 **DE Admin. Code** 9201: *Regulations Governing State Parks*, pursuant to 7 **Del.C.** §4701(a)(4) and 29 **Del.C.** §8003(7);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting its proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on March 12, 2018, and held the record open through close of business on March 27, 2018, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;
4. Promulgation of the proposed regulatory Amendments will enable the Department to comply with the Delaware Supreme Court's decision in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State wildlife areas;
5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B1" concerning same, as these proposed regulatory Amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as published in the February 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 9201: *Regulations Governing State Parks*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2018 issue of the *Register* at page 616 (21 DE Reg. 616). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[9201 Regulations Governing State Parks](#)

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## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 DE Admin. Code 1301

Secretary's Order No.: 2018-WH-0025

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1301, *Delaware Regulations Governing Solid Waste*

Date of Issuance: April 13, 2018

Effective Date of the Amendment: May 21, 2018

### 1301 Regulations Governing Solid Waste

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, and 7 **Del.C.** §6301 *et seq.*, and any other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

#### Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 1301, *Delaware Regulations Governing Solid Waste* ("DRGSW"). To provide greater environmental protection and to reduce human health risks, the Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section is proposing several modifications to the existing DRGSW, as follows, to wit: (1) the adoption of federal regulatory requirements specified within 40 CFR §257, Subpart D, *Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments*; (2) the modification of existing language to update outdated or obsolete solid waste regulations; (3) the addition of language to provide clarification where existing language was not specific in nature (to standardize regulatory requirements for Industrial Waste Landfills and Municipal Waste Landfills); and (4); the correction of typographical, grammatical, and formatting errors.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 1301, pursuant to 7 **Del.C.** Ch. 60. The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, commenced the regulatory development process with Start Action Notice #2015-08 (October 16, 2015). The Department published its initial proposed regulation Amendments in the August 1, 2017 *Delaware Register of Regulations*.

Subsequent to the publication of the initial proposed regulation Amendments on August 1, 2017 (but prior to the public hearing held on August 31, 2017), the Department identified several formatting and typographical errors associated with the proposed regulations. The Department also decided to rescind the initial proposed amendment to Section 2.0 and propose alternative language in subsection 11.1. The modifications to Section 2.0 and subsection 11.1 provided clarity for the regulatory oversight of surface impoundments containing coal combustion residuals within Delaware.

The aforementioned *revised* proposed Amendments were then presented and thoroughly vetted by the Department at the public hearing on August 31, 2017. The Department ensured copies of the *revised* proposed Amendments were available to all persons in attendance at the public hearing held in this matter, and also provided a copy of the same to this Hearing Officer as a Department exhibit for inclusion into the formal hearing record. Proper notice of the hearing was provided as required by law.

From the time of public notice in the *Register of Regulations* on August 1, 2017 until the close of the public comment period in this matter on September 15, 2017, the only comment received by the Department in this matter

was from Jason Munyan on behalf of the Delaware Solid Waste Authority ("DSWA"). Subsequent to the close of the public comment period, the *revised* proposed Amendments were once again thoroughly reviewed by responsible Department staff, along with the comments that had been received from DSWA. At the request of this Hearing Officer, a Technical Response Memorandum ("TRM") was prepared by Department staff to serve as a comprehensive summary of the comment received in this matter.

The Department's TRM of November 3, 2017 not only provides a thorough and rational discussion of the comment provided by DSWA, but also provides the Department's responses and recommendations concerning the same. Accordingly, the Department's *revised* proposed Amendments, along with the aforementioned TRM, are hereby expressly incorporated into the hearing record generated in this matter, and are attached hereto for the Secretary's review as Appendices "A" and "B", respectively.

It should be noted that no further re-noticing or republication of the Department's initial proposed Amendments is necessary in this matter, due to the fact that (1) all substantive changes were made prior to the public hearing of August 31, 2017 and fully vetted to the public at the time of the hearing; and (2) no further changes were made to the proposed Amendments subsequent to the public hearing as a result of the comments provided to the Department by DSWA.

Hearing Officer Vest prepared a Hearing Officer's Report dated March 26, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the Report as Appendix "A".

### Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the revised proposed regulatory amendments to 7 **DE Admin. Code** 1301, *Delaware Regulations Governing Solid Waste*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed regulatory Amendments be promulgated as final. I further find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section fully developed the record to support adoption of these regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed amendments to 7 **DE Admin. Code** 1301, pursuant to 7 **Del.C.** Chapter 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Chapter 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the *revised* proposed Amendments, including at the time of the public hearing held on August 31, 2017, and held the record open through close of business on September 15, 2017, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these *revised* proposed Amendments before making any final decision;
4. Promulgation of the revised proposed Amendments to 7 **DE Admin. Code** 1301: *Delaware Regulations Governing Solid Waste*, will enable the Department to (1) adopt federal regulatory requirements specified within 40 CFR §257, Subpart D, *Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments*; (2) modify existing language to update outdated or obsolete solid waste regulations; (3) add regulatory language to provide clarification where existing language was not specific in nature (to standardize regulatory requirements for Industrial Waste Landfills and Municipal Waste Landfills); and (4); correct typographical, grammatical, and formatting errors.
5. The Department has reviewed these *revised* proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "A" regarding same, as this proposed regulation is not subject to Chapter 104, Title 29 of the Delaware Code because it will not apply to small businesses or individuals at all;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed regulatory amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as *initially* published in the August 1, 2017 Delaware *Register of Regulations*, and then subsequently *revised* as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations.

Consequently, they are approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the Delaware *Register of Regulations*; and

8. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 DE **Admin. Code** 1301: *Delaware Regulations Governing Solid Waste*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

## 1301 Regulations Governing Solid Waste (Break in Continuity of Sections)

### 2.0 Scope and Applicability

(Break in Continuity Within Section)

#### 2.2 Applicability

2.2.1 These regulations apply to any person using land or allowing the use of land for the purposes of storage, collection, processing, transfer, or disposal of solid waste; and to any person transporting solid waste in or through the State of Delaware. The following shall be subject to the provisions of these regulations:

(Break in Continuity Within Section)

~~[2.2.1.9 Active and inactive surface impoundments.]~~

(Break in Continuity of Sections)

### 4.0 Permit Requirements And Administrative Procedures

(Break in Continuity Within Section)

#### 4.2 Application Procedures For Sanitary And Industrial Landfills

Unless otherwise specified within these regulations, the following application procedures apply to all submissions received after ~~[INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER]~~ May 22, 2018].

(Break in Continuity of Sections)

### 6.0 Industrial Landfills

(NOTE: This section applies to those landfills that dispose of only industrial and/or dry waste. Additional requirements for landfills and surface impoundments containing coal combustion residuals are located in Section 11.0 - Special Wastes Management, Part 3 - Coal Combustion Residuals.)

#### 6.1 Siting

(Break in Continuity Within Section)

6.1.3 No new cell of an industrial landfill shall be located in an area such that solid waste would at any time be deposited:

(Break in Continuity Within Section)

6.1.3.8 In unstable areas, unless engineering measures have been incorporated in the design to insure the integrity of the structural components of the waste facility (including liners, leachate collection systems, run-on/runoff control, capping and anything affecting the containment and/or possible release of ~~[contaminants.]~~ contaminants.) Unstable areas include those of (1) poor foundation conditions (possible subsidence), (2) susceptibility to mass movement, or (3) karst terrain.

(Break in Continuity Within Section)

#### 6.3 Liner

6.3.1 General provisions

(Break in Continuity Within Section)

# FINAL REGULATIONS

6.3.1.3 The bottom of the liner (of the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table, as measured in the uppermost aquifer beneath the landfill. ~~This 5-foot requirement may be reduced by the Department if a more stringent liner system is used. Existing landfills or lateral expansions that have physically commenced construction before [INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER] May 22, 2018~~ may continue to operate or construct lateral expansions under previous Department approvals.

*(Break in Continuity Within Section)*

6.3.2 Liner characteristics

*(Break in Continuity Within Section)*

6.3.2.1 Composite liner. A composite liner must have, as a minimum:

6.3.2.1.1 A primary (upper) liner which meets the following:

6.3.2.1.1.1 Is at least 45 mils thick. ~~Geomembrane liner components consisting of high density polyethylene (HDPE) must be at least 60 mils thick for all new cells that begin physical construction after [INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER] May 22, 2018.~~

*(Break in Continuity Within Section)*

6.4 Leachate Collection, Treatment, Disposal, And Monitoring

6.4.1 General provisions

6.4.1.1 All industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system. ~~Existing landfills or lateral expansions that have physically commenced construction before [INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER] May 22, 2018~~ may continue to operate or construct lateral expansions under previous Department approvals.

