
Delaware Register of Regulations

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Volume 20 - Issue 4, Pages 206 - 329



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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2016.

Cover Photo by
Dolores Michels

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 21 Delaware Code, Section 4504 (21 **Del.C.** §4504)
2 **DE Admin. Code** 2405

ERRATA**2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual**

* **Please Note:** The final regulation for 2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual that was published in the September 1, 2016, issue of the Delaware *Register* (Volume 20, Issue 3) inadvertently contained a publication error in the PDF of the document. An “X” to denote the removal of the Extreme Emergency Hauling Permit Notification form was published in error over the Oversized/Overweight Hauling Permit form.

The PDF for this errata shows the corrected forms. For the current version of 2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual, see <http://regulations.delaware.gov/AdminCode/title2/2000/2400/2405.shtml#TopOfPage>.

The effective date for the final order and regulation appearing in the September *Register* remains the same.

**2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual
(Break in Continuity of Sections)****6.0 Extreme Emergency Permit Procedures****(Break in Continuity Within Section)****A.3 Permit Format**

STATE OF DELAWARE PERMIT
OVERSIZE/OVERWEIGHT NONDIVISIBLE LOADS

										PAGE OF					
APPLICANT					REQUESTED START DATE			OVERALL FEET INCHES*		OVERALL FEET INCHES*					
LOAD DESCRIPTION – MAKE, MODEL, SERIAL No, OR BILL OF LADING No.					LOAD CODE			LENGTH		HEIGHT					
					# OF PIECES			WIDTH		OVERHANG FEET INCHES* FRONT REAR					
MOTOR CARRIER'S NAME AND ADDRESS							USDOT / FEIN / SS#								
							VEHICLE		LIC. PLATE # IF NONE: VIN		ST/ JUR	# OF AXLES			
							POWER UNIT								
TRAILER															
AXLE #	STEERING AXLE	2	3	4	5	6	7	GROSS WEIGHT							
AXLE WEIGHTS															
AXLE SPACINGS FEET/INCHES*															
SPECIFIC ADDRESS OF TRIP ORIGIN					SPECIFIC ADDRESS OF TRIP DESTINATION										
ROUTING INFORMATION										FEES					
										MIN:					
										WT:					
										TOLLS:					
										AMEND:					
TOLLS: MD LINE:										BIDDLES:		DOVER:		TOTAL:	
<p>I(WE) HAVE READ THIS FORM AND HEREBY CERTIFY: THAT THE ABOVE DATA IS CORRECT TO THE BEST OF MY(OUR) KNOWLEDGE AND BELIEF, THAT THE LOAD IS NONDIVISIBLE, THAT SATISFACTORY ARRANGEMENTS HAVE BEEN MADE WITH THE PROPER AUTHORITIES TO TRAVEL ROADS AND CROSS OVER AND UNDER ALL STRUCTURES OPERATED BY AUTHORITIES NOT PARTY TO THIS PERMIT. APPENDIX B OF THE DELAWARE HAULING PERMIT MANUAL CONTAINS THE COMMON SAFETY STANDARDS THAT APPLY TO THIS MOVE. COPIES ARE AVAILABLE FROM THE PERMIT OFFICE OR THE APPLICANT'S REPRESENTATIVE.</p>															
NAME OF APPLICANT'S REPRESENTATIVE					REP'S PHONE NUMBER			_____ DRIVER SIGNATURE _____ DRIVER SIGNATURE							
DATE & TIME OF APPLICATION					REP'S FAX NUMBER										
EFFECTIVE DATE				ISSUE DATE											
EXPIRATION DATE				ISSUE TIME				PERMIT NUMBER							
SPECIAL PROVISIONS:															
<p>THE SIGNED PERMIT MUST BE WITH THE VEHICLE DURING THE MOVE. AUTHORIZATION AND PERMISSION IS HEREBY GRANTED TO MOVE THE VEHICLE/LOAD ON THE ROUTING AS DESCRIBED ABOVE. THIS MOVEMENT SHALL ALSO BE MADE IN COMPLIANCE WITH DELAWARE LAW. THIS PERMIT MAY BE CONFISCATED AND/OR INVALIDATED IF ANY LAWS, RULES, REGULATIONS, OR PROVISIONS OF THE STATE OF DELAWARE ARE VIOLATED. ALL POSTED HIGHWAY/BRIDGE LIMITS MUST BE OBSERVED UNLESS SPECIFICALLY EXEMPTED HEREIN. THE ISSUANCE OF THIS PERMIT DOES NOT GUARANTEE THAT ANY HIGHWAY OR STRUCTURE IS CAPABLE OF CARRYING OR PASSING THE VEHICLE OR LOAD DESCRIBED.</p>															

Figure A.3: Oversized/Overweight Hauling Permit

~~A.4 HP Form 8 Extreme Emergency Hauling Permit Notification~~

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
HAULING PERMITS SECTION

Extreme Emergency Hauling Permit Notification

Name of Responding Company:	
Name of Company Representative:	
Company Representative Telephone Number:	
Nature of Emergency:	
Location of Emergency:	
Date(s) of move:	
Inclusive times of move in Delaware:	
Type and Number(s) of Equipment being moved:	
Route in Delaware:	
Validation Authorization:	

HP Form 8 (4/18/12) Page 1 of 1

~~Figure A.4: HP Form 8 Extreme Emergency Hauling Permit Notification~~

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

Statutory Authority: 7 Delaware Code, Section 903(h) (7 **Del.C.** §903(h))
7 **DE Admin. Code** 3500

SECRETARY'S ORDER

Pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h)
Order No. 2016-F-0039

3504 Striped Bass Possession Size Limit; Exceptions**AUTHORITY**

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control adopted on June 13, 2016 amendments through emergency order 2016-F-0027 to Tidal Finfish Regulation 3504 without prior notice or public hearing to assure that Delaware's commercial Striped Bass harvesters were not burdened with an unnecessary harvest constraint that would result in unintended wanton waste of fish, which collectively posed an actual and imminent danger to this fishing resource and its associated businesses. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. It is now necessary to extend the emergency order for 90 days, pursuant to 7 **Del.C.** §903(h) to retain its provisions while the amendments are considered through standard administrative procedures.

REASON FOR THE EMERGENCY ORDER

The Atlantic States Marine Fisheries Commission approved in 2014 Addendum IV to Amendment 6 to the Interstate Fisheries Management Plan for Atlantic Striped Bass (the Addendum) that imposed a 25% commercial

quota poundage reduction on all states with commercial Striped Bass fisheries, resulting in Delaware reducing in 2015 its commercial quota poundage by 25%. The Addendum also required all states to reduce their recreational Striped Bass harvest by 25%, resulting in Delaware changing in 2015 its recreational Striped Bass size limit from a 28" minimum length to a slot size limit of 28" to 37" and 44" or greater. The regulation change implementing the new slot size limits for the recreational fishery inadvertently required the Striped Bass commercial hook and line fishery and commercial fall gill fishery to abide by these new recreational slot size limits. This presents a hardship for these two commercial fisheries as an additional and unnecessary constraint to their harvest within the already required 25% commercial poundage quota reduction.

