
Delaware Register of Regulations

Issue Date: November 1, 2019

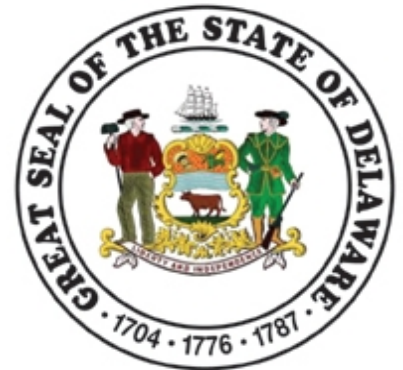
Volume 23 - Issue 5, Pages 331 - 406



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Regulations:
Proposed
Final

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 October 15, 2019.

*Fox at Bombay Hook
Cover Photo By
Dolores Michels*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 16	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 17	4:30 p.m.
April 1	March 16	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF 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****Summary**

The State of Delaware, Department of Agriculture, Delaware Harness Racing Commission (“the Commission”) proposes to amend its Regulations adopted in accordance with Title 3, Chapter 100 of the Delaware Code to amend existing regulation 1.0 to add new definitions of Extended Break and Kicking, amend existing regulation 7.5.3 to provide that the Presiding Judge may order the use of properly affixed mud guards (fenders) and mud aprons, amend existing regulation 7.6.5.4 with respect to starting gate speed, strike existing regulation 7.6.5.6, amend existing regulation 7.6.6 to provide that a fine and/or suspension may be applied by the starter or the judges to any driver for specified infractions, add a Charging the Gate provision as new regulation 7.6.6.8, add a new provision for placement of starting positions in a race with multiple trailers as new regulation 7.6.8.4, amend the Conduct of the Race regulation 7.6.13 by amending existing regulation 7.6.13.1.9 and adding new regulations 7.6.13.1.18 and 7.6.13.1.19, and amend existing regulation 10.2.9.2 to extend the time to file an appeal from a ruling from the Board of Judges from 48 hours to four business days after publishing of the ruling. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code, Chapter 100, Section 10005. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the November 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before December 2, 2019. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after December 2, 2019, following review of the public comment, the Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

***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/november2019/proposed/23 DE Reg 340RFA 11-01-19.pdf>

501 Harness Racing Rules and Regulations

1.0 Definitions

(Break in Continuity Within Section)

“Extended Break” of a horse is a horse that is not on its proper gait for 25 consecutive strides or more after the start of the race.

(Break in Continuity Within Section)

“Kicking” is a blow or thrust with the foot against any part of the horse’s body or to impel by striking with the foot at any time on the racetrack, including before, during or after the race.

(Break in Continuity of Sections)

7.0 Rules of the Race

(Break in Continuity Within Section)

7.5 Equipment

(Break in Continuity Within Section)

7.5.3 It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of each wheel of a type approved by the Commission. In his discretion, the Presiding Judge may order the use of properly affixed mud guards (fenders) and mud aprons.

7.6 Racing Rules

(Break in Continuity Within Section)

7.6.5 Starting

(Break in Continuity Within Section)

~~7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:~~

~~7.6.5.4.1 For the first one eighth of a mile, not less than 11 miles per hour.~~

~~7.6.5.4.2 For the next one sixteenth of a mile, not less than 18 miles per hour.~~

~~7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.~~

7.6.5.4 The starter shall cause the gate to move toward the starting point, gradually increasing the speed of the gate to maximum speed. When the speed has been reached in the course of a start, there shall be no decrease except in the case of a recall.

(Break in Continuity Within Section)

~~7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.~~

PROPOSED REGULATIONS

7.6.6 Recall Rules

(Break in Continuity Within Section)

7.6.6.6 A fine and/or suspension may be applied by the starter or the judges to any driver for:

(Break in Continuity Within Section)

7.6.6.6.8 Charging the Gate. Subject to the age, experience and post position of the horse and the condition of the racetrack, during extended pari-mutuel meetings, each horse in the first tier shall approach the starting gate reasonably in concert with the other horses in the field and shall be on the gate at the start. If the judges deem that a driver has intentionally laid off the gate and then charged it near the start in order to gain an advantage at the start, the driver shall be fined or suspended or both.

(Break in Continuity Within Section)

7.6.8 Two-Tiered Races

(Break in Continuity Within Section)

7.6.8.4 In a race with multiple trailers, the driver of the first horse in the second tier may elect to score out behind the first or second horse in the first tier. The horse drawing the second post in the second tier shall score behind the third or fourth horse in the first tier. The horse drawing the third post in the second tier shall score behind the fifth or sixth horse. Any horse drawing a post position outside those already referenced shall be placed in a consistent manner behind the appropriate horses from the first tier. If there are more trailers than designated post positions in the second tier as described above, the judges shall determine proper starting positions for the second tier horses.

(Break in Continuity Within Section)

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:

(Break in Continuity Within Section)

7.6.13.1.9 Strike or hook wheels with another sulky, or physically interfere with another horse or driver. For any violation that results in contact with another horse, driver or bike, the driver may receive a driving suspension and /or fine.

(Break in Continuity Within Section)

7.6.13.1.18 Turn the horse abruptly after the finish line of the race in order to return to the paddock or barn area.

7.6.13.1.19 The leading horse is not to be more than four feet from the inside rail/pylons except after selecting his position in the home stretch.

(Break in Continuity of Sections)

10.0 Due Process and Disciplinary Action

(Break in Continuity Within Section)

10.2 Proceedings by Presiding Judge or Judges

(Break in Continuity Within Section)

10.2.9 Appeals

(Break in Continuity Within Section)

10.2.9.2 An appeal under this section must be filed with the Presiding Judge not later than ~~48 hours~~ four (4) business days after the publishing of the ruling. The appeal must be accompanied by a deposit in the amount of \$400, or an amount as determined by the Commission from time to time, plus an amount to be determined from time to time by the Commission for the cost of the court reporter's fee's and attendance plus the costs for providing notice of the appeal. In no event shall the deposit for the appeal be refunded.

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

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

258 Federal Programs General Complaint Procedures*

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly 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 directly address 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 will 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 amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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

subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

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

***Please Note: 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/november2019/proposed/23 DE Reg 343RFA 11-01-19.pdf>

258 Federal Programs General Complaint Procedures*

1.0 Programs Covered by the Complaint Process

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

2.0 Right to File a Complaint

- 2.1 An organization or an individual may file a complaint regarding an alleged violation of ~~Federal Program Statutes~~ federal program statutes or regulations by the Delaware Department of Education or the ~~Local Education Agency~~ local education agency. For purposes of this regulation, a ~~Local Education Agency~~ local education agency shall also include charter schools. A written and signed complaint shall be filed with the Delaware Department of Education.
- ~~2.12.2~~ The complaint shall include a statement specifying the alleged violation by the ~~State Education Agency~~ state education agency or a ~~Local Education Agency~~. ~~Such statement~~ local education agency and shall include facts and documentation of the alleged violation.
- ~~2.22.3~~ The Delaware Department of Education shall investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.
- ~~2.32.4~~ The Delaware Department of Education may conduct an independent onsite investigation of the complaint, if it is determined that an ~~on-site~~ onsite investigation is necessary.
- ~~2.42.5~~ The complaint shall allege a violation that occurred not more than one (1) year prior to the date that the complaint is received.

3.0 Complaint Made to the Local Education Agency

- 3.1 An organization or an individual is encouraged to file a written, signed complaint with the ~~Local Education Agency~~ local education agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the ~~Local Education Agency~~ local education agency of a Federal statute or regulation that applies to the ~~Local Education Agency's~~ local education agency's program.

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

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

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

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

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

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

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

605 Student Rights and Responsibilities

A. TYPE OF REGULATORY ACTION REQUIRED

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of

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

C. IMPACT CRITERIA

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

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation helps ensure that all students' health and safety are adequately protected by providing guidelines around student rights and responsibilities.

4. Will the regulation help to ensure that all students' legal rights are respected? The reauthorized regulation specifically helps to ensure that all students' legal rights are respected.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized 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 reauthorized regulation.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this reauthorized 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/november2019/proposed/23 DE Reg 345RFA 11-01-19.pdf>

605 Student Rights and Responsibilities

1.0 Required Policy

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

2.0 Distribution of Student Rights and Responsibilities Policy

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

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

3.0 Reporting Requirements and Timelines

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 27 (14 Del.C. Ch. 27)
14 DE Admin. Code 615

PUBLIC NOTICE

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

615 School Attendance

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. Ch. 27, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 615 School Attendance. This regulation concerns school attendance for students in grades K through 12. This regulation is being reviewed in compliance with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. It is also being amended to include charter schools.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation intends to help improve student achievement as measured against state achievement standards by providing guidance on school attendance.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to 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 amended regulation does not change the decision making authority and accountability for addressing the subject.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

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

***Please Note: 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/november2019/proposed/23 DE Reg 347RFA 11-01-19.pdf>

615 School Attendance

1.0 Required Attendance Policy

- 4.4 Each school district and charter school shall have an attendance policy that ~~is in accordance with the requirements of the Delaware Code~~ complies with 14 Del.C. Ch. 27 and which defines and describes the district's or charter school's rules concerning attendance for students K to 12.

2.0 Distribution of Attendance Policy

- 2.1 Each district or charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2.2 Each district or charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.
- 2.3 Each district or charter school shall post the attendance policy on its website and notify a parent, guardian or ~~Relative Caregiver~~ relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or ~~Relative Caregiver~~ relative caregiver upon request.

3.0 Reporting Requirements and Timelines

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

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

735 Standardized Financial Reporting and Transparency

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

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

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

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

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized 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 reauthorized regulation.

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

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

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

PROPOSED REGULATIONS

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

<http://regulations.delaware.gov/register/november2019/proposed/23 DE Reg 349RFA 11-01-19.pdf>

735 Standardized Financial Reporting and Transparency

1.0 Purpose

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

2.0 Definitions

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

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

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

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

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

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

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

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

3.0 Standardized Financial Report

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

4.0 Uniformity and Transparency in Financial Recording and Bookkeeping Practices

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

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

5.0 Reporting Requirements and Timelines

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

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

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

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

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

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

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

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized 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 reauthorized regulation.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this reauthorized 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/november2019/proposed/23 DE Reg 351RFA 11-01-19.pdf>

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

1.0 Use of Federal Funds

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

2.0 A School District or Charter School Shall Not

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

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

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

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

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

5.0 Additional Requirement

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 4167 (14 **Del.C.** §§122(b)(2) & 4167)

14 **DE Admin. Code** 851

PUBLIC NOTICE

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

851 K to 12 Comprehensive Health Education Program

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)(2) and 4167, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program. This regulation is being amended to include definitions related to drug use prevention and sexual consent to align with Senate Bill 78 of the 150th General Assembly, and to indicate that the hours of health education noted herein are minimum requirements.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation intends to help improve student achievement as measured against state achievement standards by creating more informed personal behavior and health decisions.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will help ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will 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 amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The 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 no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs in 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/november2019/proposed/23 DE Reg 353RFA 11-01-19.pdf>

851 K to 12 Comprehensive Health Education Program

1.0 Definitions

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

“Consent” means the unambiguous, voluntary, and freely given agreement by all participants in each physical act in the course of sexual activity, including respect for personal boundaries. Consent does not include any of the following: (a) the lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another individual in fear or (b) a current or previous dating, social or sexual relationship.

“Department” means the Delaware Department of Education.

“Evidence-based” or **“Evidence-informed”** means strategies, activities, or approaches, which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome.

“Promising Practices” means programs and strategies that have strong quantitative and qualitative data showing positive outcomes, but does not yet have enough research or replication to support generalizable outcomes.

4.02.0 Program Requirements

4.12.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards ~~Standards~~ that establishes The program shall establish a foundation of understanding the relationship between personal behavior and ~~health~~ health, and shall include at a minimum the following:

4.12.1.1 Identification of a ~~district level~~ district-level person to coordinate the district program and a coordinator in each ~~building school~~ to assure compliance at the building school level. Each charter school shall identify a person to coordinate the program for the charter school.

4.12.1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and ~~drug free~~ drug-free schools and communities to serve as members of the district, school or charter school Consolidated Application Planning Committee.

4.12.1.3 The use of the state content standards for health education for grades K to 12 to address the core concepts: tobacco, alcohol and other drugs, injury prevention and safety, nutrition and

physical activity, family life and sexuality, personal health and wellness, mental health and community and environmental health with minimum hours of instruction as follows:

- ~~4.1.3.2~~1.3.1 In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which at least ten (10) hours, in each grade, must address drug and alcohol education.
- ~~4.1.3.2~~1.3.2 In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which at least fifteen (15) hours, in each grade, must address drug and alcohol education.
- ~~4.1.3.3~~1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education and family life education of which at least fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the ~~60~~ sixty (60) hours are provided in one year at in grade 7 or 8, an additional fifteen (15) hours of drug and alcohol education must be provided in the other grade.
- ~~4.1.3.4~~1.3.4 In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which at least fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. In addition, no less than two (2) hours of this 1/2 credit course shall include a cardiopulmonary resuscitation (CPR) instructional program which uses the most current ~~evidence-based~~ Evidence-based emergency cardiovascular care guidelines, and incorporates psychomotor skills learning into the instruction, use of an Automated External Defibrillator (AED) as well as a component on the ~~life-saving~~ life-saving and life enhancing effects of organ and tissue donation. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students. ~~CPR instruction, use of an AED and organ/tissue donation awareness shall be integrated into each high school Health Education Program no later than the 2015-2016 school year.~~
- ~~4.1.4~~2.1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from ~~high-risk~~ high-risk behaviors.
- ~~4.1.5~~2.1.5 Inclusion of the core concepts of ~~nutrition and~~ nutrition, family life and sexuality ~~implemented through Family and Consumer Science courses.~~
- ~~4.1.6~~2.1.6 Inclusion of research-based fire safety education in grades kindergarten through grade 6.
- ~~4.1.7~~2.1.7 Inclusion of an ~~evidence-based~~ Evidence-based tobacco, alcohol, drug and interpersonal violence prevention program. For purposes of this subsection, Evidence-based may include Promising Practices and components such as guest speakers, those with lived experience and may be taught through other subjects.
- 2.1.7.1 The Department shall prepare and distribute on its website a list of Evidence-based and Promising Practices for tobacco, alcohol, drug, and interpersonal violence prevention programs and resources that may be used by school districts or charter schools.
- 2.1.7.2 A description of the method or methods used to implement and review for the effectiveness of the program or programs shall be reported to the Department no later than August 2021.
- 2.1.8 Inclusion of Evidence-informed, age- and developmentally-appropriate instruction on the meaning of Consent and respecting others' personal boundaries shall be provided by each school district and charter school serving one (1) or more of the grades 7 through 12 no later than the 2020-2021 school year. For the purposes of this subsection, Evidence-informed may include Promising Practices and components such as guest speakers, those with lived experience and may be taught through other subjects.
- ~~4.1.8~~2.1.9 ~~The use of effective instructional methods as demonstrated in sound research~~ Inclusion of instructional methods that encourage student engagement in the core concepts and skills inclusive of accessing information, self management, analyzing internal and external influences, interpersonal communication, decision ~~making and~~ making, goal setting and advocacy.