*(Break in Continuity Within Section)*

6.6 Surface Water Management

*(Break in Continuity Within Section)*

6.6.6 ~~Stormwater Plan. Owners or operators of all industrial landfills shall develop and maintain a Stormwater Plan (SWP) (also known as a Stormwater Pollution and Prevention Plan (SWPPP)) for areas associated with the landfill facility. The SWP/SWPPP shall describe stormwater management controls and practices in-place or planned for the facility and shall identify potential sources of pollutants which may reasonably be expected to affect the quality of stormwater discharges from landfill operations and site maintenance. The SWP/SWPPP need not address construction activities regulated by a Sediment and Stormwater Plan Approval issued by the Department. An initial plan shall be submitted to the Department no later than [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE STATE REGISTER] October 28, 2018. SWP/SWPPP plans created under regulations other than DRGSW can be substituted for this requirement provided the plan includes the following:~~

*(Break in Continuity Within Section)*

6.6.7 ~~Maintenance on surface water management systems shall be done in accordance with any post-construction requirement from the Division of Watershed Stewardship and conditions specified within the Solid Waste [permit Permit].~~

6.6.8 ~~An initial periodic report for all completed surface water management systems shall be prepared and signed by a Professional Engineer registered in Delaware no later than [INSERT DATE 12 MONTHS AFTER PUBLICATION IN STATE REGISTER] May 1, 2019. Subsequent periodic reports shall be submitted every five (5) years. Modifications to a surface water management system or part of a surface water management system may require approval from other state or federal agencies. The report shall at a minimum include:~~

*(Break in Continuity Within Section)*

6.7 ~~Ground Water~~ Groundwater Monitoring And Corrective Action

*(Break in Continuity Within Section)*

6-7.4 6.7.5 Reporting

*(Break in Continuity Within Section)*

~~6.7.4.2~~ 6.7.5.2 An annual hydrogeologic monitoring report will be prepared ~~which~~ and signed by a Professional Geologist registered in Delaware, and shall include:

*(Break in Continuity Within Section)*

6.7.5.2.10 Any additional hydrogeologic reporting requirements specified in the ~~[solid waste permit~~ Solid Waste Permit].

*(Break in Continuity Within Section)*

6.9 Landfill Operation And Maintenance Standards

6.9.1 General provisions

6.9.1.1 Landfills and landfill cells closed in accordance with DRGSW shall conduct maintenance, recordkeeping, and reporting activities in accordance with subsections 6.10 through 6.12 and the ~~[solid waste permit~~ Solid Waste Permit].

*(Break in Continuity Within Section)*

6.9.2 Details of operation and maintenance

6.9.2.1 Spreading and compacting. The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment. The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste ~~[permit~~ Permit].

*(Break in Continuity Within Section)*

6.9.2.3 Control of nuisances and hazards.

*(Break in Continuity Within Section)*

~~6.9.2.3~~ 6.9.2.3.3 Dust, fires: The landfill shall be operated in a manner which eliminates, to the extent possible, dust problems and fires. Industrial Landfills must develop and implement a dust control plan in accordance with the Solid Waste ~~[permit~~ Permit].

*(Break in Continuity Within Section)*

6.9.2.9 Weekly Inspections. No later than ~~[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE STATE REGISTER]~~ May 31, 2018, weekly inspections shall be conducted by a Qualified Person at intervals not to exceed seven (7) days. At a minimum, inspections shall include observations for any appearance of actual or potential structural weakness and other conditions that can disrupt the operation or safety of the industrial waste landfill. Results of the weekly inspections shall be maintained per subsection 6.9.3. If the operator cannot comply with conducting an inspection within a particular week, the Department shall be notified as to the reason for missing the weekly inspection BEFORE the end of that week. Additionally, the missed weekly inspection shall, nonetheless, be conducted at the earliest possible time the following week. This "post" weekly inspection will not count as that week's inspection.

*(Break in Continuity Within Section)*

6.9.2.10 Annual Inspection. An annual landfill inspection shall be conducted by a Professional Engineer registered in Delaware to evaluate whether the landfill design, construction, operation, and maintenance is consistent with recognized and generally accepted good engineering standards. Reports are to be submitted annually as part of the reporting requirements of subsection 6.9.4.

*(Break in Continuity Within Section)*

6.9.2.10.3 Deficiencies and Releases. If a deficiency or release is identified during the inspection, the owner or operator must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measure. Deficiencies or release must also be reported in accordance with the ~~[solid waste permit~~ Solid Waste Permit], as applicable.

# FINAL REGULATIONS

*(Break in Continuity Within Section)*

- 6.9.4 Reporting. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall be prepared under the direction of and signed by the Facility Manager. In addition to paper copies of reports, the Department may require documents to be submitted on machine-readable media in a format mutually acceptable to the Department and the permittee. With approval of the Department, reports submitted on machine-readable media may be submitted in lieu of paper reports. The report shall include, but not necessarily be limited to, the following:

*(Break in Continuity Within Section)*

- ~~6.9.4.3~~ 6.9.4.4 Leachate quantity and quality data as required in subsection 6.4.4, and in the Solid Waste permit; ~~[permit; Permit;]~~

- ~~6.9.4.4~~ 6.9.4.5 Gas monitoring data as required in subsection 6.5.3, and in the Solid Waste permit; ~~[permit; Permit;]~~

*(Break in Continuity Within Section)*

- 6.9.4.9 The permittee must also submit any additional reports specified in the Solid Waste ~~[permit; Permit.]~~

*(Break in Continuity Within Section)*

- 6.10 Closure

*(Break in Continuity Within Section)*

- 6.10.2 Required submittals; notification

*(Break in Continuity Within Section)*

- 6.10.2.3 If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in subsection 6.10.1, it will modify the ~~[solid waste permit Solid Waste Permit]~~ to allow closure to take place.

- 6.10.2.4 The owner or operator shall not commence closure activities before receiving the necessary modifications to the ~~[solid waste permit Solid Waste Permit]~~.

*(Break in Continuity Within Section)*

- 6.10.4 Minimum closure requirements

*(Break in Continuity Within Section)*

- 6.10.4.7 ~~When~~ Within 30 days of completion of closure of the landfill or a landfill cell is completed, the owner or operator shall submit a final report for the Department's approval, unless the Department approves a longer period of time. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the ~~[solid waste permit Solid Waste Permit]~~ and these regulations. The Department will inspect the cell or facility and will either:

- 6.10.4.7.1 Issue a letter of approval to certify that the site has been closed in accordance with the ~~[solid waste permit Solid Waste Permit]~~, the closure plan, and all applicable regulations; or

- 6.10.4.7.2 Determine that the site is not in compliance with the ~~[solid waste permit Solid Waste Permit]~~, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

*(Break in Continuity Within Section)*

6.12 Post-closure Care

*(Break in Continuity Within Section)*

6.12.2 Minimum post-closure care requirements. Post-closure care shall be in accordance with the post-closure permit and shall consist of at least the following:

*(Break in Continuity Within Section)*

6.12.2.7 Other post-closure care requirements specified in the ~~[solid waste permit~~ Solid Waste Permit].

*(Break in Continuity of Sections)*

**11.0 Special Wastes Management Part 3 - Coal Combustion Residuals**

(NOTE: This section applies to those units that contain coal combustion residuals (CCR). Additional requirements for landfills containing CCR and other industrial wastes are located in Section 6.0 - Industrial Landfills.)

11.1 General provisions.

11.1.1 Section 11.0, Part 3 applies to all ~~[existing units, landfills and surface impoundments in existence as of [INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER] May 22, 2018,]~~ lateral expansions of existing ~~[units, landfills and surface impoundments,]~~ and new ~~[units, landfills and surface impoundments,]~~ containing Coal Combustion Residuals (CCR) ~~[in existence as of [INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER]].~~ unless otherwise specified.

11.1.2 CCR units that have completed closure in accordance with DRGSW prior to ~~[INSERT DATE 21 DAYS AFTER PUBLICATION IN STATE REGISTER] May 22, 2018]~~ must comply with Section 6.0.