If Delaware does not renew the emergency order to change the size limits for its Striped Bass, the current commercial hook and line fishery and upcoming fall commercial gill net fishery, will revert to our existing regulations and will once again be subject to the unintended and unnecessary harvest constraint of restrictive recreational fishery slot size limits that require greater effort to fill or prevent filling their reduced harvest quotas. This harvest constraint also threatens the Striped Bass population by increasing the number of Striped Bass that these two fisheries catch to reach or attempt to reach their harvest quota, with catches not meeting the slot size limits released (discarded) as a substantial portion of dead or dying fish (wanton waste).

The emergency order is being renewed for 90 days since there is insufficient time to promulgate and adopt the regulation change through the Administrative Procedures Act during the ongoing commercial hook and line fishery or before the upcoming commercial fall gill net fishery. Therefore, this action is being taken "to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish" by returning the Striped Bass size limit for the commercial hook and line fishery and fall gill net fishery to the 28" minimum length. The Department has initiated the normal regulatory process through Start Action Notice #2016-13.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 a.m. on September 13, 2016, and shall remain in effect for 90 days.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901. A public hearing related to this matter is tentatively scheduled for October 24, 2016 at 6PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, the 13th day of September 2016 that the above referenced amendment to Tidal Finfish Regulation 3504, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) and supported by the evidence contained herein.

David S. Small, Secretary
Department of Natural Resources and Environmental Control
9/13/16

3504 Striped Bass Possession Size Limit; Exceptions.

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

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length or any striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than twenty (20) inches and not greater than twenty-five (25) inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.

-
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 3.0 It is unlawful for any person to possess a striped bass that measures less than 28 inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches, total length, unless said striped bass is in one or more of the following categories:
- 3.1 It has affixed, a valid strap tag issued by the Department to a commercial ~~gill-net~~ food fisherman and was legally taken and tagged by said commercial ~~gill-net~~ food fisherman ~~from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March;~~ or
- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It is unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 ~~It is unlawful for any person to land any striped bass that measures less than twenty eight (28) inches in total length or a striped bass that measures greater than thirty seven (37) inches but less than forty four (44) inches, total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.~~
- 7.0 It is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.
-

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****DELAWARE STANDARDBRED BREEDERS' FUND**

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b.2 (29 **Del.C.** §4815(b)(4)b.2)
3 DE Admin. Code 502

PUBLIC NOTICE**502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 4.2 and 9.2 removes the four (4) year old bonus program beginning with the foals of 2018 who would be four (4) year olds in 2022. This is a financial move to keep the "Fund" viable in the future.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by November 1, 2016.

***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/october2016/proposed/20 DE Reg 219RFA 10-01-16.pdf>

502 Delaware Standardbred Breeders' Fund Regulations

(Break in Continuity of Sections)

PROPOSED REGULATIONS

4.0 Eligibility of Breeders for Bonus Payments

(Break in Continuity Within Section)

- 4.2 Beginning in race year 2012 and ending in race year 2021, any four year old horse that was nominated by May 15th of its yearling year or supplemented by March 15th of its two year old year will be eligible to earn a bonus in overnight races conducted by a licensed harness race track in Delaware. A bonus payment of ten percent (10%) of any overnight purse earned shall be paid to the breeder of the eligible four year old and ten percent (10%) of any overnight purse earned shall be paid to the owner(s) or legal entity of record at the time of the race. The four year old bonus is eliminated for all foals on the ground after the 2017 breeding season.

(Break in Continuity of Sections)

9.0 Purses and Bonus Awards

(Break in Continuity Within Section)

- 9.2 Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams and maintain a separate ledger of them. Starting in race year 2012 and ending in race year 2021, the Administrator of the Program shall compile bonus payments earned by breeders and owners of Delaware Standardbred Breeders' Fund four year olds in overnight races at each racing meet and maintain a separate ledger for them. Starting in race year 2015 bonus payments will be paid on consolation races. Bonus payments will be paid out at the end of the racing year. The four year old bonus is eliminated for all foals on the ground after the 2017 breeding season.

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

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 286

PUBLIC NOTICE

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

286 Application Fee For Educator Licensure

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 286 Application Fee for Educator Licensure. This regulation is being amended to align with changes to 14 Del.C. §122(b)(27) related to educator licensure. It clarifies that the application fee for educator licensure shall be reimbursed for any applicant who becomes a teacher in a Delaware public school and that \$90,000 will be set aside for the sole purpose of reimbursing such educators.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do 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 student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The expected cost to the State is reflected in the \$90,000 that has been set aside for the sole purpose of reimbursing qualified educators.

***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/october2016/proposed/20 DE Reg 220RFA 10-01-16.pdf>

286 Application Fee For Educator Licensure**1.0 Purpose**

The purpose of this regulation is to comply with 14 **Del.C.** §122(b)(27) related to educator licensure. This regulation sets forth the rules and guidelines related to fees for educator licensure. Specifically, the Department of Education will implement a one-time, non-refundable fee of not more than \$100 for an educator's first application for licensure in Delaware. However, the fee shall be reimbursed for any applicant who becomes employed as a teacher in a Delaware Public School. This application may be for an Initial, Continuing or Advanced License.

2.0 Definitions

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §121(c) and 14 **Del.C.** Ch. 12, subchapter II.

"Charter School" means a non home-based public school including two or more of grade kindergarten through twelve, operating in an approved physical plant for the personal physical attendance of all students and is managed by a board of directors. It exists under a charter granted by a public school district or the State Department of Education, with the approval of the State Board of Education, pursuant to 14 **Del.C.** Ch. 5.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in and 14 **Del.C.** §121(c) and 14 **Del.C.** Ch. 12, subchapter II.

"Department" means the Delaware Department of Education.

PROPOSED REGULATIONS

"Educator Licensure Application Fee" means the one-time, non-refundable fee of not more than \$100 an individual pays for a first educator license in Delaware.

"Eligible Educator for Reimbursement" or **"Eligible Educator"** means an educator who has paid the one-time \$100 educator licensure fee and who has become employed as a teacher in a Delaware public school.

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. §121(c) and 14 Del.C. Ch. 12, subchapter II.

"Public School" means a physical plant having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. A Charter School, as defined herein, is also a public school.