PROPOSED REGULATIONS

~~4.1.92.1.10~~ A description of the ~~method(s)~~ method or methods used to implement and evaluate the effectiveness of the program shall be reported ~~upon request of~~ to the Department annually by November 15.

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

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

A. TYPE OF REGULATORY ACTION REQUIRED

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation helps ensure that all students' health and safety are adequately protected by providing guidelines for their release to individuals other than their parents, guardian or relative caregivers.

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

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The reauthorized 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 reauthorized regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this reauthorized 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/november2019/proposed/23 DE Reg 356RFA 11-01-19.pdf>

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

1.0 Required Policy

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

2.0 Distribution of Student Release Policy

- 2.4 Each district shall post the student release policy on its website and notify a parent, guardian or ~~Relative Caregiver~~ relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or ~~Relative Caregiver~~ relative caregiver upon request.

3.0 Reporting Requirements and Timelines

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 920

PUBLIC NOTICE

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

920 Educational Programs for English Language Learners (ELLs)

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b), the Secretary of Education intends to amend 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELLs). This regulation is being amended to include the

statutory authority, to make minor corrections, update definitions and terminology, and to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, located at the address listed above.

C. IMPACT CRITERIA

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

***Please Note: 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/november2019/proposed/23 DE Reg 357RFA 11-01-19.pdf](http://regulations.delaware.gov/register/november2019/proposed/23%20DE%20Reg%20357RFA%2011-01-19.pdf)

920 Educational Programs for English Language Learners (ELLs) (ELs)

This regulation shall apply to any district or charter school applying for or receiving funds to provide services or programs for English Language Learners (ELLs) (ELs).

1.0 Definitions

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

“ACCESS” means a suite of secure, large-scale, summative English language proficiency assessments.

“Bilingual Programs” Bilingual programs are programs that provide instruction using the student's native language and English across all subject areas or provide instruction in English across all subject areas with support in the native language.

~~“English as a Second Language (ESL) Programs”~~ English as a Second Language Programs are programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and builds on the language skills and academic subject knowledge the student has acquired in his or her native language.

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

~~“English Language Learners (ELLs)” or “ELs”~~ English Language Learners are students with limited English proficiency (also referred to as (LEP) Limited English Proficient Students). ELLs are individuals who, by reason of foreign birth or ancestry, speak a language other than English, and either comprehend, speak, read or write little or no English, or who have been identified as English Language Learners by a valid English language proficiency assessment approved by the Department of Education for use statewide means individuals who, among other things, have English language speaking, reading, writing, or understanding difficulties sufficient to deny the individual the ability to meet challenging state academic standards as defined using Delaware's standardized entrance and exit procedures

~~“ESSA Plan”~~ means a document that reflects the goals of the Delaware education system that are in compliance with applicable federal requirements outlined in the Elementary and Secondary Education Act (ESEA) of 1965, reauthorized in December 2015 as the Every Student Succeeds Act (ESSA).

~~“Home Language Survey”~~ means a questionnaire that is given to a student's parent, guardian or relative caregiver to help schools and local education agencies identify students who are potential ELs, and who will require assessment of their English language proficiency to determine whether they are eligible for a LIEP.

~~“Language Instruction Education Program” or “LIEP”~~ means programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and supports the acquisition of increased English language skills with the goal of attaining English language proficiency and supports the learner in meeting challenging academic standards.

~~“WIDA English Language Development (ELD) Standards” or “WIDA”~~ means the social, instructional, and academic language that students need to engage with peers, educators, and the curriculum in schools.

2.0 Home Language Survey

- 2.1 A state standardized home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent, guardian or ~~Relative Caregiver~~ relative caregiver the student's first acquired language and the ~~language(s)~~ language or languages spoken in the student's home or by the student.
- 2.2 ~~Any For any student for whom a language other than English is reported on the home language survey or on the registration form as the student's first acquired language or as a language used in the student's home or by the student shall be administered an English language proficiency assessment survey, the school or district shall follow Delaware's statewide entrance criteria as outlined in Delaware's approved ESSA Plan and further described in Delaware's English Learner Guidebook. The~~ When appropriate, an initial screening assessment of English language proficiency shall be conducted as soon as practicable, but not later than twenty five twenty-five (25) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument.
 - 2.2.1 The English language proficiency screening assessment shall be based on the WIDA English Language Proficiency Development Standards for English Language Learners K to 12 and shall ~~assess listening, speaking, reading and writing.~~ The assessment shall be validated for this purpose and approved by the Department of Education for use statewide.
 - 2.2.2 Any student who achieves a score on the English language proficiency screening assessment that is lower than the eligibility cut off score in ~~listening, speaking, reading and writing~~ established by the Department of Education shall be identified as an ELL EL and shall be entitled to a program of instruction for ELLs ELs.

3.0 Programs of Instruction for ~~ELLs~~ ELs

- 3.1 Programs of instruction for ~~ELLs~~ ELs shall include formal instruction ~~to increase~~ English language development proficiency; and instruction in academic subjects which is designed to provide ~~ELLs~~ ELs with access to the regular curriculum. All instruction for ELs must be aligned to the WIDA English Language Development Standards as adopted by the State Board of Education. In selecting a ~~program(s)~~ programs, each district ~~or charter school~~ shall choose programs that ~~are research-based and that~~ have been demonstrated to be effective in the education of ~~ELLs~~ ELs.
- 3.2 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not ~~limited in English proficiency~~ ELs.
- 3.3 Instruction shall be delivered by individuals who meet Department of ~~Education~~ licensure and certification requirements and who are trained in the delivery of instruction to ~~ELLs~~ ELs.
- 3.4 The student's parent, guardian or ~~Relative Caregiver~~ relative caregiver has a right to refuse placement of their ~~child(ren) in either the Bilingual or the ESL program~~ child or children in a LIEP, and also has the right to withdraw an identified student from either program. Parents, guardians or ~~Relative Caregivers~~ relative caregivers of eligible students who refuse placement of their student in either program or withdraw students from either program shall do so in writing.

4.0 English Language Proficiency Assessment

- 4.1 Every student identified as an ~~ELL~~ EL will be administered ~~an~~ the ACCESS English language proficiency assessment annually.
- 4.2 Any student who achieves a score on the annual ACCESS English language proficiency assessment that is higher than the eligibility cut off score ~~in listening, speaking, reading and writing~~ established by the Department of ~~Education~~ shall be ~~transitioned~~ reclassified as fully English proficient ~~and placed in a regular classroom~~.
- 4.2.1 For at least two school years following the ~~identification of the student as fully English Proficient~~ reclassification, the district or charter school shall monitor the academic performance of the student. Students who experience academic difficulty in the regular classroom during the transition period shall, based on further ~~assessment re-enter~~ assessment, reenter a ~~Bilingual or ESL program~~ LIEP or shall be provided with additional instructional services as necessary and appropriate.

5.0 Annual Evaluation

Each district and charter school ~~receiving funds to provide services or programs for ELL's with ELs~~ shall ~~prepare an annual evaluation of~~ annually evaluate its ~~program(s)~~ program and make programmatic changes as necessary. This evaluation shall be ~~part of the district's annual evaluation process under and in compliance with the Consolidated Application~~.

6.0 Data and Information Required

Each district and charter school shall enter such data and information concerning ~~ELLs~~ ELs as instructed by the Department of ~~Education~~ and as otherwise required by the Department into the statewide database.

7.0 Communication

Each district and charter school shall ensure that communication with parents, guardians and Relative Caregivers, including notices of eligibility for programs for ~~ELLs~~ ELs, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents, guardians and ~~Relative Caregivers~~ relative caregivers shall be provided in English or to the extent practicable in a language the parent, guardian or ~~Relative Caregiver~~ relative caregiver can understand.

8.0 Inclusion in Delaware ~~Student Testing Program~~ System of Student Assessments

~~ELLs~~ ELs and students ~~transitioned~~ reclassified as fully English proficient shall be included in the Delaware

~~Comprehensive Assessment System (DCAS) System of Student Assessments (DeSSA) as provided for in the Department of Education document *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may from time to time be amended hereafter *Department's Accessibility Guidelines for the Delaware System of Student Assessments*, or any amended version thereafter.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Chapter 29 (14 Del.C. Ch. 29)
14 DE Admin. Code 1150

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. §122(d) & Chapter 29

1150 School Transportation

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. Chapter 29, the Secretary of Education intends to amend 14 DE Admin. Code 1150 School Transportation. This regulation is being amended to clarify safety procedures and protocols for school bus drivers, aides and supervisors; to align with federal requirements per the Federal Motor Carrier Safety Administration's Entry Level Driver Training; to align with requirements for commercial licensed drivers per the Commercial Driver's License Drug and Alcohol Clearinghouse and to make grammatical and style corrections per the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 4, 2019 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not 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 help to ensure that all students' health and safety are adequately protected by ensuring bus drivers are properly adhering to school transportation training requirements and laws.

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? There is no expected cost to implementing this amended regulation.

***Please Note:**

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

[http://regulations.delaware.gov/register/november2019/proposed/23 DE Reg 361RFA 11-01-19.pdf](http://regulations.delaware.gov/register/november2019/proposed/23%20DE%20Reg%20361RFA%2011-01-19.pdf)

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

1150 School Transportation

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7406 (16 Del.C. §7406)
16 DE Admin. Code 4465

PUBLIC NOTICE

4465 Delaware Radiation Control Regulations

Pursuant to 16 Del.C. §7406, the Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Radiation Control. On November 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Radiation Control regulations. The revisions include the following changes.

- **Part B:** Provides text to clarify existing regulatory requirements for Radiation Service Providers who apply for state registration to deliver radiation services in Delaware, and specifies their obligation to report certain information to their prospective clients.
- **Part E:** Provides regulatory requirements for use of high-energy radiation machines to perform industrial radiography (non-destructive testing) to test various objects such as industrial piping and vessels for structural integrity.
- **Part K:** Provides text to clarify circumstances under which Radiation Service Providers may be cited for violation of Part B, regulatory requirements for application, service delivery and failure to report certain information to their prospective or current clients located in Delaware.
- **Part T:** Provides references to state and federal regulations governing transportation of radioactive materials via land and water routes; specifically references transportation of spent fuel from nuclear power plants that may traverse the state.

Copies of the proposed regulations are available for review in the November 1, 2019 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 them to Alanna Mozeik by Monday, December 2, 2019, at:

Alanna Mozeik
Division of Public Health

417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

***Please Note:**

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

[http://regulations.delaware.gov/register/november2019/proposed/23 DE Reg 362RFA 11-01-19.pdf](http://regulations.delaware.gov/register/november2019/proposed/23%20DE%20Reg%20362RFA%2011-01-19.pdf)

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

[4465 Delaware Radiation Control Regulations](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL, & ENERGY

Statutory Authority: 16 Delaware Code, Section 7602 (16 Del.C. §7602)
7 DE Admin. Code 2101

REGISTER NOTICE SAN# 2019-04

[2101 Regulations for State Energy Conservation Code](#)

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 2101 *Regulations for State Energy Conservation Code*

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

Delaware's Energy Conservation Code Act (16 Del.C. §7602) requires DNREC to adopt the most recent and/or highest available version of the International Energy Conservation Code (IECC), and the latest American Society of Heating, Refrigerating and Air-Conditioning Engineers/Illuminating Engineering Society of North America (ASHRAE/IESNA) energy standard. The regulations must also set out procedures for certification of compliance with these codes and standards to be utilized by the respective local governments. The Energy Conservation Code Act instructs DNREC to review the state energy codes triennially for potential updates to adopt newer versions of the IECC and ASHRAE energy code standards.

Since May 1, 2014, Delaware has required the 2012 IECC for residential buildings and ASHRAE 90.1-2010 for commercial and high-rise residential structures. In 2017, the Department convened the Delaware Energy Code Coalition to begin the triennial review of the available energy conservation codes and evaluate the impacts of adopting a newer version of the IECC and ASHRAE standards. The Coalition met eleven times between March 2017 and January 2019 to review newer versions of the IECC and ASHRAE standards. The Department, in consultation with the Codes Coalition, considered the 2015 and 2018 versions of the IECC standards and ASHRAE 90.1-2013 and ASHRAE 90.1-2016. The Department collected input through the Delaware Energy Code Coalition to inform the proposed draft regulations.

The Department is proposing to adopt by reference the 2018 IECC and ASHRAE 90.1-2016 in their entirety. The modest increased cost of the more stringent energy conservation codes is offset by the benefits accrued to the building owners and occupants over the life of the building. Adopting the current version of the IECC and ASHRAE energy conservation codes will increase building sector energy efficiency, bring energy cost savings for building owners and occupants, increase occupant comfort, and reduce emissions in Delaware.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Delaware Energy Conservation Code Act pursuant to 16 **Del.C.** §7602.

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

None

6. NOTICE OF PUBLIC COMMENT:

Persons wishing to comment on the proposed amendments to 7 **DE Admin. Code** 2101 *Regulations for State Energy Conservation Code* may do so either orally or in written form at the public hearing on Tuesday, December 3, 2019 beginning at 6:00 PM in the DNREC Auditorium at 89 Kings Highway, Dover, DE 19901. In lieu of attending the public hearing, written comments may be submitted to the Hearing Officer via either email to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. The Department will accept public comment through the close of business on Wednesday, December 18, 2019.

7. PREPARED BY:

Jessica Quinn

Email: Jessica.Quinn@delaware.gov

Ph: 302-735-3485

***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/november2019/proposed/23 DE Reg 363RFA 11-01-19.pdf](http://regulations.delaware.gov/register/november2019/proposed/23%20DE%20Reg%20363RFA%2011-01-19.pdf)

2101 Regulations for State Energy Conservation Code

1.0 Purpose and Statutory Authority

- 1.1 The purpose of these regulations is to provide the Department of Natural Resources and Environmental Control's determination of the most recent and/or highest available version of the International Energy Conservation Code and the latest ASHRAE/IESNA standard. The goal of establishing these regulations is to provide a statewide building energy conservation code.
- 1.2 These regulations provide rules of practice and procedures for certification of compliance with these codes and standards to be utilized by the respective local governments.
- 1.3 ~~Delaware Code Title 16 Section 7602~~ 16 Del.C. §7602 provides the authority for adopting ~~Delaware Energy Conservation Code~~ the State Energy Conservation Code. These regulations are promulgated under the authority of 16 **Del.C.** §7602.

2.0 Definitions

For purposes of these regulations, the following words and phrases shall have the meanings set forth below.

"**ASHRAE**" means the ANSI/ASHRAE/IES Standard ~~90-1~~ 90.1-2016: Energy Standard for Buildings except Low-Rise Residential Buildings published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

"**Department**" means the Department of Natural Resources and Environmental Control, the Division of ~~Energy and Climate~~ Climate, Coastal, & Energy or the Delaware Energy Office, as appropriate.

"**DET verifier**" means a certified Duct and Envelope Tightness verifier. A certified DET verifier shall be a certified Home Energy Rating Systems (HERS) rater, or be a certified Home Performance with ENERGY STAR contractor, or be a Building Performance Institute (BPI) Heating Professional to perform duct tightness testing or a BPI Building Analyst or Envelope Professional to perform building

tightness testing, or successfully complete a course that is approved by the Department of Natural Resources and Environmental Control.