11.1.3 Inactive solid waste units containing CCR must complete closure in accordance with DRGSW by ~~[INSERT DATE 24 MONTHS AFTER PUBLICATION IN STATE REGISTER] May 1, 2020].~~ For the purpose of this section, an inactive unit is defined as a solid waste unit that has not received CCR or is no longer removing CCR for the purpose of beneficial use since ~~[INSERT DATE 24 MONTHS BEFORE PUBLICATION IN STATE REGISTER] May 1, 2016]~~ and has not initiated or completed closure in accordance with DRGSW regulations. The Department reserves the right to allow a variance to this closure requirement.

*(Break in Continuity Within Section)*

11.3 Additional CCR Landfill Requirements.

*(Break in Continuity Within Section)*

11.3.2 Fugitive Dust Control Plan. CCR landfills must obtain a certification from a Professional Engineer registered in Delaware that the initial fugitive dust control plan, or any subsequent amendments of it, meets the requirements of DRGSW and the ~~[solid waste permit~~ Solid Waste Permit].

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2017 issue of the Register at page 129 (21 DE Reg. 129). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1301 Regulations Governing Solid Waste**

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# FINAL REGULATIONS

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**DIVISION OF WATER**  
**SURFACE WATER DISCHARGES SECTION**

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

**Amendment to Secretary's Order No.: 2018-W-0006**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 7204:**  
***Regulations for Licensing Operators of Wastewater Facilities***

**Date of Issuance: April 13, 2018**  
**Effective Date of the Amendment: May 11, 2018**

**7204 Regulations for Licensing Operators Of Wastewater Facilities**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006 and 6010, the following is entered as an Amendment to the Secretary's Order in the above-referenced regulatory proceeding.

Whereas, Secretary's Order No. 2018-W-0006 (the "Original Order") was issued on February 1, 2018, with an effective date of March 11, 2018; and

Whereas, pursuant to 29 **Del.C.** §605(a), "[n]o rule or regulation promulgated by any state agency shall become effective until the Attorney General has reviewed the rule or regulation and has informed the issuing agency in writing as to the potential of the rule or regulation to result in a taking of private property" (i.e., the "Takings Review" memorandum); and

Whereas, subsequent to the Original Order's issuance date, the Department was advised that additional time (i.e., beyond the Original Order's effective date of March 11, 2018) would be required for the Attorney General's office to provide this issuing agency with its formal Takings Review memorandum; and

Whereas, the Department has now been provided with the Attorney General's formal Takings Review memorandum, this promulgation may now be finalized with submission of the aforementioned Amendments to the State of Delaware's *Register of Regulations*; and

Therefore, the Original Order is hereby Amended, with the following terms and conditions:

1. The "Effective Date" of the aforementioned adoption of said Amendments by the Department shall now be **May 11, 2018**, as set forth in this Amendment to Order No. 2018-W-0006; and
2. The Original Order in all other respects regarding the adoption and promulgation of the revised proposed regulatory Amendments to 7 **DE Admin. Code** §7204, *Regulations for Licensing Operators of Wastewater Facilities*, stands as previously promulgated; and
3. The Department shall provide notice of this Order to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2017 issue of the *Register* at page 31 (21 DE Reg. 31). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**7204 Regulations for Licensing Operators Of Wastewater Facilities**

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## 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 11.0 Personnel Rosters and Job Assignments, 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 remove and add wording so the rule will be in sync with the amended legislation.

#### 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 remove and add wording so the rule will be in sync with the amended legislation.
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 remove and add wording so the rule will be in sync with the amended legislation.

#### 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 May 11, 2018.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 12<sup>th</sup> day of April 2018.

Lt. Colonel Monroe B. Hudson, Jr., Chairman (proxy)  
Director Robert J. Irwin  
Ms. Sandra C. Taylor

Ms. Kelly R. Jansen  
Vacant  
Vacant

Mr. Mark W. Rainford  
Mr. Wayne A. Keller

Vacant

\*Please note that no changes were made to Section 11.0 of 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**

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION  
700 BOARD OF CHIROPRACTIC**

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10) (24 **Del.C.** §706(a)(1) and (10))  
**24 DE Admin. Code 700**

**ORDER**

**700 Board of Chiropractic**

On January 1, 2018 the Delaware Board of Chiropractic published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 1, 2018 at a regularly scheduled meeting of the Board of Chiropractic 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 presented at the public hearing on February 1, 2018. No written comments were received by the Board.

**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 written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §706(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

**DECISION AND ORDER CONCERNING THE REGULATIONS**

**NOW THEREFORE**, pursuant to 24 **Del.C.** §706(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2018. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 5<sup>th</sup> day of April, 2018.

## DELAWARE BOARD OF CHIROPRACTIC

Trevor Ennis, D.C.

Jessica Bohl, D.C. (absent)

Taube Carpenter

John Mahoney, D.C.

Matthew McIlrath, D.C.

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 555 (21 DE Reg. 555). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**700 Board of Chiropractic**

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## DIVISION OF PROFESSIONAL REGULATION 1400 BOARD OF ELECTRICAL EXAMINERS

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))  
24 **DE Admin. Code** 1400

### ORDER

#### 1400 Board of Electrical Examiners

On February 1, 2018 the Delaware Board of Electrical Examiners published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 8. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 7, 2018 at a regularly scheduled meeting of the Board of Electrical Examiners to receive verbal comments regarding the Board's proposed amendments to its regulations. The rules pertaining to late renewal for electrical inspection agencies are proposed to be amended.

### 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 presented at the public hearing on March 7, 2018. No written comments were received by the Board.

### 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 written public comment periods, or at the public hearing.
3. Pursuant to 24 **Del.C.** §1406(a)(1) the Board has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

### DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §1406(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on February 1, 2018. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 4<sup>th</sup> day of April, 2018.

**DELAWARE BOARD OF ELECTRICAL EXAMINERS**

Robert MacLennan	Michael Travers (absent)
Nathan Schreppler	Thomas Hartley
James Howard, Sr.	Richard Millar
Anthony Roca	Willie Savage

\*Please note that no changes were made to the regulation as originally proposed and published in the February 2018 issue of the *Register* at page 619 (21 DE Reg. 619). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1400 Board of Electrical Examiners**

**DIVISION OF PROFESSIONAL REGULATION  
3100 BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 **Del.C.** §3105(a)(1))  
24 **DE Admin. Code** 3100

**ORDER**

**3100 Board of Funeral Services**

On January 1, 2018 the Delaware Board of Funeral Services published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 21, Issue 7. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 23, 2018 at a regularly scheduled meeting of the Board of Funeral Services 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*.

No verbal testimony was provided at the public hearing. No written comments were received by the Board.

**FINDINGS OF FACT AND CONCLUSIONS**

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 24 **Del.C.** §3105(a)(1) the Board has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed with the correction of one typographical error in subsection 13.2.12. That subsection has been corrected in this

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Final Order by striking "Board of Professional Licensing" and substituting in its place "Board of Funeral Services".

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §3105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2018 with the typographical error corrected. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 27<sup>th</sup> day of March, 2018.

### DELAWARE BOARD OF FUNERAL SERVICES

Kevin Parsell, President

Harvey Smith, Jr. (absent)

Chad Chandler

William Torbert

Jane Hovington

Elizabeth Happoldt

Danna Levy (absent)

### 3100 Board of Funeral Services (Break in Continuity of Sections)

#### 13.0 Cremation and Crematoriums

##### (Break in Continuity Within Section)

#### 13.2 Cremation

##### (Break in Continuity Within Section)

13.2.12 All crematories and crematoriums which are not part of a licensed funeral home operation must register with the Board of ~~Professional Licensing~~ Funeral Services] for an official establishment permit. The establishment shall meet the requirements set forth by the Board of Funeral Services in their regulations. No viewing of decedents would be permitted at these types of crematories or crematoriums.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2018 issue of the *Register* at page 559 (21 DE Reg. 559). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**3100 Board of Funeral Services**

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507, 508 and 29 Delaware Code, Section 8404(8) (17 **Del.C.** §§132(e), 507 & 508; 29 **Del.C.** §8404(8))  
2 DE Admin. Code 2309

### ORDER ADOPTING REVISIONS TO REGULATIONS

#### 2309 Development Coordination Manual

Pursuant to the authority provided by 17 **Del C.** §132(e), 507, and 508, as well as 29 **Del.C.** §8404(8), the Delaware Department of Transportation (DelDOT), adopted the Development Coordination Manual. The Department issues this Order adopting revisions to regulations regarding development coordination.