3.0 Application Process

- 3.1 ~~Effective the later of January 15, 2016 or upon activation of the online payment option within the electronic licensure and certification system, applicants~~ Applicants seeking an educator licensure in Delaware shall:
- 3.1.1 Establish an online account in the electronic licensure and certification system in Delaware;
 - 3.1.2 Submit official documents to the Department to support their application;
 - 3.1.3 Pay a one-time, non-refundable \$100 application fee via debit or credit card through the electronic licensure and certification system when applying for an Initial, Continuing, or Advanced License; and
 - 3.1.4 Meet all statutory and regulatory requirements.
- 3.2 An application will not be processed until all conditions of subsection 3.1 are met.
- 3.3 Submission of an online fee and application does not entitle the applicant to the requested license.

4.0 Exemptions From Application Fee

- 4.1 ~~Any person who submits an application for their first license in Delaware prior to January 15, 2016 shall be exempt from the application fee.~~
- 4.2 ~~Any person~~ An applicant who is already licensed and certified to teach in Delaware prior to January 15, 2016 shall be exempt from the application fee.

5.0 Fee Payment and Collection

- 5.1 No installment or partial payments of the fee will be accepted. Only full payment of the fee, to be made as part of the online electronic application, is permitted.
- 5.2 No appeals, exceptions, or waivers shall be granted for the fee.
- 5.3 All fees collected pursuant to this regulation shall be deposited in the General Fund, with the exception of \$90,000, which shall be retained annually by the Department in a special fund to be established for the sole purpose of reimbursing Eligible Educators.

6.0 Reimbursement

- 6.1 An Eligible Educator For Reimbursement shall receive a reimbursement of the one-time \$100 educator licensure fee. The reimbursement shall be processed by the Department of Education in coordination with the Division of Accounting for those Eligible Educators for Reimbursement identified November 1 and March 1 of each fiscal year.
- 6.2 Eligible Educators for Reimbursement shall receive their reimbursement check through either a direct deposit transaction or live check.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 612

PUBLIC NOTICE

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

612 Possession, Use or Distribution of Drugs and Alcohol

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 612 Possession, Use or Distribution of Drugs and Alcohol. This regulation is being amended to update definitions, include reference to an insulin pump and medical marijuana oil, and update drug and alcohol policy posting requirements and to clarify disciplinary penalties based on Regulation 616 (Uniform Due Process for Alternate Placement Meetings and Expulsion Hearings).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments address students' health and safety by helping to ensure that students who need medications have easy access to such medications. This regulation also establishes rules that seek to protect students from drugs in the school setting.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendments.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 223RFA 10-01-16.pdf>

612 Possession, Use or Distribution of Drugs and Alcohol

1.0 ~~The Following Policy on the Possession, Use, or Distribution of Drugs and Alcohol Shall Apply to All Public School Districts and Charter Schools~~ Purpose

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

2.0 General Provisions

2.1 The following provisions shall apply to all public school district and charter schools:

4.1 2.1.1 ~~The possession, use and/or distribution of a~~Alcohol, a ~~d~~Drug, a ~~d~~Drug ~~Like~~ ~~s~~Substance, a ~~l~~Look ~~a~~Like ~~s~~Substance and ~~d~~Drug ~~p~~Paraphernalia ~~are wrong and harmful to students and are prohibited within the s~~School ~~e~~Environment, unless medically necessary.

4.2 2.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

4.3 2.1.3 Student motor vehicle use to and in the ~~s~~School ~~e~~Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of ~~a~~Alcohol, a ~~d~~Drug, a ~~d~~Drug ~~Like~~ ~~s~~Substance, a ~~l~~Look ~~a~~Like substance or ~~d~~Drug ~~p~~Paraphernalia in the ~~s~~School ~~e~~Environment, may result in the student being asked to open an automobile in the ~~s~~School ~~e~~Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

4.4 2.1.4 All ~~a~~Alcohol, ~~d~~Drugs, ~~d~~Drug ~~Like~~ ~~s~~Substances, ~~l~~Look ~~a~~Like ~~s~~Substances and ~~d~~Drug ~~p~~Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 Del.C. Ch. 47, turned over to police as potential evidence.

23.0 ~~The Following Definitions Shall Apply to This Policy and Will be Used in All District and Charter School Policies~~

The following definitions shall apply to this regulation, unless a specific regulation, statute or the context in which they are used clearly indicates otherwise, and shall apply to all public school districts and charter schools.

"Alcohol" ~~shall mean~~ alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 Del.C. §101 including alcohol, spirits, wine and beer.

"Designated Caregiver" ~~means, pursuant to 16 Del.C. §4902A(5), a person who: is at least 21 years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than 5 qualifying patients with their medical use of marijuana.~~

"Distribute", "Distributing" or "Distribution" ~~shall mean~~ the transfer or attempted transfer of ~~a~~Alcohol, a ~~d~~Drug, a ~~d~~Drug ~~Like~~ ~~s~~Substance, or ~~d~~Drug ~~p~~Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"Drug" ~~shall mean~~ any controlled substance or counterfeit substance as defined in 16 Del.C. §4701 including, for example, narcotic ~~d~~Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

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

"Drug Paraphernalia" shall mean all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging ~~d~~Drugs.

"Expulsion" shall mean ~~exclusion from school for a period determined by the local district or charter school not to exceed the total number of student days. The process for readmission shall be determined by the local district or charter school.~~ disciplinary action approved by the Board of Education resulting in a student being removed from the regular school program for a duration not to exceed the total number of student days in a school year. A student expelled without appropriate educational services shall be unenrolled from the district/charter during the term of the expulsion. Regardless of whether without or with services, including alternative placement, the expelled student is not eligible to enroll in any other Delaware public school during the period of the expulsion and until any reasonable terms of the expulsion are fulfilled.

"Look Alike Substance" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a ~~d~~Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

"Medical Marijuana Oil" means as defined in 16 **Del.C.** §4902A(10).

"Nonprescription Medication" shall mean any over the counter medication; some of these medications may be a ~~d~~Drug ~~l~~ike ~~s~~ubstance."

"Possess" "Possessing" or "Possession" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, a ~~a~~lcohol, a ~~d~~Drug, a ~~d~~Drug ~~l~~ike ~~s~~ubstance, a ~~l~~ook ~~a~~like ~~s~~ubstance, or ~~d~~Drug ~~p~~araphernalia.

"Prescription Drugs Medication(s)" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"Relative Caregiver" means an individual who meets the criteria and requirements of 14 **Del.C.** §202 (f)(1).

"School Environment" shall mean within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Suspension" means, for the purposes of this regulation, disciplinary action approved by the principal or school discipline committee resulting in the student being removed from his regular school program for at least one (1) school day and not more than ten (10) consecutive school days. Student maintains enrollment in district/charter, but is excluded from all school activities including, but not limited to extracurricular sports/programs, field trips, and ceremonies. Student is not allowed on school property when suspension is out-of-school. A suspension requires initial due process procedures as outlined in Regulation 616.