“IECC” means the 2018 International Energy Conservation Code published by the International Code Council, Inc.

3.0 Incorporation by Reference

- 3.1 The ~~2012~~ 2018 International Energy Conservation Code (IECC), published by the International Code Council, Inc., is hereby adopted and incorporated by reference ~~with revisions~~ as the Delaware Residential Building Energy Conservation Code and is an enforceable part of the Delaware Building Codes. ~~The revisions to the 2012 IECC code are stated in Section 4.0 of these regulations.~~
- 3.2 The American Society of Heating, Refrigerating and Air-Conditioning Engineers Standards (ASHRAE) ~~90.1-2010~~2016: Energy Standard for Buildings except Low-Rise Residential Buildings and ~~Commercial Provisions~~ the commercial provisions of the ~~2012~~ 2018 International Energy Conservation Code are hereby adopted and incorporated by reference in their entirety as the Delaware Commercial Building Energy Conservation Code and is an enforceable part of the Delaware Building Codes.

4.0 Revisions to the 2012 IECC

- 4.1 ~~The following additions, insertions, deletions, and other changes are hereby made to the 2012 International Energy Conservation Code.~~
 - 4.1.1 ~~R403.2.2 amend to add: Supply duct tightness shall be verified by either of the following:~~
 - 1. ~~Post construction test: Total leakage less than or equal to 6 cfm (169.9/min) per square foot (9.29 m2) of conditioned floor area when tested at the pressure differential of 0.1 inches w.g. (25 Pa)...~~
 - 2. ~~Rough-in test: Total leakage less than or equal to 6 cfm (169.9/min) per square foot (9.29 m2) of conditioned floor area when tested at the pressure differential of 0.1 inches w.g. (25 Pa) (remainder unchanged — If the air handler is not installed... ≤ 4 cfm...)~~
 - 4.1.2 ~~R403.4.2: amend list to:~~
 - 1. ~~Piping larger than 3/4 inch nominal diameter.~~
 - 2. ~~Piping serving more than one dwelling unit.~~
 - 3. ~~Piping located outside the conditioned space.~~
 - 4. ~~Piping from the water heater to a distribution manifold.~~
 - 5. ~~Piping located under a floor slab.~~
 - 6. ~~Buried piping.~~
 - 7. ~~Supply and return piping in recirculation systems.~~

~~Delete Table R403.4.2 without substitution.~~
 - 4.1.3 ~~R402.4.1.2:~~

Exception: ~~A building or dwelling unit with 2,000 ft² or less of conditioned floor area (CFA) may satisfy R402.4.1.2 if it:~~

 - ~~(1) is tested to have an air leakage rate no greater than:~~
 - ~~5 ACH-50 for homes with < 1,500 ft² of CFA, or~~
 - ~~4 ACH-50 for homes with 1,500 — 2,000 ft² of CFA.)~~
 - 4.1.4 ~~R403.2.3 Building framing cavities shall not be used as ducts or plenums.~~

Exception: ~~Returns run exclusively through conditioned space.~~
 - 4.1.5 ~~R403.5 The building shall be provided with ventilation that meets the requirements of the International Residential Code (IRC) or International Mechanical Code (IMC), as applicable, or with other approved means of ventilation. Outdoor air intakes shall have automatic or gravity dampers that close when the ventilation system is not operating. Required ventilation rates shall also include adequate provisions for fuel-fired appliance, stove and fireplace makeup air supply;~~

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~~kitchen, bath, clothes dryer, and central vacuum exhausts; and other makeup air system supplies and/or exhausts as required in either the IRC or IMC.~~

(remainder of section unchanged)

5.04.0 Implementation and Enforcement

- ~~5.14.1~~ All buildings must meet all requirements of the applicable referenced code six months after date of promulgation.
- ~~5.24.2~~ All projects may utilize the new applicable reference codes at any time after the date of promulgation, provided such choice is stated on the construction documents.
- 4.3 Procedures for certification of compliance and standards to be utilized by respective local governments are those specified in the IECC at Chapter 1 (“Scope and Administration”) and in the ASHRAE at Chapter 4 (“Administration and Enforcement”) as enforceable parts of the Delaware Building Codes pursuant to subsections 3.1 and 3.2 herein.

6.05.0 Certified duct and envelope tightness (DET) verifier.

Testing for duct and building envelope tightness shall be conducted by a certified DET verifier.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 Del.C. §1775(c))
24 DE Admin. Code 1770

PUBLIC NOTICE

1770 Respiratory Care Practice Advisory Council

Pursuant to 24 Del.C. §1775(c), the Respiratory Care Practice Advisory Council (“the Council”) of the Board of Medical Licensure and Discipline (“the Board”) has proposed revisions to its rules and regulations. Currently, Section 11.0 states that a licensee whose license has expired may renew that license within one year after the expiration date upon fulfilling specified requirements. The lengthy late renewal period is inefficient and confusing for licensees. The Council proposes amending Section 11.0 by changing the late renewal period from one year to sixty days. This change will clarify and streamline the licensure renewal process and the associated continuing education audit process.

A public hearing will be held on January 8, 2020 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Devashree Singh, Executive Director, at the above address or at devashree.singh@delaware.gov. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be **January 23, 2020**. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.

***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/november2019/proposed/23 DE Reg 366RFA 11-01-19.pdf>

1770 Respiratory Care Practice Advisory Council (Break in Continuity of Sections)

11.0 Renewal of Licenses

(Break in Continuity Within Section)

- 11.3 Failure of a licensee to renew his/her license shall cause his/her license to expire.
- 11.3.1 ~~A Effective the licensure renewal period beginning December 1, 2020, a licensee whose license has expired may renew his/her license within one (1) year sixty (60) days after the expiration date upon fulfilling the requirements in subsections 11.2.1 - 11.2.3 above, certifying that he/she has not practiced respiratory care in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation. All late renewals shall be audited for compliance with CE renewal requirements. Any licensee whose license is in an expired status as of December 1, 2014 must either renew his/her license no later than November 30, 2015 or fulfill the requirements in subsections 11.2.2 or 11.2.3, as applicable.~~
- 11.3.2 ~~An applicant whose license has been expired for more than one (1) year and who has been actively engaged in the practice of respiratory care during the period of expiration in another jurisdiction shall be required to submit to the Council an application for reinstatement demonstrating proof of active practice, consisting of a minimum of 500 hours over the one year preceding the date of application for reinstatement, on a Council approved form, and shall demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application.~~
- 11.3.3 ~~An applicant whose license has been expired for more than one (1) year and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.~~
- 11.3.2 The failure of a licensee to renew the lapsed license within sixty (60) days as set forth in subsection 11.3.1 shall cause the license to terminate.
- 11.3.3 A respiratory care practitioner whose license has terminated may reapply under the same conditions that govern applicants for new licensure under 24 Del.C. Ch. 17.
- 11.3.4 A respiratory care practitioner who reapplies for licensure more than a year after the date of license termination must, in addition to the requirements of subsection 11.3.3, show evidence of completion of 20 hours of continuing education within the two year period prior to reapplication.

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

1770 Respiratory Care Practice Advisory Council

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1457(j) (11 **Del.C.** §1457(j))
14 **DE Admin. Code** 603

REGULATORY IMPLEMENTING ORDER

603 Compliance with the Gun Free Schools Act

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 11 **Del.C.** §1457(j), the Secretary of Education intends to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act. This amendment is needed to update the statutory reference, make minor clarifications and comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on September 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities (SCPD) endorsing the proposed amended regulation; however, the Council did ask the Department how it will ensure compliance with the federal requirement to collect assurances from the necessary school districts and charter schools. The Department electronically collects codes of conduct from the local education agencies, which include compliance with the Gun-Free Schools Act. Additionally, each LEA is required to follow mandatory reporting that includes reports under the Gun-Free Schools Act. LEAs are audited periodically for mandatory reporting.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act in order to update the statutory reference(s), make minor clarifications and comply with 29 **Del.C.**

§10407 which requires regulations to be reviewed every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of October 2019.

Department of Education

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

Approved this 15th day of October 2019

603 Compliance with the ~~Gun-Free~~ Gun-Free Schools Act

1.0 Written Policy Required

1.1 Each school district and charter school ~~requesting assistance under the Elementary and Secondary Education Act (ESEA)~~ shall have a written policy implementing the Gun-Free Gun-Free Schools Act [(20 USC 4144) (20 USC 7154) (20 U.S.C. §7961)] and complying with 11 **Del.C.** §1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

4-11.1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.

4-21.1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.

4-31.1.3 The definition of "**Firearm**" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.

2.0 Submission of the Policy to the State Department of Education

2.1 Each school district and charter school ~~requesting assistance under the ESEA~~ shall submit the following to the Delaware Department of Education ~~by June 4 each year~~ annually, in such form as the Department requires:

- ~~2.12.1.1~~ ~~An assurance that its policies comply with this regulation and~~ An electronic copy of its policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 Del.C. §1457(j) or its successor statute. ~~statute; and~~
- ~~2.1.2~~ An electronic copy of any revised policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 Del.C. §1457(j) or its successor statute under the policy implemented in accord with this regulation within ninety (90) days of such revision regardless of whether revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies; and
- ~~2.2.1.3~~ Descriptions of the expulsions imposed under 11 Del.C. §1457(j) or its successor statute and under the policy implemented in accord with this regulation.

3.0 Individuals with Disabilities Act

Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

4.0 Reporting Requirements and Timelines

- ~~4.1~~ ~~Each public school district and charter school shall have an electronic copy of its policy implementing the Gun-Free Schools Act [(20 USC 4141) (20 USC 7151)] and 11 Del.C. §1457(j) or its successor statute on file with the Department of Education.~~
- ~~4.2~~ ~~Each public school district and charter school shall provide an electronic copy of any policy implementing the Gun-Free Schools Act [(20 USC 4141) (20 USC 7151)] and 11 Del.C. §1457(j) or its successor statute within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)
14 DE Admin. Code 611

REGULATORY IMPLEMENTING ORDER

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 11 Del.C. §1457(j), the Secretary of Education intends to amend 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. This amendment is needed to update the statutory reference, make minor clarifications and comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on September 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens. The comments were similar endorsing the proposed amended regulation while seeking clarification of certain changes. The first comment concerned how the local school district would determine whether an incident is "equivalent to or greater than" the identified offenses. Regulation 611's enumerated offenses are a non-exhaustive list of behaviors that would prohibit an expelled or suspended pending expulsion student from placement in a Consortium Discipline Alternative Program (CDAP). In keeping with standard practice in reaching its decision, the local school district will look to the nature of the behavior, the degree of the criminal offense type, i.e. misdemeanor or felony, and the potential risk the student poses to facilitators and/or participants in the CDAP.

The second comment concerned whether a student whose behavior is "equivalent to" selling a small amount of a controlled substance will be excluded from CDAP. Again, the local school district will look to the nature of the behavior, the degree of the criminal offense type, i.e. misdemeanor or felony, and the potential risk the student

poses to facilitators and/or participants in the CDAP. The proposed amendment does not change the applicable Uniform Due Process Procedures pursuant to Regulation 616.

The third general comment involved the potentially restrictive impact of the proposed amendment to Section 2.2. The proposed amendment to Section 2.2 memorializes a standard practice. The “student’s educational and behavioral modification needs” are of primary importance. Neither the Department nor the local school district wants to place the student in an inappropriate setting. The proposed language will help ensure students receive the appropriate education and behavioral modification services. The proposed amendment does not change the applicable Uniform Due Process Procedures pursuant to Regulation 616.

Finally, the proposed amendments do not alter a local school district or charter school’s duties to students with disabilities.

The Department appreciates the time each of the Councils provided in reviewing the proposed amended regulation. Other minor grammatical changes were found to be needed and were made by the Department.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems in order to update the statutory reference(s), make minor clarifications and comply with 29 **Del.C.** §10407 which requires regulations to be reviewed every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of October 2019.

Department of Education

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

Approved this 15th day of October 2019

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems
1.0 Eligible Students

- 1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site.
- 1.2 Subject to Section 11.0, local school districts shall place a an eligible student at a Consortium Discipline Alternative Program site if the district board:
 - 1.2.1 Has expelled the student for a violation of the district's discipline code or, determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as ~~behavioural~~ behavioral contracts or counseling or, determined that the student has exhibited such severe discipline problems that expulsion is ~~imminent; and imminent.~~
 - 1.2.2 ~~Determined the student is not ineligible for placement at a Consortium Discipline Alternative Placement pursuant to the conditions in 2.0.~~
- 1.3 School districts may place a student in a Consortium Discipline Alternative Program for classroom or school environment disruptions only if:
 - 1.3.1 Such disruptions are chronic and repetitive; and
 - 1.3.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

2.0 Ineligible Students

- 2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.
 - 2.1.1 11 **Del.C.** §613 Assault in the First Degree; class ~~G~~ B felony; or
 - 2.1.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F; class A or B misdemeanor; or
 - 2.1.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or
 - 2.1.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or
 - 2.1.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or
 - 2.1.6 11 **Del.C.** §771 Rape in the third degree; class B felony; or
 - 2.1.7 11 **Del.C.** §772 Rape in the second degree class B felony; or
 - 2.1.8 11 **Del.C.** §773 Rape in the first degree class A felony; or
 - 2.1.9 ~~16 **Del.C.** §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or~~ 16 **Del.C.** §4752 Drug dealing—Aggravated possession; class B felony; or
 - 2.1.10 Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.
 - 2.1.10 16 **Del.C.** §4752B Drug dealing — Resulting in death; class B felony; or
 - 2.1.11 16 **Del.C.** §4753 Drug dealing—Aggravated possession; class C felony; or
 - 2.1.12 16 **Del.C.** §4754 Drug dealing—Aggravated possession; class D felony; or
 - 2.1.13 Any behavior equivalent to or greater than the offenses in subsections 2.1.1 through 2.1.12.
- 2.2 Provided further, any student expelled or suspended pending expulsion may not be placed at a Consortium Discipline Alternative Program if the school district determines, by a preponderance of the evidence, the student is inappropriate for such placement. When determining whether a student is inappropriate for placement in a Consortium Discipline Alternative Program, the school district shall consider the availability of space in the program to serve the student, ~~and~~ the student's age and the student's educational and behavioral modification needs.

3.0 Written Decision Required

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program, the school district's decision shall be in writing and address with specificity the ~~reason~~ reasons for ~~non-placement~~ non-placement and the evidence in support thereof. Such decisions shall be submitted to the Delaware Department of Education's Office of School Climate and Discipline within five working days of such decision with a copy to the student's parent, guardian, or Relative Caregiver.

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (If the Student is Age 18 or Older)

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's ~~individual~~ eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade Level Levels to be Served

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through ~~Alternative Program~~ CDAP funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a ~~district level~~ district-level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 **DE Admin. Code** 925.

7.0 September 30 Enrollment Count

7.1 Students enrolled at a Consortium Discipline Alternative ~~Programs~~ Program site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a Career and Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

8.0 Consortium Discipline Alternative Program Setting

- 8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.
- 8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

- 9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.
- 9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, ~~test-taking~~ test-taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.
- 9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.
- 9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 **DE Admin. Code** 505 507.