The Department published the proposed revisions in the March 1, 2018, *Delaware Register of Regulations*, pages 692-694.

The Department took written comments on these proposed revisions from March 1, 2018, through April 2, 2018. No comments were received.

### Summary of the Evidence and Information Submitted

The current regulations were enacted in April of 2016. The proposed revisions to the Development Coordination Manual address procedural changes, add or modify technical requirements and clarify and amend design criteria. These collective changes are both technical and administrative in nature and serve in part to clarify the intent of the Department as enacted through these regulations. A listing of changes made as part of this revision is included in the attached table.

### Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions.

2. The proposed revisions are useful and proper and the Department believes that the adoption of these revisions is appropriate.

### Decision and Order Concerning the Regulations

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the Development Coordination Manual be adopted and promulgated as set forth below.

The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g)

Jennifer Cohan, Secretary      4/16/18  
Delaware Department of Transportation

### SUMMARY OF PROPOSED CHANGES TO THE DEVELOPMENT COORDINATION MANUAL

Sec/Fig	Para.	DelDOT Comment/Proposed Change	Justification
P3-a	-	<p>“Submit Record Plan in accordance with the Gatekeeping Checklist” <b>“Submit Record Plan in accordance with the Development Coordination Manual”</b></p> <p>“Submission acceptable in accordance with Gatekeeping Checklist” <b>“Submission acceptable in accordance with Development Coordination Manual”</b></p>	Removing the reference to the Gatekeeping Checklist

P3-b	-	<p>“Submit Entrance/Construction Plans in accordance with the Gatekeeping Checklist.” <b>“Submit Entrance/Construction Plans in accordance to the Development Coordination Manual.”</b></p> <p>“Submission acceptable in accordance to the Gatekeeping Checklist?” <b>“Submission acceptable in accordance to the Development Coordination Manual?”</b></p>	Removing the reference to the Gatekeeping Checklist
P.4.2		<p>“Once the approval expires, plans will need to be resubmitted for review.”</p> <p>“Once the approval expires, plans will need to be resubmitted for review <b>with the proper fee</b>”.</p>	Clarification
P.4.2		<p>“Upon addressing all comments provided by DeIDOT in a comment response letter, the entrance/ construction plans can be submitted.”</p> <p>“Upon addressing all comments provided by DeIDOT <b>in a comment response letter</b>, the entrance/ construction plans can be submitted.”</p>	Clarification
P.4.4		<p>“For commercial sites, a Commercial Entrance Construction Permit (see Appendix E) will be issued in addition to NTP.”</p> <p>“For commercial sites, a Commercial Entrance Construction Permit (<del>see Appendix E</del>) will be issued in addition to NTP.”</p>	Typographical Error
P.5		Added <b>“If all or a portion of the property subject to this fee is re-subdivided within 10 years of the payment of this fee, that subdivision shall be treated for fee purposes as if planned for 5 lots or more.”</b>	Added Language from Title 17, Chapter 1, Section 131 for clarification
P6		Deleted and Replaced entire Section	Modified this entire section to allow more projects to be eligible for this shorter process. The revision added clarity to what was required of the projects in the process and clarified the waiver process.
P7		Deleted entire Section. P6 and P7 now combined into one.	Deleted entire Section. P6 and P7 now combined into one.
P.9		Now P.8 Updated manual references to the most current version.	Clarification
5.2.9	-	Auxiliary Lane warrants	Consistent with other local and regional standards.
Ch.9	-	Removal of entire Chapter	Removed to prevent any conflict with the Administrative Procedures Act

**\*Please Note:** Due to the size of the final regulation, it is not being published here. The following links to the final regulation are provided below:

Preface (<http://regulations.delaware.gov/register/may2018/final/Preface.pdf>)

Chapter 5 Design Elements (<http://regulations.delaware.gov/register/may2018/final/Chap5.pdf>)

Chapter 9 Manual Updates (<http://regulations.delaware.gov/register/may2018/finalChap9.pdf>)

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### DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
(17 Del.C. §§134, 141 and 21 Del.C. Ch. 41)  
2 DE Admin. Code 2402

### ORDER

#### 2402 Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the Delaware Code, Sections 134 and 141, as well as 21 Delaware Code Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department issues this Order adopting revisions to Parts 1, 2, 3, 4, 6, 7, and 9 of the Delaware MUTCD.

The Department published the proposed revisions in the November 1, 2017 Delaware *Register of Regulations*, pages 412 to 418. The Department took written comments on these draft revisions to the Delaware MUTCD from November 1, 2017 to December 1, 2017.

After substantial comments and changes, the Department published the updated proposed revisions in the March 1, 2018 Delaware *Register of Regulations*, pages 695 to 711. The Department took written comments on these draft revisions to the Delaware MUTCD from March 1, 2018 through April 2, 2018. No comments were received.

#### Summary of the Evidence and Information Submitted

The proposed revisions to the 2011 version of the Delaware MUTCD, Revision 3 dated May 2018, are listed in the table below.

#### Findings of Fact

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions to the 2011 version of the Delaware MUTCD.

2. The proposed revisions to the 2011 version of the Delaware MUTCD are useful and proper and the Department believes that the adoption of these revisions is appropriate.

#### Decision and Order Concerning the Regulations

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these revisions to the Delaware MUTCD be adopted and promulgated as set forth below.

The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Jennifer Cohan, Secretary  
Delaware Department of Transportation  
4/9/2018

Page s	Sec/Fig/Table	Para.	DelDOT Comment / Proposed Change	Modification
1A-3	Section 1A.07	01A	Add option for traffic control devices and applications based on engineering judgment and approval of DelDOT Chief Engineer.	<i>Text added.</i> <b>Justification:</b> Clarified approval process for traffic control devices that do not comply with standard statements.
1A-14	Section 1A.13	03	Add definition of bicycle box.	<i>Text added.</i> <b>Justification:</b> Concept of bicycle box is being introduced into the DE MUTCD.
2B-3	Table 2B-1	-	Add a footnote for ONE WAY (R6-1) signs to allow smaller signs on multi-lane conventional roads and expressways based on engineering judgment.	<i>Table modified.</i> <b>Justification:</b> Excessively large ONE WAY signs takes away from the visibility and message of the STOP sign on the minor street approach and other more important sign messages.
2B-3	Table 2B-1	-	Add option for 24" x 24" DO NOT ENTER sign to be used on the back side of 36" STOP signs at development access points.	<i>Table modified.</i> <b>Justification:</b> Reduces the number of required sign assemblies at development entrances where DO NOT ENTER signs are required.
2B-10	Section 2B.06	02	Add guidance for use of STOP signs on minor-street approaches.	<i>Text added.</i> <b>Justification:</b> The DE MUTCD provides minimum volume thresholds for major street approach but not minor street approach volumes for the installation of STOP signs. This guidance statement will allow for the omission of STOP signs on very low volume approaches based on engineering judgement.
2B-14	Section 2B.11	01E	Incorporate FHWA Official Interpretation – R1-5 Sign text into manual.	<i>Text added.</i> <b>Justification:</b> Updated text to reflect the FHWA official interpretation of the R1-5 series.
2B-38	Section 2B.37	03C	Provide guidance regarding spacing between DO NOT ENTER and WRONG WAY signs.	<i>Text added.</i> <b>Justification:</b> Numerous instances across the state where DO NOT ENTER AND WRONG WAY signs are being installed too close together.
2B-6 2B-78 2B-79	Table 2B-1 Figure 2B-33 Section 2B.72	08A	Added IT CAN WAIT! plaque as an option	<i>Text added and figure modified.</i> <b>Justification:</b> Revised to reflect use of educational plaque