"Use" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated a ~~a~~lcohol, a ~~d~~Drug or a ~~d~~Drug ~~l~~ike ~~s~~ubstance, or is reasonably found to be under the influence of such a substance.

34.0 Requirement of Each School District and Charter School to have a Policy.

PROPOSED REGULATIONS

- ~~4.1~~ Each school district and charter school shall have a policy on file and update it periodically. The policy shall ~~include, as at~~ a minimum, the following:
- ~~3.4~~ 4.1.1 A system of notification of each student and ~~of his/her~~ their parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and ~~his/her~~ their parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
- ~~3.2~~ 4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.
- ~~3.3~~ 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.
- ~~3.4~~ 4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- ~~3.5~~ 4.1.5 A written policy on search and seizure.
- ~~3.6~~ 4.1.6 A program of assistance for students with counseling and referral to services as needed.
- ~~3.7~~ 4.1.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state, district, and charter school ~~d~~Drug policies.
- ~~3.7.1~~ Use/Impairment: ~~For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she shall be suspended for up to 10 days, or placed in an alternative setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative setting for the rest of the school year.~~
- ~~3.7.2~~ Possession of alcohol, a drug, a drug like substance, and/or a look alike substance, in an amount typical for personal use, and drug paraphernalia: ~~For a first offense, the student shall be suspended for 5 to 10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.~~
- ~~3.7.3~~ Possession of a quantity of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia in an amount which exceeds an amount typical for personal use, or distribution of the above named substances or paraphernalia: ~~the student shall be suspended for 10 days, or placed in an alternative setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.~~
- ~~3.8~~ 4.1.8 A policy in cases involving a ~~d~~Drug ~~l~~ike ~~s~~ubstance or a ~~l~~ook ~~a~~like ~~s~~ubstance for establishing that the student intended to use, possess or distribute the substance as a ~~d~~Drug.
- ~~3.9~~ 4.1.9 A policy which establishes how ~~p~~rescription Medications and ~~n~~onprescription ~~d~~rugs Medications shall be handled in the ~~s~~chool ~~e~~nvironment and when they will be considered unauthorized and subject to these state and local policies.
- ~~3.10~~ 4.1.10 A policy which sets out the conditions for return after ~~e~~xpulsion for ~~a~~lcohol or ~~d~~Drug infractions.
- ~~3.14~~ 4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of ~~d~~Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler (~~"Inhaler"~~) with an individual prescription label, or an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump"); provided, nevertheless, that the student uses the inhaler, ~~or~~ autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, ~~or~~ autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, ~~or~~ autoinjectable

epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, ~~or~~ autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.

~~3.11.1~~ 4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, ~~or~~ autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.

~~3.11.2~~ 4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, ~~or~~ autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

(For students who use prescribed asthmatic quick relief inhalers, ~~or~~ autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy, see 14 **DE Admin. Code** 817, Administration of Medications and Treatments)

4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of dose(s) prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

45.0 Reporting Requirements and Timelines

~~4.1~~ 5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of ~~d~~Drugs and ~~a~~Alcohol policy on file with the Department of Education.

~~4.2~~ 5.2 When a local school district or charter school revises its possession, use, and distribution of ~~d~~Drugs and ~~a~~Alcohol policy, it shall ~~provide an electronic copy~~ notify the Department of Education of the revised policy ~~to the Department~~ within thirty (30) days of the revision, even if the revision was made because of changes in ~~F~~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** 804

PUBLIC NOTICE

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

804 Immunizations

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 804 Immunizations. This regulation is being amended to align with 14 **Del.C.** Ch. 1., §131 which provides explicit language related to the responsibilities of the school and parents for exemptions from immunizations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at

401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to improve student achievement as measured against state achievement standards by helping to ensure students are healthy for learning.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to help ensure all students receive an equitable education by promoting a healthy school environment.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment is designed to help ensure that all students' health and safety are adequately protected and allow for a healthy school environment.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all student's legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers, but it does require schools to: (1) provide parents seeking exemption for religious reasons with materials and (2) change the schools' exemptions form.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 227RFA 10-01-16.pdf>

804 Immunizations

1.0 Purpose

This regulation is promulgated pursuant to Title 14 **Del.C.** Ch. 1, §131 which states that, "the Department (of Education) shall from time to time, with advice from Division of Public Health (DPH), adopt and promulgate rules and regulations to establish an immunization program to protect pupils enrolled in public schools from certain diseases."

19 DE Reg. 43 (07/01/15)

2.0 Definitions

"Affidavit of Religious Belief" means, pursuant to 14 **Del.C.** Ch. 1, §131(a)(6), the statement to request exemption from immunizations based on individual religious beliefs.

“**Approved Vaccine**” means a vaccine, vaccine combination, formulation, or schedule which has been reviewed and accepted by the Division of Public Health (DPH) based upon Centers for Disease Control and Prevention (CDC) Recommended Immunization Schedule.

“**School Enterer**” means any child between birth and twenty (20) years inclusive entering or being admitted to a Delaware public school district or public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

“**Secondary School**” means, for the purposes of this regulation, ~~means~~ a school with a grade or age configuration including any of the following: grade 9, grade 10, grade 11, or grade 12.

3.0 Minimum Immunizations Required for All School Enterers

- 3.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:
- 3.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other Approved Vaccine). Notwithstanding this requirement:
 - 3.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;
 - 3.1.1.2 A child who received the first dose of diphtheria and tetanus containing vaccine as adult Td vaccine at or after age seven may meet this requirement with only three doses of Td or Approved Vaccine.
 - 3.1.1.3 A booster dose of Tdap (adult) is strongly recommended by DPH for all students at age 11-12 years (preferred) or through 18 years and required as per subsections 4.1 and 4.1.1 below.
 - 3.1.2 Three or more doses of inactivated polio virus vaccine (IPV), oral polio vaccine (OPV), or an Approved Vaccine. Notwithstanding this requirement:
 - 3.1.2.1 A child who received a third dose prior to his or her fourth birthday shall have a fourth dose.
 - 3.1.3 Two doses of measles, mumps and rubella (MMR) Approved Vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday.
 - 3.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.
 - 3.1.4 Three doses of Hepatitis B vaccine.
 - 3.1.4.1 For children 11 to 15 years old age, two doses of an Approved Vaccine may be used.
 - 3.1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.
 - 3.1.5 Two doses of Varicella Approved Vaccine. Students who entered during or prior to the 2008-2009 school year are required to have one dose. By the 2020-2021 school year all students must have two doses. DPH strongly recommends two doses for all students regardless of date of school entry.
 - 3.1.5.1 The first dose should be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school.
 - 3.1.5.2 A written disease history, provided by the health care provider, will be accepted in lieu of the Varicella vaccination.
 - 3.1.6 Two doses of meningococcal vaccine are strongly recommended by DPH, with an initial dose at ages 11-12 and a booster at ages 16-18, and required as per subsections 4.1 and 4.1.2 below.
- 3.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

4.0 Minimum Immunizations for Secondary School Students

- 4.1 Beginning in school year 2016-2017 entering grade 9 students shall show proof of immunizations. One Secondary School grade shall be added each year thereafter.
 - 4.1.1 An adolescent booster dose of Tdap or other Approved Vaccine administered at age 11-12 (preferred) or prior to entry to Grade 9.
 - 4.1.2 One dose of meningococcal Approved Vaccine.
- 4.2 Schools will coordinate with the Division of Public Health to assure services to non-compliant Secondary School students.