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

- 11.1 Nothing in this regulation shall alter a district's or charter school's duties under the Individual with Disabilities Act (IDEA) or 14 **DE Admin. Code** 922 through 929. Nor shall this regulation prevent a district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Department regulations.
- 11.2 Nothing in this regulation shall alter a district's or charter ~~schools's~~ school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district or charter school from providing supportive instruction to such students.

12.0 Charter School Students

- 12.1 A charter school, subject to the limitations of 14 **Del.C.** 504A(8), shall pursue referral of any student meeting the requirements of ~~Section~~ subsection 1.2 into a Consortium Discipline Alternative Program pursuant to the provisions of Chapter 16 of Title 14 of the **Delaware Code**.
- 12.2 To the extent applicable, a charter school placing a student in a Consortium Discipline Alternative Program shall be subject to the provisions of this regulation.

13.0 Evaluation

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. In addition, the Department of Education shall annually review the

decisions acquired pursuant to Section 3.0 to assess the reasons for non-placement of students in the alternative programs, including lack of space and number, age, race and special education status of excluded students by district and charter school. Grantees shall compile and submit data based on uniform standards and format established by the Department.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)
14 **DE Admin. Code** 714

REGULATORY IMPLEMENTING ORDER

714 Professional Employee Work Stoppage or Strike

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Under authority granted in 14 **Del.C.** §122, the Secretary of Education intends to repeal 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike in the form attached hereto as *Exhibit "A"*. The Department of Education reviewed this regulation as part of its ongoing regulatory review as required by 29 **Del.C.** §10407. The Department is repealing this regulation because the duties of local Boards of Education and charter school boards regarding professional employee work stoppages or strikes are specified in **Delaware Code**, e.g., 14 **Del.C.** Ch. 40, and therefore the regulation is superfluous.

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

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike as the duties of local Boards of Education and charter school boards regarding professional employee work stoppages or strikes are specified in **Delaware Code**, e.g., 14 **Del.C.** Ch. 40, and therefore the regulation is superfluous.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike attached hereto as *Exhibit "B"* is hereby repealed.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of October 2019.

Department of Education

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

Approved this 15th day of October 2019

714 Professional Employee Work Stoppage or Strike**4.0 ~~Work Stoppage or Strike~~**

- 1.1 ~~If it is determined that illegal activity such as a work stoppage or strike has taken place, the local Board of Education or charter school shall:~~
- 1.1.1 ~~Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 Del.C. §4016, and such organization as the exclusive representative will be revoked at a time to be determined by the local Board of Education or charter school;~~
 - 1.1.2 ~~Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine;~~
 - 1.1.3 ~~Deduct salary for unexcused absence in accordance with 14 Del.C. §1320;~~
 - 1.1.4 ~~Execute items 1.1.2 and 1.1.3 above in the preparation of the next regular payroll;~~
 - 1.1.5 ~~Require a medical certificate for each employee absent claiming sick leave during the period of the strike.~~

2.0 ~~School Days Lost~~

- 2.1 ~~As a part of any settlement following a strike or work stoppage, the local Board of Education or charter school shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled.~~
- 2.2 ~~Similarly, the local Board of Education or charter school shall not agree to extend the school year or to request such an extension from the Secretary of Education.~~

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 1006

REGULATORY IMPLEMENTING ORDER**1006 Delaware Interscholastic Athletic Association (DIAA)****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

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

II. FINDINGS OF FACTS

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

III. DECISION TO AMEND THE REGULATION

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

IV. TEXT AND CITATION

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

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 15th day of October, 2019.

Department of Education

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

1006 Delaware Interscholastic Athletic Association (DIAA)

(Break in Continuity of Sections)

3.0 DIAA Board of Directors

(Break in Continuity Within Section)

3.2 Committees of the DIAA Board of Directors

(Break in Continuity Within Section)

3.2.2 Committee Membership

3.2.2.1 Committees shall consist of no less than 10 and no more than 15 committee members in addition to the ~~Board's Chairperson or his or her designee and the Executive Director or his or her designee~~ one current Board member.

3.2.2.1.1 ~~The Board's Chairperson or his or her designee and the Executive Director or his or her designee shall be voting, ex officio committee members of each committee. Each~~ committee shall include a current Board member as a member of the committee.

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

1006 Delaware Interscholastic Athletic Association (DIAA)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Sections 122(1), 122(3)h, and Ch. 8C (16 **Del.C.** §§122(1), 122(3)h, & Ch. 8C)
16 **DE Admin. Code** 4107

ORDER**4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsections 122(1) and 122(3)h, and Ch. 8C.

On September 1, 2019 (Volume 23, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 2, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders were published in the Delaware *Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (September 1, 2019 through October 2, 2019).

Entities offering written comments include:

- Mr. Richard James, Member, Newborn Screening Advisory Committee
- Mr. Chris Manning, Nemours Children’s Health System

Comments from Mr. Richard James

I am a member of the Newborn Screening Advisory Committee and would like to make the following comments on the proposed revisions. My appointment happened this year so when these revisions were discussed I was not a member of the committee and did not participate. The following comments should not be construed as any criticism of those discussions or the opinions of the Committee.

Re. Section 11: I would argue that this section should be deleted in total, and no exemption from screening be authorized for religious, personal, or any other reason. There is no circumstance in which screening compels parental/caregiver action that might conflict with beliefs of any kind, and there is no possibility that the screening procedure in itself creates any harm to the infant. This being the case it is unreasonable that any refusal to screen can be in the child’s best interest and therefore there is no justification for providing the option to refuse. On receipt of screening results, the parents decisional autonomy is retained and they may make conscience- or beliefs-based decisions within normal bounds, but since there is no harm and no coercion in the screening in and of itself, and screening is important for epidemiological and other reasons, refusal should not be sanctioned or at least, should be much more burdensome than the proposed revisions allow.

- Response: The Agency appreciates and acknowledges these comments. The language referenced in your submitted comment was not included in the final regulation. Title 16, §805C of the Delaware Code governs the requirement for exemptions to newborn screening.

Comments from Mr. Chris Manning, Nemours Children’s Health System

Nemours Children’s Health System appreciates the opportunity to comment on proposed revisions to the Newborn Screening Program (16 **Del.C.** §122(1), 122(3)h, & Ch.8C).

Nemours supports the proposed changes which align with best clinical practice and reflect the recommendations by Delaware's Newborn Screening Advisory Committee. The National Institutes of Health and the Centers for Disease Control and Prevention validate the timely collection of the infant blood spot specimen by day two (48 hours) of life. Likewise, special consideration should be given to preterm or sick newborns to ensure accurate results, as clinical best practice warrants a second screen for this population¹.

Thank you for the opportunity to comment. Nemours remains committed to supporting optimal child health and development. We look forward to continued partnership in the future.

- Response: The Agency appreciates and acknowledges these comments.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders is adopted and shall become effective November 11, 2019 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

10/9/19

Date

Kara Odom Walker, MD, MPH, MSHS
Cabinet Secretary

4107 Screening of Newborn Infants for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders

1.0 Authority and Purpose

Under the authority granted the Department of Health and Social Services, Division of Public Health under 16 **Del.C.** §122(1), 16 **Del.C.** §122(3)(h), 16 **Del.C.** Ch. 8C and 29 **Del.C.** §7904 the Department adopts the following regulations pertaining to the screening of newborns for various disorders.

The purpose of these regulations is to describe the procedures for the Newborn Screening Program where each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic, endocrinologic, and certain structural disorders that may result in developmental delay, cognitive disabilities, serious medical conditions, or death.

The responsibility for implementation of the regulations rests with the institution in which the infant is born. If an infant is born outside a facility, the responsibility for implementation of the regulations rests with the attending delivering physician or midwife, the newborn's primary health care provider and the parent or legal guardian.

2.0 Definitions

"Blood Specimen for Metabolic, Hematologic and Endocrinologic Disorders" means a dried blood spot on a special filter paper utilized for screening (not diagnostic) tests to establish the likely presence of metabolic, hematologic or endocrinologic disorders.

"Certain Structural Disorders" includes critical congenital heart defects and other structural disorders.

"Designated Laboratory" is the laboratory or laboratories, which have been selected by the Division of Public Health to perform these services.

1. Fabie N.A., Pappas, K.B., Feldman, G. L. The current state of newborn screening in the United States. *Pediatric Clinics of North America* 2019; 66: pp. 369-386

“Endocrinologic Disorder” means the absence or deficiency of a hormone resulting in interference with normal health, growth or development. These disorders include Congenital Hypothyroidism (CH) and Congenital Adrenal Hyperplasia (CAH).

“Hematologic Disorder” means, in these regulations, a condition in which a variation in one or more of the hemoglobin structural genes or in one or more of the genes involved in hemoglobin synthesis produces a variation in hemoglobin structure or synthesis, which results in variation in hemoglobin function. The term **“hemoglobinopathies”** includes sickle cell anemia, sickle cell hemoglobin C disease (SC disease), sickle beta thalassemia, beta thalassemia, alpha thalassemia, hemoglobin C disease and other clinically important variations in hemoglobin structure or synthesis.

“Kit” means any or all parts of the combined materials, laboratory filter ~~paper~~ paper, specimen forms, Newborn Screening Program brochure, and/or other components provided by the State Newborn Screening Program for the purposes of collection of the blood spot specimen and for submission of the blood spot specimen for laboratory screening.

“Metabolic Disorder” means a disorder caused by a genetic alteration, which results in a defect in the structure or function of a specific enzyme or other protein. These disorders include, but are not limited to, Phenylketonuria (PKU), Galactosemia, Maple Syrup Urine Disease (MSUD), and Medium Chain Acyl-CoA Dehydrogenase (MCAD) Deficiency.

“Newborn Infant” means any infant born in the state who is under 4 weeks of age.

“Pulse Oximetry Screening” is non-invasive test allowing for determination of the oxygen saturation of a patient’s hemoglobin to screen for a critical congenital heart defect.

“Satisfactory Specimen” means a blood spot specimen on which an accurate laboratory analysis for the various disorders can be performed.

“The Newborn Screening Advisory Committee” means a committee, established through the Division of Public Health Newborn Screening Program, convened to provide advice and guidance to the Program. Members are appointed by the Governor and include, but are not limited to: three individuals or parents of individuals with one of the disorders for which screening is performed affected by disorders identified by the screening panel; physicians not employed by the Division of Public Health who have expertise in the disorders for which screening is performed; an ethicist; an attorney not employed by the Division of Public Health State; an ethicist not employed by the Division of Public Health; three pediatric physicians; the Medical Director for the Division of Public Health, or their designee; the Laboratory Director for the Division of Public Health, or their designee; a representative from the Department of Services for Children, Youth, and Their Families; the Chair of the Midwifery Advisory Council, or their designee; and a member of the public, representatives of relevant agencies within the Department of Health and Social Services. The Committee will meets meet at least semi-annually. The Director of the Division of Public Health will appoint members after recommendation by the Newborn Screening Program.

“Unsatisfactory Specimen” means a blood spot specimen ~~which that~~ is of insufficient quantity; or a blood spot specimen on which an accurate analysis for the various disorders cannot be performed.

3.0 Determination of Required Screens

The Director of the Division of Public Health or designee shall determine the disorders subject to screening tests.

4.0 Persons Responsible for Submitting Blood Spot Specimens and Pulse Oximetry Results for Screening for Metabolic, Hematologic, Endocrinologic, and Certain Structural Disorders

4.1 The person or facility responsible for assuring that a satisfactory blood spot specimen and pulse oximetry results are submitted for screening newborns for metabolic, hematologic, endocrinologic and certain structural disorders shall be, in order of responsibility:

4.1.1 ~~the~~ The hospital, birthing facility or other licensed health care facility in which the newborn is ~~born,~~ born;

4.1.2 ~~the~~ The newborn’s primary health care provider; or, if no provider is identified;

4.1.3 ~~the~~ The parent or legal guardian.

4.2 In cases of newborns entering a health care facility before 48 hours of age as result of transfer from another facility or of an infant not born in a hospital or other licensed health care facility, the receiving facility shall be responsible for the timely collection of the blood spot specimen and pulse oximetry screening results.

4.3 In cases of newborns not born in a hospital or other licensed health care facility, and not transferred to a health care facility, the timely collection of the blood spot specimen and pulse oximetry screening results shall be the responsibility of the following, in order of responsibility:

4.3.1 ~~the~~ The attending delivering physician, or ~~midwife,~~ midwife; or in the absence of such a person;

4.3.2 ~~the~~ The newborn's primary health care provider; or, if no provider is identified;

4.3.3 ~~the~~ The parent or legal guardian.

5.0 Manner of Submitting Blood Spot Specimens and Pulse Oximetry Results

5.1 All dried blood spot specimens submitted to the designated laboratory for testing shall be collected using kits available from the Newborn Screening Program office and/or designated laboratory.

5.2 Blood spot specimens collected for screening shall be forwarded from the collecting facility to the designated laboratory within 24 hours of collection, either by the designated Division of Public Health courier or courier, by mail, mail, or via the service provided by the designated laboratory.

5.3 Pulse oximetry screening results shall be forwarded to the Division of Public Health electronically by the 15th of each month for births occurring in the previous calendar month.

6.0 Timing of Collecting the Blood Spot Specimen and Pulse Oximetry Screening for Screening Infants By Hospitals, Birth Centers or Midwives

6.1 A blood spot specimen for screening for metabolic, hematologic, and endocrinologic disorders shall be collected ~~prior to hospital discharge, but no later than three days after birth as follows:~~ by the hospital, birth center, or midwife by 72 hours of age regardless of feeding history or medical condition unless the newborn falls into one of the following categories:

6.1.1 For infants born inside or outside of a hospital or other health care facility, or infants born outside of a hospital or other health care facility and transferred to the hospital ~~where they will remain for the next 24 hours,~~ a specimen shall be collected 24 hours after the onset of milk feeding, but no later than three days after birth, preferably between 36 and 72 hours of birth. A second specimen is to be collected between seven and 28 days of age. for continuing care prior to 48 hours of age, the hospital to which the newborn child has been transferred shall collect a specimen from the newborn child, regardless of feeding history or medical condition, as close to arrival as possible.

6.1.2 For pre-term or sick newborns, the initial blood spot specimen shall be collected between 24 hours and 48 hours after birth, if possible. ~~The second dried blood spot specimen on pre-term or sick newborns must be completed at hospital discharge or transfer if within seven days from birth, or otherwise may be collected prior to 24 hours of age if the infant is receiving blood products. If the first specimen is collected prior to 24 hours of age, a second specimen shall be collected at 8 – 10 days of age or prior to discharge, whichever occurs first. A third specimen on pre-term or sick newborns shall be collected between 21-24 days or at discharge, whichever comes first. For infants weighing less than 1800 grams at birth, a second specimen shall be collected at 28 days of life or prior to discharge, whichever comes first.~~

6.1.3 ~~When an infant is~~ For infants discharged from a hospital or other health care facility before 24 hours of milk feedings age, a blood spot specimen shall be obtained immediately prior to discharge from the facility and a second dried blood spot specimen shall be obtained after 3 days of age and before 14 days of age.

6.2 Birth facilities or care providers responsible for screening newborns shall adopt protocols consistent with the scientific statement regarding the role of pulse oximetry from the American Heart Association and American Academy of Pediatrics (Pediatrics, Vol. 124, No. 2, August 1, 2009, pp. 823-836) 2012: 129 (1) pp. 190-192).