2C-2	Table 2C-1		Change designation for the Duck Crossing sign from W11-11-DE to W11-3-DE.	01		<i>Table modified, text added, and figure modified.</i> <b>Justification:</b> Revised to reduce potential confusion regarding sign designations for the Duck Crossing (originally W11-11-DE) sign and the Golf Cart (W11-11) sign.
2C-5	Table 2C-2					
2C-35	Section 2C.50					
2C-36	Figure 2C-11					
2C-17	Figure 2C-3	-	Remove signs W1-11R and W13-1P from figure; keep text referring to these signs as an option.			<i>Figure modified.</i> <b>Justification:</b> W11-1R and W13-1P signs are often misused based on their depiction in Figure 2C-3d
2C-2	Table 2C-1		Create new sign called W11-1-DE with text "IN LANE". Provide guidance about preferred width of shoulder. Add new sign to list of vehicular traffic warning signs on Page 2C-33.	06A		<i>Text added and figure modified.</i> <b>Justification:</b> Updated to reflect DelDOT's desire to discontinue the use of the Share the Road plaque.
2C-5	Table 2C-2					
2C-33	Section 2C.49					
2C-34	Figure 2C-10					
2C-39	Section 2C.60	01A				
2D-3	Section 2D.05	01	Revise text regarding lettering style to match original federal text.	04		<i>Text modified.</i> <b>Justification:</b> FHWA rescinded use of Clearview font.
2D-4	Section 2E.14					
2E-6						
2D-3	Table 2D-1		Add DART Beach Bus Park & Ride (D2-2-DE) sign to Figure 2D-7 and as an option in Section 2D.41, paragraph 08A.	08A		<i>Text and figure modified.</i> <b>Justification:</b> Sign provides guidance regarding the distance to Park & Rides serving the DART Beach Bus
2D-21	Figure 2D-7					
2D-28	Section 2D.41					
2D-29	Section 2D.43	07A 08A	Incorporate Interim Guidance – Overhead Street Signs Mounted on Traffic Signals memo			<i>Text modified.</i> <b>Justification:</b> Smaller letter heights are sufficient to convey information to motorists and problems with mounting large signs on signal mast arms and span wires.
2I-2	Table 2I-1		Change "DISABLED VEHICLES" in sign D12-4-DE to "TRAFFIC PROBLEMS" and update text accordingly in Section 2I.09. Create new plaque "TRAFFIC ALERT WHEN FLASHING" as an optional supplement to the D12-1-DE sign, and update text accordingly in Section 2I.09	01A 09A		<i>Text and figure modified.</i> <b>Justification:</b> Revised to reflect current practices; TRAFFIC PROBLEMS conveys are more comprehensive message compared to DISABLED VEHICLES.
2I-13	Figure 2I-8					
2I-14	Section 2I.09					
2K-3	Figure 2K-1		Add reference to Standards for Agricultural Tourism Attraction Guide Signs memo; delete existing guidance	02		<i>Text and figure modified.</i> <b>Justification:</b> Standards for Agricultural Tourism signs have been modified.
2K-6	Section 2K.07					
3B-4	3B.01	11C	Add guidance for centerline markings on roadways with on-street parking			<i>Text modified.</i> <b>Justification:</b> Previous DE MUTCD guidance did not account for roadways with on-street parking.

3B-4 3B-37	3B.01 3B.08	11D 03A	Add guidance for maintaining center line and edge line striping along roadways at the intersection with minor roadways or driveways with an ADT of 200 vehicles per day or lower.	<i>Text modified.</i> <b>Justification:</b> This guidance statement will allow the center line and edge line to be maintained at low volume driveways based on engineering judgement.
3B-58	Section 3B-13 Figure 3B-15F Figure 3B-15G Figure 3B-15H	01.B.6	Remove RPMs from turn lanes on Figure 3B-15F and 3B-15H. Remove Figure 3B-15G. Create new Figure 3B-15G for RPM application for two-way left-turn lanes with 80' spacing through the two-way left-turn lane and 40' spacing approaching the intersection. Remove 48' RPM spacing from Figure 3B-15F. Remove any text regarding 20' RPM spacing (note 2 in multiple figures) along conventional roadways. Revise spacing for all RPMs to 40' or 80' for conventional roadways.	<i>Text and figures modified.</i> <b>Justification:</b> Excessive use of RPMs along conventional roadways; clarification needed for usage of RPMs along two-way left-turn lanes.
3B-59	3B.16	01E	Add guidance for stop lines at stop-controlled approaches with an ADT of 100 vehicles per day or lower.	<i>Text modified.</i> <b>Justification:</b> This guidance statement will allow for the omission of stop lines on very low volume approaches based on engineering judgement. Adding a minimum volume threshold for the installation of stop lines would reduce the costs to construct intersections with low-volume approaches; for example, at access points to new development or roadside businesses.
3B-60	3B.16	10	Add text to reference bicycle boxes in Part 9.	<i>Text modified.</i> <b>Justification:</b> Added Bicycle Boxes based on recommendations from the NCUTCD.
4D-14 4D-15 4D-17	Section 4D.11  Section 4D-12	07A- 07D  18- 19B	Change Guidance for use of signal backplates on signal heads mounted on mast arms and where an engineering study indicates their need. Add Standard for two-inch wide yellow retroreflective border on backplates and tether wire on signal heads with backplates on span wire.	<i>Text modified.</i> <b>Justification:</b> Text updated to be consistent with the DelDOT Traffic Design Manual.

4E-7 to 4E- 10	Section 4E.08 Figure 4E-3 Figure 4E-4	04 06A	Add text to Section 4E.08 paragraph 04 with additional criteria regarding 10" guidance at landing area and extension. Revise wording in Section 4E.08 paragraph 06A. Update depictions of landing areas and pedestrian pushbuttons in Figure 4E-3 and Figure 4E-4.	<i>Text and figures modified.</i> <b>Justification:</b> Corrected issues with landing areas in Figure 4E-4. Updated for current practice in Delaware for Figure 4E-3.
6E-11	Section 6E.08	01A 01B 04A	Add Standard to prohibit flagger stations on Interstates, Freeways, and Expressways. Add Option for use of flaggers to support emergencies and incidents. Add Guidance for location of flagger stations for moving operations on two-lane, two-way roadways.	<i>Text added.</i> <b>Justification:</b> Reflects DeIDOT's current standard practice.
6F-1 6F-11	Section 6F.01 Section 6F.03	02 03 05 18	Add reference to AASHTO's <i>Manual for Assessing Safety Hardware</i> (MASH) when referring to NCHRP Report 350	<i>Text modified.</i> <b>Justification:</b> AASHTO's MASH is an update to NCHRP Report 350
6F-11	Section 6F.04	04 – 06	Add Guidance, Option, and Standard for use of ballasts and sandbags with temporary sign stands.	<i>Text added.</i> <b>Justification:</b> Reflects DeIDOT's current standard practice.
6F-3 6F-20 6F-26 6H-79 6H-81	Table 6F-1 Figure 6F-5 Section 6F.59 Figure 6H-28 Figure 6H-29	03, 13 & 13A	Add the following signs to Table 6F-1 and Figure 6F-5: M4-9-DE1 (48"x36" I/F/E, 30"x24" Other), M4-9b-DE (9"x12"), and M4-9b-DE1 (9"x12"). Update text in Section 6F.59 to include new signs. Update the TA-28 and TA-29 to show new smaller signs.	<i>Text, table and figures modified.</i> <b>Justification:</b> There have been reports that motorists have confused pedestrian / bicycle detour signs for vehicular detour signs. The smaller version of these signs for pedestrians / bicyclists are intended to reduce driver confusion
6F-24	Section 6F.50	02A	Replace Share the Road plaque with W11-1-DE.	<i>Text modified.</i> <b>Justification:</b> Text updated to reflect DeIDOT's current standard practice to discontinue the use of the Share the Road plaque, as discussed in the <i>Bicycle Warning Sign and Share the Road Plaque</i> memorandum.
6F-29	Section 6F.60	30D	Add Guidance for placement of portable changeable message sign and drums to accommodate bicycles to the extent possible on conventional roads.	<i>Text added.</i> <b>Justification:</b> Reflects DeIDOT's current standard practice.