(Non-regulatory guidance: Please refer to 14 **DE Admin. Code** 815 Health Examinations and Screenings for health examinations required for entering grade 9 students.)

5.0 **Certification Documentation of Immunization**

- 5.1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18) shall present a ~~certificate~~ documentation specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.
- 5.2 According to 14 **Del.C.** §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver, or a School Enterer who has reached the statutory age of majority (18) shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.
- 5.3 A School Enterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:
 - 5.3.1 One dose of DTaP, or DTP, or DT, or Approved Vaccine; and
 - 5.3.2 One dose of IPV or OPV, or Approved Vaccine; and
 - 5.3.3 One dose of measles, mumps and rubella (MMR) Approved Vaccine; and
 - 5.3.4 The first dose of the Hepatitis B series; and
 - 5.3.5 One dose of Varicella vaccine.
 - 5.3.6 One dose of meningococcal vaccine, if entering a Secondary School according to subsections 4.1 and 4.1.2.
- 5.4 School districts and charter schools shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall assist homeless children and youth in meeting the immunization requirements.
- 5.5 In accordance with the provisions of 14 **Del.C.**, Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, a School Enterer or Secondary School student who is subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate a series of immunizations required by this regulation.
- 5.6 If the School Enterer or Secondary School student fails to complete the series of required immunizations, the parent, legal guardian, Relative Caregiver, or student who has reached the statutory age of majority (18) shall be notified that the School Enterer or Secondary School student will be excluded according to 14 **Del.C.** §131.

6.0 **Lost or Destroyed Immunization Record**

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver, ~~or a~~ School Enterer who has reached the statutory age of majority (18), or the school nurse shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in subsection 5.3. Evidence that the vaccines were administered shall be presented to the superintendent or his or her designee.

7.0 Exemption from Immunization

- 7.1 Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 and this regulation which permits approved medical and notarized religious exemptions.
- 7.1.1 ~~Medical exemptions are reviewed and approved by the Delaware Division of Public Health~~ Medical exemptions shall be considered based on a written statement from a physician, i.e., medical doctor or doctor of osteopathy, stating that immunization is medically contraindicated.
- 7.1.1.1 The Delaware Division of Public Health shall review and determine approval.
- 7.1.2 Religious exemptions shall be approved upon receipt of a notarized Affidavit of Religious Belief, and the school shall offer information regarding the benefits of immunization and the risks of not being fully immunized.
- 7.1.3 Upon approval of a medical or religious exemption, the school shall inform the parent, legal guardian, Relative Caregiver, or a School Enterer who has reached the statutory age of majority (18), that the student shall be temporarily excluded from school in the event the Division of Public Health declares an outbreak of a vaccine preventable disease or determines the student has had or is at risk of having an exposure to a vaccine preventable disease. The Division of Public Health shall determine when the student may return to school.
- 7.1.3.1 During a temporary exclusion, the school and parent, legal guardian or Relative Caregiver shall assist the student with keeping up with school work. No academic penalty shall be assessed provided the student completes assignments.
- 7.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

8.0 Verification of School Records

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

9.0 Documentation

- 9.1 School nurses shall record and maintain documentation of each student's immunization status.
- 9.2 Each student's immunization record shall be included in the Delaware Immunization Registry.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 817

PUBLIC NOTICE

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

817 Medications and Treatments

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is being amended to align with Senate Bill 181 with Senate Amendment 1 of the 148th General Assembly, which permits the use, with specific conditions, of medical marijuana oil in schools. Non-regulatory notes have been edited and added to the end of the regulation to reference the change in state law and emphasize that the school nurse will not be administering medical marijuana oil.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

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

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 231RFA 10-01-16.pdf>

817 Medications and Treatments (Break in Continuity of Sections)

8.0 Other School Employees Obligation

Except for a School Nurse, no Educator or Other School Employee shall be compelled to assist a student with medication or to administer emergency medication unless training is a requirement of hire or contract. If a facility is otherwise required to have a School Nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine, an insulin pump or administration of medical marijuana oil.

Nonregulatory note: 16 **Del.C.** §3007E provides liability protection for any Trained Person or School Nurse, who, in good faith and without expectation of compensation from the person aided or treated, administers Emergency

Medication.

Nonregulatory note: 16 Del.C. §4904A provides exceptions for the administration of medical marijuana oil by a parent or designated caregivers.

***Please Note: As the rest of the regulation was not amended, it is not being published in full. A copy of the regulation is available at:**

817 Medications and Treatments

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 925

PUBLIC NOTICE

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

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to align with 14 Del.C. Chapter 31 regarding the appointment of individuals to represent the educational interests of children with disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by outlining procedures for the appointment of an individual to represent the educational interest of a child with a disability.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue 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 amendments do 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 student's legal rights are respected.

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 233RFA 10-01-16.pdf>

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

20.0 Definition of Individualized Education Program

(Break in Continuity Within Section)

- 20.3 Transfer of rights at age of majority: Beginning not later than 4 one year before the child reaches the age of 18, the IEP shall include a statement that the child has been informed that the child's rights under ~~Part B of the Act~~ 14 Del.C. §3132 will transfer to the child, or an educational representative or educational surrogate parent on reaching the age of 18 under 14 DE Admin. Code 926.20.0.
(Authority: 20 U.S.C. 1415(m); 14 Del.C. §3132)

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

[925 Children with Disabilities Subpart D](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 926

PUBLIC NOTICE

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

[926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children](#)

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 926 Children with Disabilities Subpart E, Procedural Safeguards for Parents and Children. This regulation is being amended to align with 14 **Del.C.** Chapter 31 regarding the appointment of individuals to represent the educational interests of children with disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by outlining procedures for the appointment of an individual to represent the educational interest of a child with a disability.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue 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 amendments do 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 student's legal rights are respected.