- 6.3 The data elements to be reported for pulse oximetry screening of newborns to the Division of Public Health are:
- 6.3.1 The number of births in a birthing facility each ~~month~~ month;
 - 6.3.2 The number of pulse oximetry screenings on newborn infants performed each ~~month~~ month;
 - 6.3.3 The number of positive and negative screens ~~recorded~~ recorded;
 - 6.3.4 For those infants who do not receive a screen, a reason for not being screened; and
 - 6.3.5 The identity of the infants who fail the screen including their diagnostic evaluation and ~~disposition~~ disposition.

7.0 Procedures for Follow Up of Dried Blood Spot Specimens Designated as Abnormal or Suspicious

- 7.1 The hospital/facility of birth/midwife to which a newborn is transferred shall develop adequate procedures to ~~insure~~ ensure a satisfactory blood spot specimen is collected by the time each newborn is ~~three~~ two days of age. The sample must be taken from every newborn unless a refusal form signed by the parent or legal guardians is obtained.
- 7.2 The hospital/facility of birth/midwife to which a newborn is transferred and the primary health care provider of the newborn shall cooperate with the Newborn Screening Program in completing follow up of newborns whose blood spot specimen result is designated as "~~abnormal~~" or "~~suspicious~~." "unacceptable", "presumptive positive" or "inconclusive." This cooperation shall include:
- 7.2.1 Providing appropriate demographic information to the Newborn Screening Program as requested on each ~~baby~~ baby; and
 - 7.2.2 Providing the Newborn Screening Program with clinical information on each newborn as necessary for interpretation of the results of the screening.

8.0 Reporting of Results of Newborn Screening Tests

- 8.1 The designated laboratory shall report the results to the Newborn Screening Program as designated in the contract.
- 8.2 The Newborn Screening Program shall contact with abnormal results the ~~parent or legal guardian and~~ primary health care provider in writing and/or by telephone.
- 8.3 A copy of the Newborn Screening laboratory report shall be available to the primary health care provider, the birth facility or midwife, and upon request to the parent or legal guardian ~~upon request made to the birth hospital medical record department or their primary health care provider~~.

9.0 Confidentiality of Records

- 9.1 The Newborn Screening Program shall maintain and treat as confidential all newborn screening communications with facilities, families and health care providers. The Newborn Screening Program shall maintain and treat as confidential a record of every newborn in whom a diagnosis of one or more of the various metabolic, hematologic, or endocrinologic disorders is confirmed.
- 9.2 Information may be disclosed by the Newborn Screening Program in summary forms, which do not identify individuals. Individuals or institutions requesting summary data must submit a proposal to the Newborn Screening Program and to the Institutional Review Board of the Division of Public Health.
- 9.3 Dried blood-spots will be retained for a period of three years under appropriate conditions. The stored specimens will only be used for activities to improve the screening program and/or develop new screening tests.

10.0 Fees for Newborn Screening Tests Performed in the Designated Laboratory

- 10.1 The Division of Public Health Newborn Screening Program shall bill the facility or individual for services provided for each newborn screened under these regulations including but not limited to, the cost of the kits for collection of specimens, the laboratory fee for analysis, and administrative costs. The fee will be determined annually (in July) based on cost of the program.

- 10.2 No Delaware newborn shall be denied testing for hereditary disorders because of inability of the newborn's ~~parent or~~ parent or legal guardian to pay the fee. A "Statement of Fee Exemption" form will be provided to the practitioner or parent requesting exemption from fees. This form must be completed and submitted to the Newborn Screening Program Office within 30 days of birth.

11.0 Religious Exemption from Screening

- 11.1 A newborn may be excused from screening if the parent or legal guardian objects to the tests ~~because the screening tests conflict with the religious tenets or practices of the parent or legal guardian for any reason.~~
- 11.2 In the event a ~~religious~~ an exemption is claimed from the requirements for screening, the person otherwise responsible for submitting the specimen for screening shall be responsible for submitting a completed affidavit-refusal form to the Delaware Newborn Screening Program Office, signed by the infant's parent or legal guardian, ~~using the following language:~~ guardian.
1. ~~(I) (We) (am) (are) the (parent(s)) (legal guardian(s)) of (name of child)~~
 2. ~~(I) (We) hereby (swear) (affirm) that (I) (we) subscribe to a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.~~
 3. ~~(I) (We) further (swear) (affirm) that our belief is sincere and meaningful and occupies a place in (my) (our) life parallel to that filled by the orthodox belief in God.~~
 4. ~~This belief is not a political, sociological or philosophical view of a merely personal moral code.~~
 5. ~~This belief causes (me) (us) to request an exemption from the requirements for testing for Hereditary Disorders by the Delaware Newborn Screening Program for _____ (name of child).~~

Signature of Parent (s) or
Legal Guardian(s)

SWORN TO AND SUBSCRIBED before me, a registered Notary Public, this ____ day of _____, 200__.
_____(Seal)

Notary Public

My Commission Expires:

~~11.3~~11.2.1 The Newborn Screening Refusal Form will be provided through the Newborn Screening Program Office.

12.0 Penalty for Non-compliance

Under the Authority granted to the Department of Health and Social Services, Division of Public Health under 16 **Del.C** §107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Division shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

FINAL REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)e and 7903 (16 **Del.C.** §§122(3)e and 7903)

16 **DE Admin. Code** 4455

FINAL

ORDER

4455 Delaware Regulations Governing a Detailed Plumbing Code

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing a Detailed Plumbing Code. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsections 122(3)(e) and 7903.

On September 1, 2019 (Volume 23, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 2, 2019, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing a Detailed Plumbing Code is adopted and shall become effective November 11, 2019 (ten days), after publication of the final regulation in the Delaware *Register of Regulations*.

10/9/19

Date

Kara Odom Walker, MD, MPH, MSHS
Cabinet Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2019 issue of the *Register* at page 200 (23 DE Reg. 200). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4455 Delaware Regulations Governing a Detailed Plumbing Code

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 512 and 518 (31 **Del.C.** §§512 & 518)

16 **DE Admin. Code** 3012

ORDER

TANF CMR School Attendance Requirement

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the Division of Social Services Manual (DSSM) regarding TANF CMR School Attendance Requirement, specifically, to update policy regarding the school

attendance element of the Contract of Mutual Responsibility (CMR). 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 August 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 3, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after November 12, 2019, Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 3012 and 3012.1 regarding Temporary Assistance for Needy Families (TANF), specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR).

Statutory Authority

- Social Security Act, Title IV, Part A
- CFR, Title 45, Subtitle B, Chapter II
- 31 Del.C. §512
- 31 Del.C. §518

Background

The Temporary Assistance for Needy Families (TANF) Contract of Mutual Responsibility (CMR) is an agreement between the TANF client and the Division of Social Services that sets obligations and expectations for helping the TANF household achieve self-sufficiency. The CMR lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements.

Purpose

The proposed rule includes a new section on TANF bonus payments for specific school milestones and incorporates CMR sanction guidelines.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on September 3, 2019.

Fiscal Impact Statement

The policy is currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: Two commenters requested clarity be provided on the definition of "satisfactory school attendance." The proposed regulations state the following: "TANF children are required to maintain satisfactory school attendance as defined by their individual schools or at an 85% attendance rate." The commenters questioned, "If these metrics are different, which will DSS use – whichever is less?"

Agency Response: The school's response to attendance is what DSS relies on as the primary verification to determine if attendance is satisfactory. When the school does not respond then DSS would default to the 85% rate.

Comment: Two commenters requested that DSS distinguish between excused vs. unexcused absences? How will DSS treat absences due to suspensions?

Agency Response: When there are a high number of absences DSS will contact the school to verify if the parent is cooperating with the school. DSS will also offer the family supportive services and case management when the family is facing numerous challenges. DSS will explore issues with families to determine when barriers

exist that prevent compliance with attendance laws. Good Cause encapsulates a broad range of issues and circumstances our families experience daily.

Comment: Two commenters stated that DSS accommodate TANF children with disabilities before imposing sanctions due to unsatisfactory school attendance.

Agency Response: When there are a high number of absences DSS will contact the school to verify if the parent is cooperating with the school. DSS will also offer the family supportive services and case management when the family is facing numerous challenges. DSS will explore issues with families to determine when barriers exist that prevent compliance with attendance laws. Good Cause encapsulates a broad range of issues and circumstances our families experience daily, this could include absences related to health issues.

Comment: Two commenters asked that DSS clarify how much the bonus payment will be and to clarify that a determination regarding eligibility for a bonus payment is an appealable decision.

Agency Response: DSS publishes the amount of the bonus payment in an administrative notice. All actions taken or not taken on cases can be appealed.

Comment: Two commenters suggested that DSS amend its policy so that TANF children with disabilities are eligible to receive a bonus payment if they graduate from high school by age 21.

Agency Response: TANF is for families with minor children in the home. If a child has not graduated by the age of 19 they are no longer eligible for TANF. DSS does not have any high school students between the ages of 19 and 21 on TANF. So they cannot be issued a TANF payment because, one must be receiving TANF assistance to qualify for the high school graduation bonus payment.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF), specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR), is adopted and shall be final effective November 12, 2019.

10/9/19

Date of Signature

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

FINAL

POLICY – AMENDMENT

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

3012 Requiring Satisfactory School Attendance Requirements

~~School attendance requirements exist for both adults and children. Children are expected to maintain satisfactory school attendance. Acceptable school attendance will be defined by the individual school. If the school does not define what is acceptable, use an 85% attendance rate.~~

~~Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. These penalties will differ~~

depending upon whether a child is under the age of 16 or is 16 or over.

Ensuring TANF children maintain satisfactory school attendance is a required CMR element for all TANF clients.

- 1. School attendance requirements exist for both TANF adults and children.**
 - A. TANF adults are required to cooperate with school officials and other service providers when necessary to help their children maintain satisfactory school attendance.
 - B. TANF children are required to maintain satisfactory school attendance as defined by their individual schools or at an 85% attendance rate.

- 2. TANF clients will receive one-time bonus payments when their children achieve specific school milestones.**
 - A. DSS will issue a one-time bonus payment for TANF children who graduate from high school by age 19. This bonus payment will be paid directly to the high school graduate.
 - B. DSS case workers must disregard the bonus payment as income for TANF and Food Benefit cases.

- 3. Failure to comply (without good cause) with the school attendance element in the CMR will result in a sanction to the TANF case.**
 - A. For children under 16 years old:
 - i. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount if the TANF adult does not comply with the school or other service providers to ensure the child's satisfactory school attendance.
 - ii. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.
 - iii. If the child does not comply, a sanction will not be imposed if the TANF adult is complying with the school or other service providers.
 - B. For children over 16 years old:
 - i. If the child does not comply, the child is removed from the TANF grant and the household size is reduced.
 - C. The client will receive written notification of compliance requirements.
 - D. The sanction will end when DSS receives proof that TANF clients are complying with the school attendance element.
 - i. The TANF adult must comply with the school or other service providers for four consecutive weeks for the sanction to end.
 - ii. TANF children over 16 years old must return to school, participate in employment and training, or work for four consecutive weeks for the sanction to end.

FINAL

POLICY – AMENDMENT

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

~~3012.1 Sanctions and Cures for Unsatisfactory School Attendance~~**~~CHILDREN UNDER 16 YEARS OLD~~**

~~The fiscal sanction for noncompliance, without good cause, with school attendance (including dropping out of school) or alternative participation requirements will be:~~

~~A \$50.00 reduction in the TANF grant each month if the parent does not work with the teen and the school to ensure school attendance. If the parent works with the school and the teen still does not comply with the requirement the sanction is removed.~~

~~CHILDREN AGE 16 AND OLDER, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN OR HEAD OF HOUSEHOLD~~

~~The fiscal sanction for noncompliance, without good cause, with school attendance, including dropping out of school, or alternative participation requirements will be:~~

~~The removal of the child from the grant and the subsequent reduction in household size.~~

~~To cure the sanction teens over 16 must first serve a full month sanction and either return to school, work, or participate in employment and training for four consecutive weeks whichever is longest.~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
 16 DE Admin. Code 11004

ORDER**POC - Determining and Reviewing Child Care****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Purchase of Care (POC), specifically, to align policy with Federal requirements. 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 August 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 3, 2019 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after November 12, 2019 the Delaware Health and Social Services/ Division of Social Services proposes to amend the Division of Social Services Manual section 11004.11 regarding Purchase of Care (POC), specifically, to align policy with Federal requirements.

Statutory Authority

45 CFR 98.21 (b)(2)

Background

On Nov. 19, 2014, President Barack Obama signed into law the Child Care and Development Block Grant (CCDBG) which is a comprehensive reauthorization with new requirements. The amended version of DSSM 11004.11, Determining and Reviewing Child Care, includes several new requirements mandated by CCDBG. The revised policy outlines the requirement for 12-month authorizations for eligible families, the prohibition from increasing copayments during the eligibility period, and the requirement to authorize an additional 90 days of child care in the event of a loss of need for assistance during the eligibility period. The revised policy also includes case processing guidance for DSS eligibility staff.

Purpose

Summary of Proposed Changes

Effective for services provided on and after November 12, 2019 Delaware Health and Social Services/Division of Social Services proposes to amend section 11004.11 of the Division of Social Service Manual regarding Purchase of Care (POC), specifically, to align policy with Federal requirements.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Social Services 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 September 3, 2019.

Fiscal Impact Statement

The policy amendment will have no fiscal impact since the purpose is to revise the requirements of the program.

Summary of Comments Received with Agency Response and Explanation of Changes

DSS received endorsement from two commenters.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons With Disabilities

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual section 11004.11 regarding Purchase of Care (POC), specifically, to align policy with Federal requirements, is adopted and shall be final effective November 12, 2019.