6F-37	Section 6F.67	01	Add Standard for base color of drums (orange).	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6G-10	Section 6G.13	04A	Update text to include reference to <i>Traffic Control Within Intersections</i> memorandum.	<i>Text modified.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6G-12	Section 6G.14	05 06	Add Standard to prohibit use of flaggers on Interstates, Freeways, and Expressways. Add Option for use of flaggers to support emergencies or incidents	<i>Text added.</i> <b>Justification:</b> Reflects DelDOT's current standard practice.
6G-16	Section 6G.22	All	Create new section based on <i>Interim Guidance – Rolling Road Blocks</i> memorandum.	<i>Section added.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6G-17	Section 6G.23	All	Create new section based on <i>Interim Guidance – Installing and Removing TTC Devices</i> memorandum.	<i>Section added.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6G-19	Section 6G.24	All	Create new section based on <i>Interim Guidance – Aerial Work</i> memorandum.	<i>Section added.</i> <b>Justification:</b> The memorandum describes DelDOT's current standard practice.
6H-38	Figure 6H-11A	01	Include Note 2 (Standard) from Figure 6H-11 in Figure 6H-11A	<i>Figure modified.</i> <b>Justification:</b> Modifications to regulatory signs (e.g., new STOP signs and new intersection traffic control types/operations), albeit temporary, require DelDOT Traffic's formal approval and Traffic Control Device Authorization.
6H-66 & 6H-67	Figure 6H-21A	-	Create new typical application (TA-21A) for turn lane closure (left-turn or right-turn lane). Include shoulder closure taper transitioning into in-place left or right turn lane closure.	<i>Figure added.</i> <b>Justification:</b> A right-turn lane closure is a very common MOT application; yet, TA-21 is primarily intended for thru lane applications and TA-23 is a relatively uncommon double left-turn lane closure.
6H-71	Figure 6H-23	-	Shift signs and sign dimensions A and B on the eastbound approach back.	<i>Figure modified.</i> <b>Justification:</b> The former sign dimensions erroneously depicted the stop line as the primary point of measure; however, the beginning of the turn lane closure taper is the appropriate reference point.

7B-1	Table 7B-1		Update name and size of overhead school speed limit sign in Table 7B-1.	<i>Table and figures modified.</i>
7B-4	Figure 7B-1			<b>Justification:</b> Previously, sign read "School Speed XX Limit When Flashing". Sign has been updated to read "School Speed Limit XX When Flashing" as described in <i>Interim Guidance – Overhead School Speed Limit XX When Flashing Sign</i> memorandum.
7B-7	Figure 7B-3		Update overhead school speed limit sign in Figures 7B-1, 3, and 5.	<i>Text and figures modified.</i>
7B-9	Figure 7B-5			<b>Justification:</b> Flashing beacons on school speed limit sign assembly has been updated to comply with MUTCD standards. Previously, both flashing beacons were located on top of the assembly, an arrangement which should only be used at railroad crossings.
7B-7	Figure 7B-3	17 & 18	Update school speed limit assembly signs with flashing beacons in Figures 7B-3 and 7B-5. Remove paragraph 18 in Section 7B.15, as paragraph 16 is sufficient for the description and location of the beacons, and paragraph 18 is incorrect.	<i>Text modified.</i>
7B-9	Figure 7B-5			<b>Justification:</b> Updated text to reflect the FHWA official interpretation of the R1-5 series described in <i>FHWA Official Interpretation – R1-5 Sign</i> memorandum.
7B-13	Section 7B.15			<i>Text, table, and figure modified.</i>
7B-10	Section 7B.12	04A	Add paragraph 04A to Section 7B.12 to include R1-5 series signs.	<b>Justification:</b> Added plaque based on recommendations from the <i>NCUTCD Except Bicycles Plaque</i> and <i>FHWA Interim Approval #18</i> memorandums.
9B-2	Table 9B-1	06 - 09	Add text and update table and figure for new EXCEPT BICYCLES R3-7bP plaque.	<i>Text, table, and figures modified.</i>
9B-5	Figure 9B-2(1)			<b>Justification:</b> New Bicycle IN LANE warning sign added based on DelDOT's current practice. Text updated to reflect DelDOT's current standard practice to discontinue the use of the Share the Road plaque, as discussed in the <i>Bicycle Warning Sign and Share the Road Plaque</i> memorandum.
9B-8	Section 9B.11			<i>Text added.</i>
9B-3	Table 9B-1	02	Remove W16-1P sign from Table 9B-1 and Figure 9B-3 (no longer related to bicycles). Add W11-1-DE sign to Figure 9B-3. Replace paragraph 02 with Option for W11-1-DE instead of SHARE THE ROAD plaque.	<b>Justification:</b> Reduce overuse of signs.
9B-11	Section 9B.19			<i>Table and figures modified.</i>
9B-15	Figure 9B-3			<b>Justification:</b> Application of both sign messages was confusing.
	Figure 9B-5			
9B-4	Section 9B.04	01A	Add Guidance for use of Bike Lane (R3-17) and Bicycle Route (M1-8) signs.	
9B-13	Section 9B.21	01A	Eliminate use of the R4-4. Replace all references to R4-4 with R4-4-DE.	
9B-5	Figure 9B-2(1)	01 - 04	Modify text to allow optional use of R4-4-DE for all weaving movements between bicycles and right-turning vehicles.	
9B-6	Section 9B.05			
9B-7				
9C-2	Figure 9C-1			

9B-15	Figure 9B-5				
9C-2	Figure 9C-1				
9C-3	Figure 9C-1A				
9C-4	Figure 9C-1B				
9C-6	Figure 9C-1D				<i>Figures modified.</i>
9C-7	Figure 9C-1E				<b>Justification:</b> Optional signs shown on figures have led to the overuse of optional signs.
9C-8	Figure 9C-1F	-		Remove optional signs from figures.	
9C-13	Figure 9C-4				
9C-14	Figure 9C-4A				
9C-15	Figure 9C-5				
9C-16	Figure 9C-6				
9C-17	Figure 9C-6A				
<i>Figure removed.</i>					
9C-9	Figure 9C-1G	-		Remove Figure 9C-1G	<b>Justification:</b> Figure is no longer needed since the use of raised pavement markers is changing in Part 3 and will no longer be used along dotted lines.
<i>Text modified.</i>					
9C-10	Section 9C.04	03A		Modify the Guidance text to include "should" condition.	<b>Justification:</b> Clarified Guidance statement.
<i>Text and figures added.</i>					
9C-12	Section 9C.04	15 –		Add paragraphs 15 – 21 in Section	right-turn lane treatments where space does not exist to provide a dedicated bicycle lane to the left of a right-turn only lane, as described in the <i>Interim Guidance; Part 9, Right-Turn Lane Markings for Bicycles</i> memorandum.
9C-15	Figure 9C-4B	21		9C.04. Add Figures 9C-4B and 9C-4C.	
9C-16	Figure 9C-4C				<i>Text and figures added.</i>
<b>Justification:</b> Added Bicycle Boxes based on recommendations from the <i>NCUTCD Bicycle Box</i> and <i>FHWA Interim Approval #18</i> memorandums.					
9C-23	Section 9C.08	01 –			
9C-25	Figure 9C-10	07		Add new section and figures.	
9C-26	Figure 9C-11				

**\*Please Note: Due to the size of the final regulation, the Delaware Manual on Uniform Traffic Control Devices is not being published here. A PDF version is available at the following location:**

DE MUTCD Revision 3 - Part 1 - General

<http://regulations.delaware.gov/register/may2018/final/MUTCDPart1General.pdf>

DE MUTCD Revision 3 - Part 2 - Signs

<http://regulations.delaware.gov/register/may2018/final/MUTCDPart2Signs.pdf>

DE MUTCD Revision 3 - Part 3 - Markings

<http://regulations.delaware.gov/register/may2018/final/MUTCDPart3Markings.pdf>

DE MUTCD Revision 3 - Part 4 - Highway Traffic Signals

<http://regulations.delaware.gov/register/may2018/final/MUTCDPart4HighwayTrafficSignals.pdf>

DE MUTCD Revision 3 - Part 6 - Temporary Traffic Control

<http://regulations.delaware.gov/register/may2018/final/MUTCDPart6TemporaryTrafficControl.pdf>

DE MUTCD Revision 3 - Part 7 - School Areas

<http://regulations.delaware.gov/register/may2018/finalMUTCDPart7SchoolAreas.pdf>

DE MUTCD Revision 3 - Part 9 - Bicycle Facilities

<http://regulations.delaware.gov/register/may2018/final/MUTCDPart9BicycleFacilities.pdf>

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

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

### NOTICE

#### **Delaware Diamond State Health Plan 1115 Demonstration Waiver Amendment and Extension Requests**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) 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) intends to submit a request to the Centers for Medicare and Medicaid Services (CMS) to immediately amend Delaware's Section 1115 Diamond State Health Plan (DSHP) Demonstration Waiver to address Medicaid coverage of substance use disorder (SUD) treatment services when provided in a setting that qualifies as an institution for mental diseases (IMD).

In compliance with federal public notice requirements of 42 U.S.C. §1315(d) and 42 CFR Part 431, Subpart G, as well as the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, DHSS / DMMA also gives notice of its intent to file an application with CMS to request a five year extension of the DSHP 1115 Demonstration Waiver, which is currently approved through December 31, 2018. The requested extension period is from January 1, 2019 through December 31, 2023. DHSS/DMMA is not currently requesting any changes to the DSHP 1115 Demonstration Waiver for the extension period, with the exception of the amendment described below.