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

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

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

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

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

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

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 234RFA 10-01-16.pdf>

926 Children with Disabilities Subpart E Procedural Safeguards for Parents and Children

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

4.0 Procedural Safeguards Notice

- 4.1 General: A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one (1) time a school year, except that a copy also shall be given to the parents:

(Break in Continuity Within Section)

- 4.1.5 *In addition, a copy of the procedural safeguards notice shall be offered provided to the parents of a child with a disability at each IEP meeting convened for the child.*

(Break in Continuity of Sections)

11.0 Impartial Due Process Hearing

(Break in Continuity Within Section)

- 11.2 The DOE shall be responsible for conducting the due process hearing as further provided in this section. Upon receipt of a due process complaint, the Secretary shall appoint a three (3) member hearing panel, on a rotating basis, consisting of:

- 11.2.1 An attorney admitted to practice in Delaware and in good standing with the bar of a state;

(Break in Continuity of Sections)

20.0 Transfer of Parental Rights at Age of Majority

- 20.1 ~~Age of majority: When a child with a disability reaches the age of majority (eighteen (18)) years old (except a child with a disability who has been determined to be incompetent under State law):~~ To assure that children with disabilities who have reached age 18 have an identified decision-maker, which may be the child with a disability, the IEP team shall discuss the potential need for an educational representative during the transfer of rights at age of majority review, and annually thereafter. In determining the need for an educational representative, the IEP team shall consider:

- 20.1.4 ~~All rights accorded to parents under Part B of the Act transfer to the child; and~~

- 20.1.1 A child with a disability without a court-appointed guardian of the person shall be presumed to have capacity and be accorded the rights of a parent upon attainment of age 18.

- 20.1.1.1 The public agency shall notify both the child and the parents that all rights accorded to parents under 14 Del.C. §3132(b) transfer to the child.

- 20.1.2 ~~The public agency shall notify both the child and the parents that all rights accorded to parents under Part B of the Act transfer to the child.~~

- 20.1.2 A child with a disability with capacity may authorize an adult agent to exercise rights through execution of a power of attorney or a standard voluntary grant of authority form published by the Department of Education.

- 20.1.3 The determination of capacity shall be made by the IEP team during an IEP meeting and shall conform to the following standards:

- 20.1.3.1 In cases where capacity is uncertain, a school psychologist familiar with the child must attend the initial meeting. For purposes of this section, the term "familiar with the child" means the school psychologist has conducted a recent in-person evaluation of the child which conforms to evaluation procedures established by the Department of Education. In subsequent annual IEP meeting reviews, the participation of a school psychologist is discretionary if it is clear there has been no change in the child's capacity.

- 20.1.3.2 The child with a disability and parent, as defined in 14 Del.C. §3101(7), must be invited to participate in the meeting regardless of whether the child has already attained the age of 18.

- 20.1.3.3 The IEP team may consider information from sources apart from school personnel and may authorize evaluation if necessary to inform its deliberations.

- 20.1.3.4 If information is ambiguous, any benefit of the doubt shall be exercised in favor of a finding of capacity.

20.1.4 *If the IEP team determines that the child lacks capacity, the IEP team shall appoint an individual to serve as an educational representative in the following descending order of priority:*

20.1.4.1 *Willing and available biological or adoptive parent;*

20.1.4.2 *Willing and available adult relative.*

20.2 *If such an individual is not identified, the IEP team shall promptly facilitate a referral to the Department of Education for appointment of an educational surrogate parent. An appointed educational representative shall have the same authority as a parent under 14 Del.C. §3101(7).*

20.2.1 *If a child with a disability or parent disagrees with the capacity determination, either may contest the determination by pursuing dispute resolution options described in the procedural safeguards in this regulation or in 14 Del.C. Ch. 31.*

20.2.2 *The capacity determination is limited to exercise of rights under 14 Del.C. Ch. 31 or this regulation and shall not affect exercise of rights in any other context. In furtherance of this limitation, any other statute notwithstanding, the capacity determination shall not be admissible as evidence of competency or capacity in any non-educational judicial or administrative proceeding.*

(Authority: 20 U.S.C. 1415(m); 14 Del.C. §3110)

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

926 Children with Disabilities Subpart E

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1201 Christa McAuliffe Award Program

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to create 14 DE Admin. Code 1201 Christa McAuliffe Award Program. This regulation is being created to formally put into policy the purpose, eligibility and other criteria for the award of this scholarship loan program. This is the first in a series of regulations the Department of Education will be promulgating related to higher education/scholarships.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

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

2. Will the regulation help ensure that all students receive an equitable education? The regulation is intended to help ensure all students who meet the established criteria will receive equal opportunity for this scholarship.

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

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 237RFA 10-01-16.pdf>

1201 Christa McAuliffe Award Program

1.0 Purpose

The purpose of this regulation is to provide criteria for the Christa McAuliffe Award, a professional incentive program, pursuant to 14 **Del.C.** §3419 and to encourage academically talented Delawareans to pursue teaching careers in Delaware public schools.

2.0 Definitions

"Award" means a loan under the Christa McAuliffe Award program, the repayment of which is forgiven when the borrower is employed in the teaching profession for the period of time specified in 14 **Del.C.** §3418(c)(2).

"Critical Need Area" means, for the purposes of this regulation, classifications where there is a shortage of teachers available for employment. These classifications are posted annually on the Delaware Higher Education Office (DHEO) website and are based on federal and state reporting.

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

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

"Full-Time Student" means a student enrolled in twelve or more college credit hours.

"Grade Point Average (GPA)" means the number representing the average value of the accumulated final grades earned in courses over time.

"Part-Time Student" means a student enrolled in six to eleven college credit hours.

"Qualifying Employment" means, for the purposes of this regulation, employment as a teacher in a Delaware public school, whether as an employee of the State, the Department of Education, a school district or an individual school, or as an employee of a private organization providing educational services to Delaware school children under a contract with the State, the Department of Education, a school district or an individual school.

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

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

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

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

3.0 Application Acceptance and Submission Period

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

4.0 Eligibility

- 4.1 Applicants shall meet the following eligibility requirements to be considered for the Christa McAuliffe Award Program:
 - 4.1.1 Be a Resident of the State; and
 - 4.1.2 Be a high school senior who ranks in the upper half of his or her class and has a minimum combined reading and math score of 1000 on the SAT; or
 - 4.1.3 Be either a Part-Time or a Full-Time Student enrolled at a Delaware college or university in an Undergraduate program leading to teacher licensure and certification and have at least a 3.0 cumulative GPA; or
 - 4.1.4 Be a Part-Time or a Full-Time Student enrolled at a college or university in a program of study not offered in Delaware leading to teacher licensure and certification and have at least a 3.0 cumulative GPA.