10/9/19

Date of Signature

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

POLICY – AMENDMENT

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

11004.11 ~~Review/Determination~~ Determining and Reviewing Child Care

45-CFR 98.145 CFR 98.21 (b)(2)

All ~~childcare applicants and recipients are continuously eligible for child care services for twelve months. This means that the applicants and recipients remain eligible for child care services unless:~~

- ~~A. The child moves out of or is removed from the parent's/caretaker's home, or~~
- ~~B. The child moves out of state, or~~
- ~~C. The child is deceased.~~

~~In the event of any of the above, close the child care case.~~

~~Additionally, the child care parent fee will not change during the authorization unless the parent/caretaker in a single parent home loses his or her job or one or both parents in a two parent home loses his or her job. (See DSSM 11004.12.1 Continuing Child Care after Loss of Need.)~~

~~Complete a review/redetermination of the circumstances of each parent/caretaker at least once every twelve months and just prior to the end of each authorization period.~~

~~Close the child care case if parents/caretakers fail to complete a review or return the six month interim report (See DSSM 9068.1 12-Month Certification Periods). Only child care/food benefit cases will require an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.~~

~~Good cause can be anything believed to be reasonable, but generally includes things such as:~~

- ~~1. Illness;~~
- ~~2. Court required appearance;~~
- ~~3. Household emergency (fire, heating problem, family crisis, etc.);~~
- ~~4. Lack of transportation; or~~
- ~~5. Inclement weather.~~

~~Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1 Prioritizing Service Needs).~~

~~Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.~~

~~All recipients of child care assistance are continuously eligible for 12 months of child care services as outlined in this policy.~~

- 1. DSS must complete an interview with the client at application and redetermination as part of the child care eligibility process. The client can complete the interview with DSS in person or by telephone.**
- 2. DSS must authorize 12 months of child care services for every eligible child.**

3. **DSS case workers must complete Form 636 "Child Care Checklist" when adding an additional child to an open, on-going child care case.**
 4. **The child care copayment:**
 - Must decrease when a decrease in the family's income is reported; and
 - Must not increase beyond the initial copayment amount during the authorization period.
- Note: If a family's income decreases during the child care authorization period and then increases, the adjusted copayment cannot exceed the original copayment amount.
5. **If a family has a loss of need for child care services during the authorization period, DSS must authorize the family for 90 days of continuing care before the child care case is closed (see DSSM 11004.12.1). If the family regains a need for child care services before the 90 days ends, the family will remain eligible and authorized for child care until their next review.**
 6. **DSS will close a child care case at any time during the authorization period for the following reasons (see DSSM 11004.12):**
 - Excessive unexplained absences of the child from the child care site;
 - A permanent change in the child's state residency;
 - The family's income exceeding 85% of the state median income (SMI);
 - Substantiated fraud or intentional program violations;
 - A written request to close the case or to authorize child care for a specific length of time; or
 - The death of the case head or of the authorized child.
 7. **DSS case workers must redetermine the eligibility of a child care case prior to the end of the authorization period.**
 8. **A client must show good cause for not returning a redetermination application timely to avoid the closure of the child care case. Good cause can be anything believed to be reasonable, but generally includes things such as:**
 - An illness;
 - A court required appearance;
 - A household emergency (e.g., fire, heating problem, family crisis, etc.);
 - A lack of transportation;
 - A domestic violence situation; or
 - Inclement weather.
 9. **A family whose child care case closed due to failure to complete a redetermination or provide verification may reapply for service. If DSS is using a wait list for child care assistance, the family will be subject to the DSS priority service order (see DSSM 11004.3.1).**
 10. **DSS must not end a child care authorization or close a child care case without providing the family with at least a 10-day notice.**
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DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING

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**2309 Development Coordination Manual**

Pursuant to the authority provided by 17 **Del.C.** §132(e), 507, and 508, as well as 21 **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 September 1, 2019, Delaware *Register of Regulations*.

The Department took written comments on these proposed revisions from September 1, 2019, through October 1, 2019.

Public comment and DelDOT responses are as follows:

D.J. Hughes, P.E., Associate, Davis Bowen & Friedel, Inc

Comment #1:

Regulatory Transparency and Accountability Acts of 2015: The requirements per the laws of the State of Delaware do not appear to be satisfied with respect to the impacts to small businesses based on revisions to the regulations since the law went into effect on January 1, 2016. The February 2016 proposed regulations that took effect in April 2016 and were further revised in part in May 2016 with respect to left-turn treatment at site access points clearly were subject to the Regulatory Transparency and Accountability Acts of 2015 yet have never been evaluated with respect to revisions to the October 2015 regulations (most recent regulations prior to January 1, 2016) as required by State law with respect to impacts to small businesses. The current left-turn treatment requirements need to be compared to the October 2015 regulations since no comparison or evaluation of any of the revisions to left-turn treatment requirements has occurred since January 1, 2016. Letter of No Contention (LONC) procedures have also been revised prohibiting site leveling without evaluating and noting the potential impacts to small businesses. A Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) was not submitted to the Register as required for the April 2016. The March 1, 2018 RFA/RIS improperly claimed the regulations were exempt because they were not “substantially likely to impose additional costs or burdens upon individuals and/or small businesses”. Any revisions that have occurred to the October 2015 regulations were required to be evaluated consistent with the law and respecting the spirit of the law. The impacts to small business and small projects are potentially very significant (potentially \$250,000 or more) in some cases with respect to costs of the design and construction of left-turn treatments for a low to moderate volume site access along moderate to high- volume, two-lane roads. That is in addition to impacts associated with the time for approvals. Prohibiting site leveling for potential LONC projects can add the time and expense of the formal DelDOT process as well as any potential additional requirements resulting from the process;

Comment Response #1:

Comments given were not comments on the proposed changes to the DCM, as published on September 1, 2019. The Department will review them and respond to Mr. Hughes in due course, but the Department does not intend to make any changes to the Regulation at this time.

Comment #2:

Chapter 1: Figure 1.3a: Thank you for increasing the eligibility for the LONC from 200 ADT to 500 ADT in Section P.6.1. However, Figure 1.3a does not reflect the change. The figure suggests 200 ADT is still the threshold for a LONC without indicating sites with 200 ADT to 499 ADT are eligible.

Comment Response #2:

The Department will update Figure 1.3a to reflect the change that was made in the Regulations. This is a typographical change.

Comment #3:

Section 1.5: For the 1st sentence, suggest deleting “existing commercial uses/” and adding “commercial”

between “existing” and “entrance facility”. Suggest “A.” be deleted. The determination should be about the design and function of the access and not the age. An access constructed 5 or even 10 years ago but not used for the last 3 years is likely better designed than an access constructed 30 years ago but continuously used. Delaware Code Title 17 Subsection 146(d) does not place a timeframe on the use of an existing access. The code references “significant alteration in the character, flow or volume of traffic.”

Comment Response #3:

The Department does not think this will make a substantive change to the Regulation, therefore we will leave the language as is.

Comment #4:

For “B.”, suggest adding “building demolition” after “building expansions”, and also suggest the last sentence of “B.” is deleted due to potentially significant impacts on small businesses that may choose to level an existing building that is not suitable for their purposes. ACEC made similar comments to DeIDOT in August 2017 regarding the LONC process. DeIDOT is supposed to consider less stringent requirements on small businesses yet added a more stringent requirement without evaluating the impacts to small businesses as required by State law. DeIDOT regulates traffic not building construction. DeIDOT’s focus should be on the traffic using the access and not the building demolition, revisions, or construction.

Comment Response #4:

Item B is clear as written. Thank you for your suggestion but we do not plan to implement it at this time.

Comment #5:

Section 1.8: For the definition of Travel Demand Model, “tolls” should be “tools”.

Comment Response #5:

The Department will correct the typographical error.

Comment #6:

Suggest at the end of the last sentence after “DeIDOT Planning” adding “and that is required for site trip distribution for purposes of determining site access design, and when applicable, Area of Influence for a TIS.”

Comment Response #6:

Thank you for your suggestion but we do not plan to implement it at this time. Per Section 2.2.4.2.2 of the DCM, use of the Travel Demand Model is required in the determination of the area of Influence for Traffic Impact Studies. While the Model can be a helpful tool in determining the site trip distribution for site access design its use for this purpose is not required.

Comment #7:

Chapter 5: Figures 5.2.5.4-b & c: While the regulations did not necessarily change, the implementation of them did. Previously, DeIDOT did not require bike lanes on 50 mph and 55 mph divided highways (see enclosed e-mail from DeIDOT), presumably for safety reasons along a high-speed facility. Add Notes “6.” and “7.”, respectively, to each figure “On roads with a speed limit exceeding 45 mph, bike lanes shall not be provided without vertical (includes rumble strips) or horizontal separation (such as a shared-use path in lieu of a bike lane adjacent to the travel lane). For 50 mph roads, 15 feet of separation is the recommended horizontal separation and 20 feet is preferred. For roads with 85th Percentile Speeds of 62 mph or higher, 33 feet is the preferred separation. Shared-use paths can accomplish the horizontal separation.”

The suggestion is referenced from the Maryland Department of Transportation State Highway Administration (SHA) research report called “SAFE ACCOMMODATION OF BICYCLISTS ON HIGH-SPEED ROADWAYS IN MARYLAND” that was completed in December 2016 in conjunction with the University of Maryland. The Study Findings and Recommendations include the statement: “Bicycle advocacy groups contacted in 16 states (see Appendix 3.1) as part of this study were unanimous in their concerns about cycling along roadways with speed limits above 45 mph. They agreed that the method used for separating bicyclists from motor-vehicle traffic, whether a buffer, physical barrier or separated path, is very important. Some groups recommended cycle tracks with complete separation. Others suggested separated trails or side paths.”

The referenced bicycle advocacy groups included Delaware. Shared-use path (SUP) facilities are required by DeIDOT providing separate facilities for cyclists that should be used by cyclists in lieu of bike lanes adjacent to a travel lane on roads with speeds exceeding 45 mph. That is especially true on high-volume roadways and truck traffic is significant. If mixing of different types of SUP users is a safety concern, perhaps a wider SUP (13 feet?) with a dedicated (marked) lane for cyclists in the same direction of travel as motor vehicles on that side of the roadway centerline could be considered in lieu of a bike lane adjacent to travel lanes with speeds exceeding 45 mph and high volumes.

The conclusions of the SHA research report noted: “main conclusion of this study is that bicyclists on high-speed roads (above 45 mph) face serious risks unless sufficiently separated from the motor-vehicle traffic. The treatments presented in the project report, if prudently implemented, can help mitigate such risks where separated facilities are not an option.” When SUPs are provided, separate facilities are an option cyclists should use and perhaps be required to use.

After a recent “Walkable Bikeable Delaware Summit”, I had the opportunity to speak to one of the presenters, Mr. Bill Schultheiss. He expressed that as a cyclist if he were traveling along the shoulder approach an access he prefers no bike lane between the thru and right-turn lane forcing any right-turn vehicles to yield to the cyclist in lieu of potentially sandwiching the cyclist between two vehicles, perhaps trucks, traveling at high speeds.

Comment Response #7:

The Department will not remove the requirement for bike lanes on high speed roads. Bicycles are legally allowed to use any non-interstate/limited access highway/roadway within the state of Delaware.

Comment #8:

Figures 5.2.5.5-c: Move figure heading to be on same page as figure.

Comment Response #8:

Formatting will be addressed during the Final posting.

Comment #9:

Add same note as above: “On roads with a speed limit exceeding 45 mph, bike lanes shall not be provided without vertical (includes rumble strips) or horizontal separation (such as a shared-use path in lieu of a bike lane adjacent to the travel lane). For 50 mph roads, 15 feet of separation is the recommended horizontal separation and 20 feet is preferred. For roads with 85th Percentile Speeds of 62 mph or higher, 33 feet is the preferred separation. Shared-use paths can accomplish the horizontal separation.” The figure should also illustrate how SUPs and sidewalks should safely cross the minor street ensuring good visibility of the crossing and good sight lines for drivers turning from the major street.

Comment Response #9:

The Department will not remove the requirement for bike lanes on high speed roads. Bicycles are legally allowed to use any non-interstate/limited access highway/roadway within the state of Delaware.

Comment #10:

Section 5.2.9: 1. The left-turn treatment requirements that have been implemented by the online DeIDOT auxiliary lane worksheet for years that has changed numerous times do not appear to be based on any recent data from Delaware or based on any data from this century; The continued reference to an online DeIDOT Auxiliary Lane Worksheet (similar to the DNREC Technical Documents) should be removed or at least referenced as an option only while making it clear the regulations required to be followed are published in the DCM, which is required to go to the Register any time revisions to it are proposed. Delaware law and precedent are very clear for that situation (see DNREC regulations). Suggest removing the Auxiliary Lane Worksheet from the DeIDOT website.

Comment Response #10:

The Auxiliary Lane Worksheet is a tool that was developed to be helpful for engineers that are submitting to the Department. The Department will not be removing the Auxiliary Lane Worksheet from the DeIDOT website.

Comment #11:

DeIDOT has implemented an online regulation that has frequently changed over the years without review of the changes as is required for State policies and regulations. Require the DCM users to implement the figures and text within the DCM in lieu of DeIDOT having to maintain a worksheet and provide quality control to make sure the worksheet replicates the DCM. The costs to the State and potential confusion when the Auxiliary Lane Worksheet and DCM do not result in the same required design are unnecessary. Errors have been found on multiple occasions in previous versions where the DCM was not being replicated, or the online worksheet (implemented as regulation) was revised without revisions to the DCM.

Irrespective of what the Auxiliary Lane Worksheet is implementing, the concern is it is an online worksheet that dictates site access design requirements/standards as a regulation, similar to the former and infamous DNREC Technical Document that was only available online. Why not do away with the Auxiliary Lane Worksheet and make the DCM users implement the DCM without a worksheet to do so for them?

Comment Response #11:

The Department will not remove the requirement for bike lanes on high speed roads. Bicycles are legally

allowed to use any non-interstate/limited access highway/roadway within the state of Delaware.

Comment #12:

Any changes to the worksheet that implement different requirements from the DCM are subject to the Administrative Procedures Act (APA) the same as DCM revisions. DeIDOT has not been following the APA requirements with at least 20 versions of the online worksheet dating back to 2012 and at least 14 versions of the online worksheet dating back to 2015. Not removing the online worksheet in conjunction with implementation of the new regulations leads to concerns that the online worksheet will continuously be changed outside the required APA process as has occurred averaging over three (3) times per year dating back to 2012 and averaging over four (4) times per year dating back to 2015.

Comment Response #12:

Comments given were not comments on the proposed changes to the DCM, as published on September 1, 2019. The Department will review them and respond to Mr. Hughes in due course, but the Department does not intend to make any changes to the Regulation at this time.

Comment #13:

Thank you for adding “or provided by DeIDOT if a TOA/TIS is preformed” after “1.5% annual growth...”. A 1.5% annual growth factor is generic, not specific to a roadway, and often different from DeIDOT growth factors provided for a subject roadway.

Comment Response #13:

You are welcome.

Comment #14:

The Delaware Vehicle Volume Summary referenced link is incorrect. The correct link and other suggested minor revisions are enclosed on DCM page 5-44.

Comment Response #14:

The hyperlink works, but the link verbiage is incorrect. The Department will correct this typographical error. DCM page 5-44 was not enclosed.

Comment #15:

Thank you for adding “If traffic counts are collected or a TOA/TIS is performed, those traffic volumes can be utilized instead of applying the associated K and D factors.” We have been using the volumes collected as part of a TIS/TOA for years with DeIDOT approval.

Comment Response #15:

You are welcome.

Comment #16:

Section 5.2.9.1: To the end of the sentence beginning “A five foot bike lane”, add: “, except on divided highways with posted speed limit exceeding 45 mph and a shared-use path (SUP) available for use by cyclists.” If a SUP is available, it is much safer for cyclists on high-speed, high-volume roadways that often serve significant truck traffic. While this is only suggested along divided highways, the same could be considered for all roads with speeds exceeding 45 mph based on the previously referenced SHA study.

Comment Response #16:

The Department will not remove the requirement for bike lanes on high speed roads. Bicycles are legally allowed to use any non-interstate/limited access highway/roadway within the state of Delaware.

Comment #17:

Section 5.2.9.2.A.1 & 4: Thank you for raising the ADT upper limit for bypass lanes to 8,000 and removing the functional classification as a determining factor in a previous round of DCM revisions.

Comment Response #17:

You are welcome.

Comment #18:

While that is much more reasonable, it is suggested the determination of when to install a left-turn lane treatment be based on the Benefit/Cost (B/C) ratio as discussed later, rather than generic one size fits all volumes, that do not appear to be based on any actual data, and certainly not data collected in Delaware.