#### **Purpose**

The purpose of this posting is to: (1) provide public notice and receive input for consideration regarding Delaware's DSHP Waiver amendment for SUD treatment services; and (2) provide public notice and receive public input for consideration regarding Delaware's DSHP 1115 Waiver five-year extension request. Delaware is proposing an amendment and an extension that will be submitted to CMS at the same time.

#### **Proposed Amendment: Overview and Summary of Proposed 1115 DSHP Waiver Amendment for SUD Services in IMDs**

Federal Medicaid rules generally prohibit Medicaid coverage of services for individuals ages 21-64 provided in settings that qualify as IMDs. However, Delaware's Medicaid managed care program has had a long-standing exception to these rules due to separate policies that govern Medicaid managed care contracts and payment rates, known as Medicaid "in lieu of" services. These policies allowed Delaware to provide coverage in settings that qualify as IMDs if an IMD is a cost-effective alternative setting to an allowable Medicaid state plan setting. In 2016, CMS revised the managed care regulations to limit such IMD stays to no more than 15 days in a month. In recognition of the national opioid/ SUD epidemic and the need for potentially longer, medically necessary residential treatment stays as part of a comprehensive continuum of care for SUD, CMS is now offering states the opportunity to apply for and receive 1115 waiver authority to include IMD settings as Medicaid-covered settings for SUD treatment.

If Delaware does not amend the 1115 waiver, Medicaid funding will no longer be available for SUD services provided in settings that qualify as IMDs. This amendment is needed to avoid unnecessarily disrupting Delaware's substance use continuum of care during the addiction epidemic in Delaware. This amendment will also remove federal Medicaid payment barriers for SUD treatment in IMD settings, regardless of whether the SUD treatment services are delivered through managed care or fee-for-service.

**Proposed Extension: Overview and Summary of Proposed DSHP 1115 Waiver Extension****DSHP 1115 Waiver Program Description, Goals and Objectives**

Delaware's DSHP 1115 Demonstration Waiver was initially approved in 1995, and implemented on January 1, 1996. The original goal of DSHP 1115 Waiver was to improve the health status of low-income Delawareans by expanding access to healthcare to more individuals throughout the state; creating and maintaining a managed care delivery system with an emphasis on primary care; and controlling the growth of healthcare expenditures for the Medicaid population.

In order to achieve this goal, the DSHP 1115 Waiver was designed to mandatorily enroll eligible Medicaid recipients into managed care organizations (MCOs) and create efficiencies in the Medicaid program. Initial savings achieved under managed care enabled the expansion of coverage to certain individuals who would otherwise not be eligible for Medicaid, leading up to Medicaid expansion under the Affordable Care Act in 2014. Since 2012, the DSHP 1115 Waiver provides long-term services and supports (LTSS) to eligible individuals through DSHP Plus, as well as enhanced behavioral health services and supports for targeted Medicaid beneficiaries through a voluntary program begun in 2015 called Promoting Optimal Mental Health for Individuals through Supports and Empowerment (PROMISE).

A complete description of the current DSHP 1115 Waiver is available at:

<http://dhss.delaware.gov/dhss/dmma/medicaid.html>

Delaware's goal today in operating the DSHP 1115 Waiver demonstration is to improve the health status of low-income Delawareans by:

- Improving access to health care for the Medicaid population, including increasing options for those who need long-term care (LTC) by expanding access to home and community based services (HCBS);
- Rebalancing Delaware's LTC system in favor of HCBS;
- Promoting early intervention for individuals with, or at-risk, for having, LTC needs;
- Increasing coordination of care and supports;
- Expanding consumer choices;
- Improving the quality of health services, including LTC services, delivered to all Delawareans;
- Creating a payment structure that provides incentives for resources to shift from institutions to community-based LTSS services where appropriate;
- Improving coordination and integration of Medicare and Medicaid benefits for full-benefit dual eligibles;
- Expanding coverage to additional low-income Delawareans;
- Improving overall health status and quality of life of individuals enrolled in PROMISE; and
- Increasing and strengthening overall coverage of former foster care youth to improve health outcomes for this population.

Delaware will continue working to improve the health status of low-income Delawareans during the DSHP 1115 Waiver extension. During the extension, DHSS/DMMA continues to plan and prepare for the future of healthcare in Delaware, including the roles of Medicaid and the Children's Health Insurance Program (CHIP).

**DSHP 1115 Waiver Eligibility**

No changes to the DSHP 1115 Waiver eligibility are proposed for the extension period. Most eligibility groups in the DSHP 1115 Waiver are approved in the Medicaid and CHIP State Plan. The 1115 Waiver extends eligibility to additional groups as necessary for their receipt of LTSS through DSHP Plus and behavioral health services through PROMISE. These groups are described in detail as "Demonstration Population Expenditures" in the current approved 1115 Waiver. A waiver amendment was recently approved to add coverage for out-of-state former foster care youth.

**DSHP 1115 Waiver Benefits**

No changes are proposed to the DSHP 1115 Waiver benefits for the extension period. Individuals enrolled in the DSHP 1115 Waiver receive most Medicaid and CHIP State Plan benefits through the DSHP 1115 Waiver delivery system (described below). Individuals eligible for DSHP Plus receive comprehensive, integrated LTSS and individuals eligible for PROMISE services receive an enhanced package of behavioral health services.

## DSHP 1115 Waiver Delivery System

No changes are currently proposed to the DSHP 1115 waiver delivery system for the extension period. The delivery system for DSHP and DSHP-Plus benefits during the extension period will continue to be mandatory enrollment in MCOs. A limited number of benefits, such as children's dental and non-emergency transportation, are delivered through fee-for-service. PROMISE benefits will continue to be delivered through the fee-for-service PROMISE program administered through the Division of Substance Abuse and Mental Health (DSAMH). A waiver amendment was recently approved to include DDDS Lifespan Waiver enrollees in MCOs. The SUD amendment proposes to include IMDs as allowable settings for SUD treatment in managed care and fee-for-service.

## DSHP Cost Sharing

No changes to cost sharing are proposed for the extension period. Cost-sharing will not differ from the approved Medicaid and CHIP State Plans.

## DSHP Waiver Hypotheses and Evaluation

Once the SUD amendment has been approved by CMS, those hypotheses and evaluation plans will be incorporated into the extension period. The SUD amendment proposes to test whether Delaware can enhance the effectiveness of the SUD treatment system in Medicaid by maintenance and expansion of SUD residential services as part of a coordinated, full continuum of care, resulting in increased access and improved health outcomes for individuals with SUD. Delaware expects to evaluate whether the SUD amendment:

- Increases enrollee access to and utilization of appropriate SUD treatment services based on the American Society of Addiction Medicine (ASAM) Criteria;
- Decreases the use of medically inappropriate and avoidable high-cost emergency department and hospital services by enrollees with SUD;
- Increases initiation of follow-up after discharge from emergency department for alcohol or other drug dependence; and
- Reduces readmission rates for SUD treatment.

Details on the SUD amendment can be found in the draft application for public comment.

No other changes to the DSHP 1115 waiver proposed hypotheses and evaluation parameters are planned for the extension period. Delaware's proposed hypotheses and evaluation approach is in its draft Waiver Evaluation Plan pending before CMS. Delaware has proposed various methodologies to evaluate the impact of the 1115 Waiver on access to care, quality of care, cost-containment/cost-effectiveness, and the impact of rebalancing LTC in favor of HCBS. For example, Delaware has proposed to evaluate the following questions:

### Access to Care

- Is access to primary care providers sufficient?
- Has access to specialists increased under the 1115 Waiver?
- Is access to HCBS providers sufficient in the community?
- Are the members satisfied with the services received under DSHP Plus?
- Has there been a shift in where services are being received from Nursing Home to community based care?
- What is the Nursing Home admission rate in the DSHP Plus population?
- What is the Nursing Home discharge rate (other than death) in the DSHP Plus population?

### Quality of Care

- Has the health status of waiver enrollees improved?
- Has the quality of care improved for select performance measures?
- What is the level of enrollee satisfaction with MCOs?

### Cost Containment/Cost Effectiveness

- Are actual expenditures less than the per member per month projections for the 1115 waiver?
- Did emergency room care utilization and expenditures decrease for select populations?
- Is there a decrease in nursing home utilization?