5.0 Awards

- 5.1 Preference for the award shall be given to applicants planning to teach in a Critical Need Area as annually defined on the DHEO’s website.
- 5.2 An Award may be pro-rated for Part-Time Students.
- 5.3 An Award is to be used for, and not in excess of, Direct Educational Expenses.
- 5.4 For Full-Time Students and Part-Time Students, an Award may be renewed annually for the equivalent of four academic years.
 - 5.4.1 An Award is renewable upon the condition that the student maintains a 3.0 cumulative GPA within an eligible program of study leading to teacher certification.

6.0 Award Payment

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1561

PUBLIC NOTICE

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

1561 Bilingual Teacher

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1561 Bilingual Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to update requisite performance levels in oral and written proficiency in English and the target language. This regulation is also being reviewed as part of the five year review cycle. This regulation sets forth the requirements for a Bilingual Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, October 31, 2016 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 will 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.

9. Is there a less burdensome method for addressing the purpose of the regulation? 14 **Del.C.** §1205 requires that we promulgate this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to local school boards for compliance with the 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/october2016/proposed/20 DE Reg 240RFA 10-01-16.pdf>

1561 Bilingual Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Bilingual Teacher (Category). ~~This certification is required for grades K to 12.~~
- 1.1.1 This certification is required for an educator within district-identified bilingual classrooms or bilingual programs for grades K to 12 that are identified to serve students who are English Language Learners or immersion program students.
- 1.1.2 This certification is a category certificate and does not certify an educator to practice in a particular area or teach a particular subject. A category certificate only establishes that an educator has met the prescribed knowledge, skill, or education to instruct a particular category of students specified. This certification is limited to the specific category of teaching students who are English Language Learners or immersion program students.
- 1.1.3 This certification may not be issued alone and an educator shall hold at least one subject or area certification.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
- ~~“Nationally recognized equivalent examination” means a standardized test which measures knowledge in a specific content area that is nationally recognized as having at a minimum the same rigor and reliability as a Praxis II examination.~~
- “Passing score”** means a minimum score as established by the Standards Board, in consultation with the Department and with the concurrence approval of the State Board of Education.
- “Target language”** means, for the purpose of this regulation, the world language of the bilingual classroom or bilingual program.

PROPOSED REGULATIONS

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Bilingual Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and;
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~ Holds a Standard Certificate in a subject or area; and
 - 3.1.4 ~~Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

An educator must also have met the following:

- 4.1 ~~Demonstrated oral and written proficiency in English and the target language of the bilingual program by having completed the following:~~
- 4.1.1 ~~Achieved a passing score on an oral proficiency examination in English; and~~
 - 4.1.2 ~~Achieved a passing score on a written proficiency examination in English; and~~
 - 4.1.3 ~~Achieved a passing score on an oral proficiency examination in the target language of the bilingual program; and~~
 - 4.1.4 ~~Achieved a passing score on a written proficiency examination in the target language of the bilingual program; and~~
 - 4.1.5 ~~The written proficiency and oral proficiency examinations required may be a Praxis II examination if applicable and available or as specified in section 4.2.~~
- 4.2 ~~If an examination of content knowledge such as Praxis II is not applicable and available for the Standard Certificate requested, an educator must also meet the following:~~
- 4.2.1 ~~Where no PRAXIS II examination is applicable and available, nationally recognized equivalent examinations may be substituted. The applicant shall achieve a passing score on the examination as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board.~~
 - 4.2.2 ~~For the purposes of this regulation, the following test shall be accepted as a nationally recognized equivalent examination: the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test.~~
 - 4.2.2.1 ~~For purposes of this regulation the following shall be considered a passing score:~~
 - 4.2.2.1.1 ~~For tests of languages using a Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines.~~
 - 4.2.2.1.2 ~~For tests of languages using a non Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines.~~
- 4.3 ~~If the educator is applying for their first Standard certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 **DE Admin. Code** 3.1.5.1 that must be satisfactory completed for this standard certificate must at a minimum include the following areas;~~
- 4.3.1 ~~Methods of Teaching English as a Second Language (3 credits);~~
 - 4.3.2 ~~Second Language Acquisition (3 credits);~~
 - 4.3.3 ~~Teaching Literacy for English Language Learners (3 credits);~~
 - 4.3.4 ~~Second Language Testing (3 credits);~~
 - 4.3.5 ~~Structure of the English Language (3 credits).~~

- ~~4.4 If the educator is applying for their second standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of;~~
- ~~4.4.1 Methods of Teaching English as a Second Language (3 credits);~~
 - ~~4.4.2 Second Language Acquisition (3 credits);~~
 - ~~4.4.3 Teaching Literacy for English Language Learners (3 credits);~~
 - ~~4.4.4 Second Language Testing (3 credits);~~
 - ~~4.4.5 Structure of the English Language (3 credits).~~
- 4.1 An educator shall also have satisfied each of the following requirements:
- 4.1.1 Demonstrated oral and written proficiency in English by:
 - 4.1.1.1 Completion of a bachelor's, master's, or doctoral degree from a regionally accredited college or university that is located in the United States or in a permanently inhabited territory of the United States in which the majority of courses were taught and assessed in the English language; or
 - 4.1.1.2 Achieving a minimum level of Advanced Mid based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines on:
 - 4.1.1.2.1 the ACTFL Oral Proficiency Interview (OPI) in English, and
 - 4.1.1.2.2 the ACTFL Writing Proficiency Test (WPT) in English.
 - 4.1.2 Demonstrated oral and written proficiency in the target language of the bilingual classroom or bilingual program by:
 - 4.1.2.1 Achieving a minimum level of Advanced Mid based on the ACTFL Proficiency Guidelines on the ACTFL OPI in the target language, and
 - 4.1.2.2 Achieving a passing score on the ACTFL WPT in the target language.
 - 4.1.2.2.1 For the purposes of subsection 4.1.2.2 of this regulation, a passing score shall be:
 - 4.1.2.2.1.1 For tests using the Roman alphabet, achieving a minimum level of Advanced Mid based on the ACTFL Proficiency Guidelines.
 - 4.1.2.2.1.2 For tests using a non-Roman alphabet, achieving a minimum level of Advanced Low based on the ACTFL Proficiency Guidelines.
 - 4.1.3 Completion of either:
 - 4.1.3.1 A bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in bilingual education from an educator preparation program approved or recognized by National Council for the Accreditation of Teacher Education (NCATE), the Council for Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; or
 - 4.1.3.2 A minimum of fifteen (15) credits or the equivalent thereof in professional development as approved by the Department in the following content areas:
 - 4.1.3.2.1 Methods of Teaching English as a Second Language (3 credits);
 - 4.1.3.2.2 Second Language Acquisition (3 credits);
 - 4.1.3.2.3 Teaching Literacy for English Language Learners (3 credits);
 - 4.1.3.2.4 Second Language Testing (3 credits); and
 - 4.1.3.2.5 Structure of the English Language (3 credits).