DeIDOT installed numerous bypass lanes along US Route 9 where the AADT exceeds 16,000 in eastern Sussex County and they have functioned safely and efficiently. Sheffield Drive is a good example where a bypass lane eliminated potential delays and functions safely with an AADT of 16,593 trips per day based on April and May 2017 traffic counts. Left-turn lanes for low volume access points add unnecessary costs to small projects including small businesses and add unnecessary impervious surface, sometimes in environmentally sensitive areas. Bypass

lanes can function safely serving more volumes than DeIDOT requirements currently allow. There are also small business access points that function safely with no left-turn treatment and lefts occurring from the thru lane.

Comment Response #18:

Comments given were not comments on the proposed changes to the DCM, as published on September 1, 2019. The Department will review them and respond to Mr. Hughes in due course, but the Department does not intend to make any changes to the Regulation at this time.

Comment #19:

Section 5.2.9.2.A.2: Requiring separate worksheets for each intersection approach (existing and proposed) is understandable from a design and warrants perspective. This may have even previously been implemented by practice if not regulation. Regardless of the merits of doing so, it undoubtedly has the potential to add significant costs to a small business/small project. If a proposed project does not meet the requirements for any left-turn treatment, yet an existing project does meet the requirements regardless of whether any left-turn treatment currently exists, the potential additional costs to the new project (including small businesses and small projects) could be approximately \$250,000. Suggest revising Figure 5.2.9.2-a as detailed later in these comments and/or creating a limit for when separate worksheets are required based on the traffic projected to use the proposed 4th intersection leg to be created. Regardless, the potential impacts are required to be acknowledged and documented due to the regulation change.

Comment Response #19:

The Regulation requires the computations to be completed. Completing the computations does not correlate to constructing all turn lanes that might show on the computations.

Comment #20:

Section 5.2.9.2.A.5: Regardless of the merits of requiring a left-turn lane due to lack of sight distance, it undoubtedly has the potential to add significant costs to a small business/small project that does not warrant a left-turn lane based on traffic. The potential additional costs to the new project (including small businesses and small projects) could be approximately \$250,000 minus the costs of a bypass lane. If a bypass lane is assumed to cost only \$100,000, the potential impacts are an increased cost of \$150,000. While it is understood the addition of the new requirement is for safety, the potential impacts are required to be acknowledged and documented due to the regulation change.

Comment Response #20:

Comments given were not comments on the proposed changes to the DCM, as published on September 1, 2019. The Department will review them and respond to Mr. Hughes in due course, but the Department does not intend to make any changes to the Regulation at this time.

Comment #21:

Section 5.2.9.2.D: Suggest defining "very low opposing volumes" to remove the subjectivity and give the DCM user an idea of when a bypass lane may be waived. For example, 120 vph could be defined considering that is only 2 vehicles per minute with an average gap of 30 seconds between vehicles, which is sufficient time to allow multiple entering left turns to occur without significant delays for following vehicles. Additionally, it is suggested "very low advancing volumes" be added and similarly defined. If the following vehicles are very low in volume, there is no need for a separate lane. AASHTO and DeIDOT off-site intersection warrants for left-turn lanes compare advancing and opposing volumes.

Comment Response #21:

At this time, the Department does not see the need to define "very low opposing volumes." This allows the Department to analyze project based on site specific needs.

Comment #22:

Figure 5.2.9.2-a: Suggest removing this figure in its entirety and requiring the developer's engineer to provide Benefit/Cost (B/C) Ratio calculations in lieu of following a chart. If not removed, a discrepancy for 25 mph speed zones needs to be addressed. Currently, Figure 5.2.9.2-a indicates bypass lanes are not warranted in a 25 mph zone. However, Figure 5.2.9.3-a indicates a left-turn lane can be required in a 25 mph zone, which seems to be an inconsistent approach. Suggest considering advancing volumes and opposing volumes like AASHTO warrants for left-turn treatments and NCHRP report calculations.

Based on previous DeIDOT responses regarding the left-turn lane warrants when providing comments on the DeIDOT Development Coordination Manual (DeIDOT comments from November 14, 2014, and February 11, 2015), DeIDOT appears to be using data not intended to be used unless locally calibrated. For example, NCHRP 745 references the Highway Safety Manual (HSM) for predicting crash reductions for left-turn lanes. The HSM also

references FHWA-RD-99-207, Prediction of the Expected Safety Performance of Rural Two-Lane Highways, which uses data from Minnesota and Michigan from over 20 years ago. Each state is supposed to calibrate their own local data and DeIDOT has never done so for the HSM or to predict local crash frequencies as well as types and severity of collisions. The data from the FHWA report referenced in the HSM is not recommended for use without local calibration. The report states: "It is strongly recommended that the models NOT be used without calibration."

DBF reviewed the following publications to determine the need for a left-turn lane:

- DeIDOT referenced document National Cooperative Highway Research Program Report 745: Left-Turn Accommodations at Unsignalized Intersections (NCHRP 745);
- DeIDOT referenced Transportation Research Record 1500 Lengths of Left-Turn Lanes at Unsignalized Intersections (TRR 1500);
- Transportation Research Record 1327 Analysis of Left-Turn Lane Warrants at Unsignalized T-Intersections on Two-Lane Roadways (TRR 1327);
- National Cooperative Highway Research Program Report Web-Only Document 193: Development of Left-Turn Lane Warrants for Unsignalized Intersections (NCHRP 193);
- Highway Safety Manual (HSM); and
- Prediction of the Expected Safety Performance of Rural Two-Lane Highways PUBLICATION NO. FHWA-RD-99-207 (FHWA-RD-99-207).

After reviewing publications and determining DeIDOT has not been properly using the documents as they are intended to be used, DBF researched 55 3-leg intersections (minimum of 50 suggested) in Delaware and calculated a calibration factor (as DeIDOT is supposed to do based on the direction of the HSM and FHWA-RD-99-207) to predict the amount of future crashes at intersections (including site access points for new developments). As suggested by the HSM, DBF also calculated the local percentage of personal injury versus property damage only crashes and evaluated the need for a left-turn lane based on the procedures detailed in the documents. The HSM predictive method for 3-leg unsignalized intersections is based on data from 30 to 34 years ago (1985 to 1989) in Minnesota used in FHWA-RD-99-207 and is not truly relevant to intersections in Delaware. The HSM provides a "calibration factor for intersections of a specific type developed for use for a particular jurisdiction of geographical area." On multiple occasions, DBF has requested a calibration factor from DeIDOT and DeIDOT responded that none was derived and to use 1.00 even though the HSM devotes Part C, Appendix A.1.1 to document the procedure to calculate calibration factors. Obviously, the intent of the HSM was for local agencies like DeIDOT to use the data available to them to calculate calibration factors. Since the release of the HSM, DeIDOT has possessed all the necessary data to calculate calibration factors yet has neglected to do so. A meeting with DeIDOT occurred in September 2019, and DeIDOT indicated they were beginning the process of determining how best to determine calibration factors for Delaware.

The Auxiliary Lane Worksheet and DCM implement left-turn lane warrants that unnecessarily require left-turn lanes for lower volume intersections in conflict with the Benefit-to-Cost (B/C) Ratio recommendations for left-turn lane warrants in the DeIDOT referenced NCHRP 745. The left-turn lane warrants in the DCM are not based on any known, and certainly not any local, data. The HSM notes on page 10-9: "The SPFs used in the predictive method have each been developed from specific jurisdictions and time periods. Calibration of the SPFs to local conditions will account for differences." With respect to the default distributions of crash severity and collision types (Table 10-5), the HSM states: "These default distributions can benefit from being updated based on local data as part of the calibration process presented in Part C, Appendix A.1.1."

Appendix A.1 states: "general level of crash frequencies may vary substantially from one jurisdiction to another...for the Part C predictive models to provide results that are meaningful and accurate for each jurisdiction, it is important that the SPFs be calibrated for application in each jurisdiction." Additionally, it states: "distribution of crashes by collision type...are known to vary substantially from jurisdiction to jurisdiction. Where appropriate local data are available, users are encouraged to replace these default values with locally derived values." Appendix A.1.1 states: "purpose of the Part C calibration procedure is to adjust predictive models which were developed with data from one jurisdiction for application in another jurisdiction. Calibration provides a method to account for the differences between jurisdictions in factors such as climate, driver populations, animal populations, crash reporting thresholds, and crash reporting system procedures." With respect to how often calibration factors should be updated, HSM A.1.1 states: "recommended the new values of the calibration factors be derived at least every two to three years...The calibration factor for the most recent available period is to be used for all assessment of proposed future projects." Table A-1 is provided for facility types: "for which calibration factors need to be derived." In Table A-1, "Three-leg intersections with minor-road stop control" is listed with references to Ci and Equation 10-

3.

The “desirable minimum sample size” is listed as 30 to 50 sites. While it also notes the sites should represent a total of 100 crashes per year, DBF evaluated 55 intersections (50 Sussex County, 3 New Castle County, and 2 Kent County) and the total crashes per year is only approximately 42. Evaluating additional intersections is well beyond the efforts of a small business and the HSM also notes: “If a jurisdiction has fewer than 30 sites...it is desirable to use all of those available sites for calibration.” Similar logic is applied to using all 55 sites even though less than 100 crashes per year occurred. DBF created a spreadsheet replicating the HSM calculations in Table Ex-1. Example of Calibration Factor Computation.

Local data in Delaware has needed to be evaluated since the HSM was released to assess intersections with various volumes along the major street, along the minor street, and making left turns from the major street. Considering DeIDOT has neglected to do so, DBF took the initiative to initially evaluate 25 intersections (submitted to DeIDOT along with the July 3, 2018 comments) and has since expanded the evaluation to include 55 three- leg intersections.

To determine a calibration factor to be used for three-leg intersections in Delaware, the predicted crash frequency based on the HSM Predictive Method was calculated for each of the 55 three-leg intersections. Printouts with the predicted crash frequency calculations per the HSM are provided. The predicted crash frequency was compared to the existing crash data to determine the calibration factor, consistent with the methods in the HSM. Based on the DBF calculations, a calibration factor of 0.46 should be used for three-leg unsignalized intersections with stop control on the minor street approach in Delaware. The data suggests less than half the amount of HSM predicted crashes (based on data from 1985 to 1989 in Minnesota) occur in Delaware. All the data evaluated by DBF includes data within the range of 2010 to 2018.

The severity of the existing crashes was also reviewed as suggested by the HSM. The results show 23.39% of crashes at three-leg intersections in Delaware are personal injury crashes (PI), and 76.61% are Property Damage Only (PDO). None of the intersections evaluated had a fatal crash. The HSM indicates that approximately 41.5% of all crashes are PI and 1.7% of all crashes are fatal. When considering the calculated Delaware Calibration Factor (Ci) and the amount of PI versus PDO crashes occurring in Delaware, PI crashes in Delaware occur about $\frac{1}{4}$ ($0.46 \times 23.39 / 41.50 = 0.2593$) of the amount projected by the HSM. In other words, for every four (4) PI crashes projected by the HSM, only 1 PI crash is occurring in Delaware. When uncalibrated data is used, it can significantly skew results for a given area, which is why local calibration is recommended. NCHRP 193 indicates that the average mid-range crash costs approximately \$214,000, which is an average of all crash types (fatality, personal injury, PDO). When using the Delaware calibrated data with a lower percentage of PI crashes, an average crash costs of \$125,314.10 is calculated (\$117,116.83 per PI crash and \$8,197.27 per PDO crash). That is a significant difference when weighing benefits versus costs. The existing counts data and last year counted for the 55 intersections is also provided. The most recent counted annual volume data was used.

The NCHRP Reports recommend using the Benefit/Cost (B/C) ratio to determine if a left- turn treatment is warranted. For rural roads a B/C ratio greater than 2.0 indicates a left- turn lane should be installed, a B/C ratio greater than or equal to 1.0 but less than 2.0 indicates a bypass lane should be installed, and a B/C ratio less than 1.0 indicates left- turn treatment does not need to be installed. The B/C ratio is a function of the crash reduction costs savings and the delay reduction costs savings that is expected when a left- turn lane is installed versus the costs to construct a left-turn lane (assumed as \$250,000 per NCHRP 193).

Based on November 14, 2014, and February 11, 2015, DeIDOT responses regarding DBF comments (enclosed) on the left-turn lane warrants, DeIDOT is basing their warrants on procedures not intended to be used without locally calibrated. For example, NCHRP 745 references the HSM for predicting crash reductions for left-turn lanes. The HSM references FHWA-RD-99-207 that uses data from Minnesota from 1985 to 1989 for stop-controlled intersections. The data is 30 to 34 years old. Each state is supposed to calibrate their own local data and DeIDOT has never done so for the HSM equations or to predict local crash frequencies as well as types and severity of collisions. The data from the FHWA report referenced in the HSM is not recommended for use without local calibration. The FHWA report states:

“States also differ markedly in climate, animal population, driver populations, accident reporting threshold, and accident reporting practices. These variations may result in some States experiencing substantially more reported traffic accidents on rural two-lane highways than others. Such variations cannot be directly accounted for by the accident prediction algorithm. Therefore, a calibration procedure has been developed to allow highway agencies to adjust the accident prediction algorithm to suit the safety conditions present in their State.”

For the Calibration Procedure, the FHWA report notes: “It is generally expected that the calibration factors (Cr

and Ci) would be determined by highway agencies based on statewide data... In addition to estimates of accident frequency, the accident prediction algorithm includes default distributions of accident severity and accident type for rural two-lane highway roadway sections and intersections... The calibration procedure presented in appendix C includes a capability for highway agencies who use the accident prediction algorithm to modify the default distributions of accident severity and accident type to match their own experience on rural two-lane highways."

Appendix C of the FHWA documents is dedicated to the calibration procedure and states: "It is possible for a highway agency to use the accident prediction algorithm without calibration, but this is not recommended. Using the accident prediction algorithm without calibration requires the user to accept the assumption that for their agency $C_r = 1.0$, $C_i = 1.0$, and the accident severity and accident type distributions for two-lane highways are those shown in tables 1 and 2, respectively. These assumptions are unlikely to be correct for any highway agency and are unlikely to remain correct over time. Even a minimal calibration effort (referred to later in this appendix as level 1 calibration) is likely to produce far more satisfactory results than using the algorithm without calibration." It is very clear that calibration using local data needs to occur or the assumptions in the procedures DelDOT is basing their warrants on are "unlikely to be correct" and "even a minimal calibration effort...likely to produce far more satisfactory results".

Per DelDOT, NCHRP 745 is the basis of the DCM and Auxiliary Lane Worksheet left-turn treatment warrants. While DelDOT also referenced TRR 1500, the reference is incorrect and the publication is from 1995, almost 25 years ago. The title speaks for itself, Lengths of Left-Turn Lanes at Unsignalized Intersections. TRR 1500 notes two questions: "Is a separate left-turn lane warranted?" and "If it is warranted, what should be the length of the lane?" It then states: "The work presented addresses the second question." TRR 1500 also references TRR 1327, a 1991 publication that is almost 30 years old. No references to Delaware crash data were found.

Comment Response #22:

Comments given were not comments on the proposed changes to the DCM, as published on September 1, 2019. The Department will review them and respond to Mr. Hughes in due course, but the Department does not intend to make any changes to the Regulation at this time.