The proposed evaluation will use data from a variety of sources as follows:

- Provider Satisfaction Surveys
- Member Satisfaction Survey
- MCO member surveys
- External Quality Review Reports
- Enrollment files and reports.
- Fee-for-service claims and encounter data as applicable.
- Data submitted to the State for review such as contracts, quality management plans; select utilization reports.

An interim evaluation report will be submitted to CMS on ten of the eleven goals in place during the most recent waiver period. (The eleventh goal related to foster-care youth is too new to evaluate.) Overall, this interim evaluation concludes that Delaware has been successful in meeting the DSHP Waiver's goals, but additional efforts may be needed with respect to PROMISE behavioral health services and improving coordination for full-benefit dual eligibles. A summary of this interim evaluation is included in the draft application for public comment.

### **Waiver and Expenditure Authorities**

Expenditure authority for the proposed SUD amendment is the only change proposed for the extension period. No other changes to the DSHP 1115 waiver and expenditure authorities are proposed for the extension period. DHSS/DMMA is requesting the same waiver and expenditure authorities as approved in the current DSHP 1115 Waiver. These include:

#### Waiver authorities:

1. Amount, duration and scope of services (Section 1902(a)(10)(B) and 1902(a)(17))-To permit benefit packages for DSHP and DSHP Plus enrollees that vary from the State Plan and permit the provision of additional benefits under DSHP Plus and PROMISE.
2. Provision of Medical Assistance Section 1902(a)(8) and 1902(a)(10)-To the extent necessary to enable Delaware to limit the provision of medical assistance (and treatment as eligible) for individuals described in the eligibility group under section 1902(a)(10)(A)(ii)(XX) of the Act and the Medicaid state plan to only former foster care youth who are under 26 years of age, were in foster care under the responsibility of another state or tribe on the date of attaining 18 years of age (or such higher age as the state has elected), were enrolled in Medicaid on that date, and are now residents in Delaware applying for Medicaid.
3. Freedom of Choice (Section 1902(a)(23)(A))-To permit mandatory enrollment in MCOs and selective contracting for certain HCBS and transportation providers.
4. Retroactive Eligibility Section 1902(a)(34)-To permit Delaware to not extend eligibility to DSHP and DSHP Plus participants prior to the date that an application for assistance is made, with the exception of institutionalized individuals in nursing facilities and workers with disabilities who buy-in for Medicaid coverage.

#### Current Expenditure authorities:

Expenditures for the following 1115 Demonstration Populations receiving LTSS or PROMISE services:

1. 217-Like Elderly and Disabled Home and Community Based Services (HCBS) Group
2. 217-Like HIV/AIDS HCBS Group
3. "At-risk" for Nursing Facility Group
4. TEFRA-Like Group
5. Continuing Receipt of Nursing Facility Care Group
6. Continuing Receipt of Home and Community-Based Services Group
7. Continuing Receipt of Medicaid State Plan Services Disabled Children Group.

8. PROMISE Services Group

SUD Expenditure authority requested for amendment and extension periods:

Expenditures for otherwise covered services furnished to otherwise eligible individuals who are primarily receiving treatment and withdrawal management services for substance use disorder (SUD) who are short-term residents in facilities that meet the definition of an IMD.

**DSHP 1115 Waiver Estimate of Expected Increase/Decrease in Annual Enrollment and Annual Aggregate Expenditures**

The expected increase in enrollment and expenditures through the extension period reflect the program as currently approved. The estimated enrollment and expenditures for 2018-2023 also reflect the proposed SUD amendment. The SUD amendment is not expected to have a material impact on Medicaid expenditures. No other changes are currently proposed for the extension period.

	Historical Data (Current Waiver Period)				
	2014	2015	2016	2017	2018* (estimated)
Enrollment	180,879	193,774	204,641	200,155	205,158
Expenditures	\$1,577,390,016	\$1,752,418,701	\$1,843,586,926	\$1,989,261,953	2,039,318,474

	Demonstration Extension Period				
	2019	2020	2021	2022	2023
Enrollment	208,974	212,861	216,820	220,853	224,961
Expenditures	\$2,209,320,592	\$2,362,914,413	\$2,527,612,873	\$2,704,251,065	\$2,893,729,626

**Public Comment Submission Process**

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118 (a), 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*, scheduled for May 1, 2018. The public is invited to review and comment on the proposed amendment for SUD treatment services. Comments must be received by 4:30 p.m. on May 31, 2018 and may be submitted as described below.

As required by 42 CFR Part 431, Subpart G, DHSS/DMMA must provide opportunity for public comment on the DSHP 1115 Waiver extension request. Per Del. Code, Title 29, Ch. 101 §10118(a), 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*, scheduled for May 1, 2018.

The public is invited to review and comment on the proposed DSHP 1115 Waiver extension and amendment as of the date of publication of this public notice. Comments must be received by 4:30 p.m. on May 31, 2018.

Comments on the amendment and the extension may be submitted in the following ways:

This public notice and copies of the draft amendment and extension applications are posted on the DHSS/DMMA website at: <http://dhss.delaware.gov/dhss/dmma/medicaid.html>

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## GENERAL NOTICES

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Comments and input may be submitted in the following ways:

By email: [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us)

By fax: 302-255-4413 to the attention of Nicole Cunningham

By mail: Nicole Cunningham

Division of Medicaid and Medical Assistance

Planning, Policy & Quality Unit

1901 North DuPont Highway

P.O. Box 906

New Castle, Delaware 19720-0906

Hardcopies of the public notice may also be obtained by contacting Nicole Cunningham at the address above.

Any public feedback received will be summarized including any changes that will be made as a result of the public comment to the proposed 1115 DSHP Waiver amendment or extension that will be submitted to CMS.

Stephen M. Groff

4/15/2018

Director

Division of Medicaid and Medical Assistance

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**  
**PUBLIC NOTICE**  
**501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "Lasix rules" thereby allowing rules more favorable to the welfare of the horse.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on April 6, 2018, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On April 10, 2018, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publicly noticed open meetings. Subsequent to the initial 30-day comment period from May 1 to 31, 2018 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on June 12, 2018 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB June 1, 2018. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, May 17, 2018 at 5:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE**  
**Long Term Care Medicaid**

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 Long Term Care Medicaid, specifically, to add additional application methods.

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](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on May 31, 2018. Please identify in the subject line: Long Term Care Medicaid.

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.

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4458A Cottage Food Regulations**

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Cottage Foods. On May 1, 2018, the Division of Public Health plans to publish as "proposed" revised Cottage Food Regulations. The revisions include

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requirements related to food allergens, the length of time permits are valid for and other technical corrections.

Copies of the proposed regulations are available for review in the May 1, 2018 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Elisabeth Scheneman by Friday, June 8, 2018, at:

Elisabeth Scheneman  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Elisabeth.scheneman@state.de.us](mailto:Elisabeth.scheneman@state.de.us)  
Phone: (302) 744-4951

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

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §10111(1).

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be fifteen (15) days after the public hearing is held on these regulations on May 21, 2018. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Anthony DeLuca, Division of Industrial Affairs, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8317. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. DeLuca at the address of the Delaware Department of Labor as set forth above. Written comments must be received on or before June 5, 2018.

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

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**DEPARTMENT OF STATE**  
**DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**  
**PUBLIC NOTICE**  
**902 Curation Fee For Archaeological Collections**

The purpose of these proposed regulations is to establish a fee structure to help offset the ever-rising costs associated with the long-term care, management and conservation of the State's preexisting and future archaeological 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.

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 defines the Division as a qualified repository for the State's archeological collections (7 **Del.C.** §5311). To care for Delaware's archaeological collections the Division adheres to modern professional practices and collections standards. Foremost of these are the federal

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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 statutory authority through which these proposed regulations are created are 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 purpose under the chapter, Archaeological Resources in the State. New archaeological collections accepted by the Division will be subject to the curation fee established here, unless waived by the Division Director. This fee will be applied in its entirety to the long-term care, management and conservation of the State's preexisting and future archaeological collections and associated documents.

**PLEASE TAKE NOTICE**, pursuant to 29 **Del.C.** Ch. 101, the Division of Historical and Cultural Affairs proposes regulations pursuant to its authority under 7 **Del.C.** Ch. 53, 7 **Del.C.** §5302, 29 **Del.C.** §8705. The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of a Curation Fee for Archaeological Collections. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is May 31, 2018. Anyone wishing to obtain a copy of the proposed rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

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