Comment #23:

Section 5.2.9.3.J: Delete in lieu of revised Figure 5.2.9.2-a. It is much more user friendly to review the figure in lieu of the written criteria that seemed repetitive with the figure.

Comment Response #23:

The Department prefers to keep the written version in the text and in the Table. This is more useful to our end users.

Comment #24:

Section 5.4: The online link to the Intersection Sight Distance worksheet needs updating.

Comment Response #24:

The hyperlink works, but the link verbiage is incorrect. The Department will correct this typographical error.

Comment #25:

Section 5.13: Suggest referencing Figure 5.13-a for External Design.

Comment Response #25:

At this time, the Figure is clear as written. Thank you for your suggestion but we do not plan to implement it at this time.

Summary of the Evidence and Information Submitted

The current regulations were enacted in April of 2016, with several updates. 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.

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 effective November 11, 2019.

It is so ordered on this 15th day of October, 2019.

Jennifer Cohan, Secretary
Delaware Department of Transportation

***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/november2019/final/Preface.pdf>)

Chapter 1: (<http://regulations.delaware.gov/register/november2019/final/Chap1.pdf>)

Chapter 3: (<http://regulations.delaware.gov/register/november2019/final/Chap3.pdf>)

Chapter 5: (<http://regulations.delaware.gov/register/november2019/final/Chap5.pdf>)

Chapter 8: (<http://regulations.delaware.gov/register/november2019/final/Chap8.pdf>)

DIVISION OF PLANNING

Statutory Authority: 29 Delaware Code, Section 8422 (29 Del.C. §8422)

ORDER**2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund**

Pursuant to the authority provided by 29 Del.C. §8422, the Delaware Department of Transportation (DelDOT), is promulgating regulations for the administration of the Transportation Infrastructure Investment Fund. The Transportation Infrastructure Investment Fund is established to provide economic assistance for renovation, construction, or any other type of improvements to roads and related transportation infrastructure in order to attract new businesses to this state, or expand existing businesses in this State, when such an economic development opportunity would create a significant number of direct, permanent, quality full-time jobs.

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 regulations is appropriate.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Transportation Infrastructure Investment Fund regulation, as set forth in the version attached, to be effective November 11, 2019.

It is so ordered on this 3rd day of October 2019.

Jennifer Cohan, Secretary
Delaware Department of Transportation

2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund

1.0 Authorization

This regulation is adopted pursuant to 29 **Del.C.** §8422(d).

2.0 Purpose

The purpose of these Regulations is to establish the practice and procedure for the administration of the Transportation Infrastructure Investment Fund (the "Fund"). The Regulations contain procedures governing the process for applying to the Council for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the approval or disapproval of an application for economic assistance under the Fund.

3.0 Definitions

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

"Application" means an application made to the Council on such form or forms, together with all relevant attachments, as the Council may, in its sole discretion, require in connection with administration of the Fund.

"Applicant" means any person, including individuals, firms, partnerships, trusts, public or private corporations, or other legal entities, for which a Project is undertaken or proposed to be undertaken.

"Council" means the Transportation Infrastructure Investment Fund Council as set forth in 29 **Del.C.** §8422.

"DelDOT" means the Delaware Department of Transportation.

"Final Approval" means the final approval of an Application by the Secretary of the Department of Transportation and the Secretary of State.

"Grant" means a financial award in the form of funds to Applicants for the specific intended use of the proceeds from the Fund.

"Project" means economic development or redevelopment activity to attract or expand employment.

"Public Endorser" means the State of Delaware or any agency thereof, or any County, municipality, local political subdivision within the State of Delaware.

"Transportation Infrastructure" for purposes of these Regulations, shall include but not be limited to the following:

- Any project that would construct, maintain, extend or enhance any highway, and/or road, and/or bridge.
- Any project that would construct, maintain, extend or enhance access to any transit and/or intermodal system.
- Any project that would construct, maintain, extend or enhance any access to commercial ports and/or airports.

4.0 Infrastructure Grants

4.1 **Grant Description.** Proceeds of a Grant are to be used to reimburse work performed for renovation, construction or any other type of improvements to Transportation Infrastructure.

4.2 **Eligibility Standards.** To be eligible for a Grant, a Project must have at least one Public Endorser and expand employment in the State. Grants would only be authorized for Transportation Infrastructure located within the public right-of-way or on public land.

4.3 **Project Approval Standards**

4.3.1 **Findings.** As a precondition to approving a Grant, the Council shall find that the Project would create a significant number of direct, permanent, quality, full-time jobs, and the associated Transportation Infrastructure improvements would benefit the public by improving infrastructure

FINAL REGULATIONS

- within the State. The Council shall apply the following standards, where applicable, in making such findings and determinations:
- 4.3.1.1 Employment Standard. The Council will review information concerning the Applicant as submitted in an Application. As a condition precedent to making a Grant, the Council shall determine that the Applicant intends to provide gainful employment within the State. The standards to be considered by the Council will include, but not be limited to, the number of permanent, quality, full-time jobs created as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the effect of the Project on the tax base of the State and/or the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.
- 4.3.1.2 In determining whether the Project will assist in creating "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Council that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Council may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Council, in its sole discretion, may decline to consider the Application. If requested by the Council, similar proof shall be obtained from any operator or principal user of the Project.
- 4.3.1.3 Financial Stability and Economic Sustainability. The Applicant shall demonstrate to the Council that it possesses financial stability and can also demonstrate that the Project is economically sustainable. The Applicant must meet all of the following:
- 4.3.1.3.1 Validly exist as a corporation, limited liability company, or other regulated entity.
- 4.3.1.3.2 Be in good standing under the laws of this State, duly-qualified to do business.
- 4.3.1.3.3 Be in good standing in each other jurisdiction in which its conduct of business requires such qualification.
- 4.3.1.3.4 Possess business and professional licenses required under Titles 24 and 30.
- 4.3.1.4 Public Purpose Standard. When applying the "public purpose standard", the Council shall take into consideration whether the Transportation Infrastructure improvements associated with the Project will enhance the infrastructure of the state, such that it would have a positive impact on Delaware's future economic health and competitiveness. Factors to be considered by the Council shall include, but not be limited to, whether the Transportation Infrastructure improvements will benefit the greater public and not just the Applicant, whether the Transportation Infrastructure improvements will help attract additional economic development to the area where the Project is being built, whether the Transportation Infrastructure would have otherwise required the use of State funding to be completed.
- 4.3.2 Clawback Provision. The Council shall determine appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Grant.
- 4.3.3 Post-Grant Period - Annual Reporting. Unless waived or amended by the Council, the Applicant shall, for a period of five (5) years following the award of Grant, submit to the Division of Small Business, on an annual basis, financial statements in a form acceptable to the Council, a progress report on the status of the project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Council. Each applicant shall report to the Division of Small Business no later than June 30 of each of the years for which the report is required.

5.0 **Application Procedure**

- 5.1 Applicants may obtain Application forms through DeIDOT.
- 5.2 To apply for the Grant, an Applicant must submit a completed Application concerning the Project to DeIDOT. Each Application must include the written certification of at least one Public Endorser for the Project, a narrative of the Transportation Infrastructure needed to support the Project outlining both the direct need and the benefits to the general public, proof of employment standards, financial stability and economic sustainability.
- 5.3 Completed Applications will be reviewed by the DeIDOT and the Division of Small Business. DeIDOT and the Division of Small Business shall use its reasonable best efforts to complete its review of the Application within sixty (60) days from the Application deadline. No application will be reviewed by the Council until it is complete to the satisfaction of DeIDOT and Division of Small Business.
- 5.4 Applications will be accepted on a quarterly basis, unless otherwise directed by the Council.
- 5.5 Any business applying to the Transportation Infrastructure Investment Fund shall validly exist as a corporation, limited liability company or other regulated entity and shall be in good standing under the laws of the State of Delaware, duly qualified to do business and shall be in good standing in each other jurisdiction in which its conduct of business requires such qualification. Such applying business shall possess required business and professional licenses in accordance with Titles 24 and 30 of the Delaware Code.

6.0 **Approval Process**

- 6.1 The Council shall use its reasonable best efforts to complete its review of the Application for preliminary approval or disapproval within thirty (30) days from the date DeIDOT and Division of Small Business deems an Application is complete, provided, however, that if no meeting of quorum of Council is scheduled or held within 30 days of the Application being deemed complete, the Application will be considered at the next meeting of the Council at which quorum is present.
- 6.2 If a majority of the Council present determines that a Project meets the approval standards outlined above, and that the Grant award would represent a prudent use of the Fund, then the Council shall adopt a resolution recommending the issuance of the Grant to the Secretary of Transportation and the Secretary of State for consideration for Final Approval.
- 6.3 Final Approval will be binding however, the Secretary of Transportation and Secretary of State may withdraw Final Approval at any time prior to the disbursement of the Grant, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Council's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.
- 6.4 The Council will establish the term of the Grant and the reimbursement schedule. The Council may make recommendation on limitations or grant extensions and may only be withdrawn as set forth in subsection 6.3.
- 6.5 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. The Grant is encumbered from the Fund for the Transportation Infrastructure associated with the Project upon the execution of an agreement detailing the terms and conditions of the commitment letter.

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, November 13, 2019** beginning at **1:30 p.m.** A business meeting will be held the following month on **Wednesday, December 11, 2019** beginning at **10:30 a.m.** The hearing and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania 18977. For more information, visit the DRBC web site at www.drbc.gov or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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

The State of Delaware, Department of Agriculture, Delaware Harness Racing Commission (“the Commission”) proposes to amend its Regulations adopted in accordance with Title 3, Chapter 100 of the Delaware Code to amend existing regulation 1.0 to add new definitions of Extended Break and Kicking, amend existing regulation 7.5.3 to provide that the Presiding Judge may order the use of properly affixed mud guards (fenders) and mud aprons, amend existing regulation 7.6.5.4 with respect to starting gate speed, strike existing regulation 7.6.5.6, amend existing regulation 7.6.6 to provide that a fine and/or suspension may be applied by the starter or the judges to any driver for specified infractions, add a Charging the Gate provision as new regulation 7.6.6.6.8, add a new provision for placement of starting positions in a race with multiple trailers as new regulation 7.6.8.4, amend the Conduct of the Race regulation 7.6.13 by amending existing regulation 7.6.13.1.9 and adding new regulations 7.6.13.1.18 and 7.6.13.1.19, and amend existing regulation 10.2.9.2 to extend the time to file an appeal from a ruling from the Board of Judges from 48 hours to four business days after publishing of the ruling. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code, Chapter 100, Section 10005. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the November 1, 2019 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before December 2, 2019. Written materials submitted will be available for inspection at the above address.

On or after December 2, 2019, following review of the public comment, the Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on November 21, 2019 at 5:00pm at Sussex Central High School. (26026 Patriots Way, Georgetown, DE 19947)

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

Pursuant to 16 **Del.C.** §7406, the Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Radiation Control. On November 1, 2019, the Division of Public Health plans to publish as “proposed” revisions to the Radiation Control regulations. The revisions include the following changes.

- **Part B:** Provides text to clarify existing regulatory requirements for Radiation Service Providers who apply for state registration to deliver radiation services in Delaware, and specifies their obligation to report certain information to their prospective clients.
- **Part E:** Provides regulatory requirements for use of high-energy radiation machines to perform industrial radiography (non-destructive testing) to test various objects such as industrial piping and vessels for structural integrity.
- **Part K:** Provides text to clarify circumstances under which Radiation Service Providers may be cited for violation of Part B, regulatory requirements for application, service delivery and failure to report certain information to their prospective or current clients located in Delaware.
- **Part T:** Provides references to state and federal regulations governing transportation of radioactive materials via land and water routes; specifically references transportation of spent fuel from nuclear power plants that may traverse the state.

Copies of the proposed regulations are available for review in the November 1, 2019 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 them to Alanna Mozeik by Monday, December 2, 2019, at:

Alanna Mozeik

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: Alanna.Mozeik@delaware.gov

Phone: (302) 744-4951

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF CLIMATE, COASTAL, & ENERGY****PUBLIC NOTICE****2101 Regulations for State Energy Conservation Code**

Delaware’s Energy Conservation Code Act (16 **Del.C.** §7602) requires DNREC to adopt the most recent and/or highest available version of the International Energy Conservation Code (IECC), and the latest American Society of Heating, Refrigerating and Air-Conditioning Engineers/Illuminating Engineering Society of North America (ASHRAE/IESNA) energy standard. The regulations must also set out procedures for certification of compliance with these codes and standards to be utilized by the respective local governments. The Energy Conservation Code Act instructs DNREC to review the state energy codes triennially for potential updates to adopt newer versions of the IECC and ASHRAE energy code standards.

Since May 1, 2014, Delaware has required the 2012 IECC for residential buildings and ASHRAE 90.1-2010 for commercial and high-rise residential structures. In 2017, the Department convened the Delaware Energy Code Coalition to begin the triennial review of the available energy conservation codes and evaluate the impacts of adopting

a newer version of the IECC and ASHRAE standards. The Coalition met eleven times between March 2017 and January 2019 to review newer versions of the IECC and ASHRAE standards. The Department, in consultation with the Codes Coalition, considered the 2015 and 2018 versions of the IECC standards and ASHRAE 90.1-2013 and ASHRAE 90.1-2016. The Department collected input through the Delaware Energy Code Coalition to inform the proposed draft regulations.

The Department is proposing to adopt by reference the 2018 IECC and ASHRAE 90.1-2016 in their entirety. The modest increased cost of the more stringent energy conservation codes is offset by the benefits accrued to the building owners and occupants over the life of the building. Adopting the current version of the IECC and ASHRAE energy conservation codes will increase building sector energy efficiency, bring energy cost savings for building owners and occupants, increase occupant comfort, and reduce emissions in Delaware.

Persons wishing to comment on the proposed amendments to 7 **DE Admin. Code** 2101 *Regulations for State Energy Conservation Code* may do so either orally or in written form at the public hearing on Tuesday, December 3, 2019 beginning at 6:00 PM in the DNREC Auditorium at 89 Kings Highway, Dover, DE 19901. In lieu of attending the public hearing, written comments may be submitted to the Hearing Officer via either email to DNRECHearingComments@delaware.gov, or via USPS to the DNREC Hearing Officer, 89 Kings Highway, Dover, DE 19901. The Department will accept public comment through the close of business on Wednesday, December 18, 2019.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §1775(c), the Respiratory Care Practice Advisory Council (“the Council”) of the Board of Medical Licensure and Discipline (“the Board”) has proposed revisions to its rules and regulations. Currently, Section 11.0 states that a licensee whose license has expired may renew that license within one year after the expiration date upon fulfilling specified requirements. The lengthy late renewal period is inefficient and confusing for licensees. The Council proposes amending Section 11.0 by changing the late renewal period from one year to sixty days. This change will clarify and streamline the licensure renewal process and the associated continuing education audit process.

A public hearing will be held on January 8, 2020 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Respiratory Care Practice Advisory Council, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to Devashree Singh, Executive Director, at the above address or at devashree.singh@delaware.gov. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be **January 23, 2020**. The Council will deliberate on the proposed revisions at its next regularly scheduled meeting.