5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate Bilingual Teacher issued before January 1, 2017. A teacher holding such a Standard Certificate issued by the Department before January 1, 2017 shall be considered certified as a Bilingual Teacher.

6.0 Effective Date

This regulation shall be effective on January 1, 2017.

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1561

PUBLIC NOTICE

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

1565 World Language Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1565 World Language Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to update oral and written proficiency requirements in the target language. This regulation is also being reviewed as part of the five year review cycle. This regulation sets forth the requirements for a World Language Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, October 31, 2016 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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 will 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** §1205 requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the 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/october2016/proposed/20 DE Reg 244RFA 10-01-16.pdf>

1565 World Language Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for World Language Teacher. This certification is required for grades K to 12.

1.1.1 This certification is limited to the world language in which the Standard Certificate is requested.

1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

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

"**Passing score**" means a minimum score as established by the Standards Board, in consultation with the Department, and with the approval of the State Board.

"**Target language**" means, for the purpose of this regulation, the specific world language, as defined in Section 1.0 of 14 **DE Admin. Code** 505, in which the Standard Certificate is requested.

3.0 Standard Certificate

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a World Language Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

4.1 ~~If an examination of content knowledge such as Praxis II is not applicable and available for the World Language Standard Certificate requested, an educator must also meet the following:~~

~~4.1.1 Available ACTFL Tests~~

~~4.1.1.1 When the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing Proficiency Test is available in the World Language requested, the applicant shall achieve a passing score on the examination.~~

~~4.1.1.2 For purposes of this regulation the following shall be considered a passing score:~~

PROPOSED REGULATIONS

- 4.1.1.2.1 ~~For tests of languages using a Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low Level on the oral skills and an Advanced Low Level on the writing skills based on the ACTFL Proficiency Guidelines.~~
- 4.1.1.2.2 ~~For tests of languages using a non-Roman alphabet, candidates are required to achieve as a minimum score an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines.~~
- 4.1.2 ~~If ACTFL tests are not available, the educator must meet one of the following:~~
- 4.1.2.1 ~~Specialized Education~~
- 4.1.2.1.1 ~~The applicant shall have completed fifteen (15) credits or their equivalent in professional development in the area of the World Language requested.~~
- 4.1.2.1.1.1 ~~The fifteen (15) credits or their equivalent in professional development in the area of the World Language requested for certification must be selected by the applicant with the assent of the employing school district or charter school and subsequently submitted to the Department for final approval.~~
- 4.1.2.1.1.2 ~~In the case where the educator is seeking certification independently or there is no employing school district or charter school, the Department shall review the proposed fifteen (15) credits or their equivalent in professional development selected by the applicant in the area of the World Language, for final determination of acceptance.~~
- 4.1.2.1.1.3 ~~If approved by the Department, the educator may use past coursework or professional development; or~~
- 4.1.2.2 ~~Approved Certification of Content Knowledge~~
- 4.1.2.2.1 ~~The applicant has earned an approved certificate in the World Language requested.~~
- 4.1.2.2.2 ~~The Standards Board may recognize certificate programs that establish the minimum content knowledge in a World Language. Certificates are approved by the Standards Board in consultation with the Department and with the concurrence of the State Board in the same manner as examinations of content knowledge.~~
- 4.1.2.2.3 ~~The Department shall make publicly available a list of approved World Language certificates.~~
- 4.1 An educator shall also have satisfied each of the following requirements:
- 4.1.1 Completion of a bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in the target language from an educator preparation program approved or recognized by National Council for the Accreditation of Teacher Education (NCATE), the Council for the Accreditation of Educator Preparation (CAEP), or a state where the state approval body employed the appropriate standards; and
- 4.1.2 Demonstrated oral and written proficiency in the target language by either:
- 4.1.2.1 Achieving a passing score on a Praxis Subject Assessment in the target language; or
- 4.1.2.2 Based on the American Council on the Teaching of Foreign Languages (ACTFL) Proficiency Guidelines:
- 4.1.2.2.1 Achieving a minimum level of Advanced Low on the ACTFL Oral Proficiency Interview (OPI) in the target language, and
- 4.1.2.2.2 Achieving a passing score on the ACTFL Writing Proficiency Test (WPT) in the target language.
- 4.1.2.2.2.1 For tests using the Roman alphabet, a passing score means achieving a minimum level of Advanced Low.
- 4.1.2.2.2.2 For tests using a non-Roman alphabet, a passing score means achieving a minimum level of Intermediate High.

5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate World Language Teacher issued before January 1, 2017. A teacher holding such a Standard Certificate issued by the Department before January 1, 2017 shall be considered certified as a World Language Teacher.

6.0 Effective Date

This regulation shall be effective on January 1, 2017.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Target Case Management Services for Individuals with Intellectual and Developmental Disabilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Targeted Case Management, specifically, *to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Kimberly.Xavier@state.de.us, or by fax to 302-255-4425 by October 31, 2016. Please identify in the subject line: Target Case Management Services.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Targeted Case Management, specifically, *to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities.*

Statutory Authority

- 42 CFR §440.169, *Case management services, general provisions*
- 42 CFR §441.18, *Case management services, specific requirements*
- 42 CFR §441.301(c)(1)(2)(3), *Contents of a waiver request, Person-Centered Services*
- 42 CFR §441.301(c)(4), *Contents of a waiver request, Home and Community-Based Settings*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*
- §1902(a)(23) of the Social Security Act, *Freedom of choice of qualified providers*
- §1902(a)(25) of the Social Security Act, *Third party liability*
- §1903(c) of the Social Security Act, *FFP for case management included in an individualized education program or individualized family service plan*
- §1915(c) of the Social Security Act, *Home and community-based services*
- §1915(g)(1) of the Social Security Act, *location and comparability of case management services*

- 16 DE Admin. Code 2100 Division of Developmental Disabilities Services (DDDS) *Eligibility Criteria*

Background

On July 25, 2000, the Center for Medicare and Medicaid Services (CMS) issued a State Medicaid Director Letter (SMDL) providing policy changes and clarification giving states more flexibility to serve people with disabilities in different settings. This SMDL provided clarification regarding the use of Case Management to assist states to overcome barriers to community transition. Case management services are defined under section 1915(g)(2) of the Social Security Act (the Act) as "services which will assist individuals, eligible under the plan, in gaining access to needed medical, social, educational, and other services." Case management services are often used to foster the transitioning of a person from institutional care to a more integrated setting or to help maintain a person in the community. There are several ways that case management services may be furnished under the Medicaid program. Home and Community-Based Services (HCBS) Case Management may be furnished as a service under the authority of section 1915(c) when this service is included in an approved HCBS waiver. Persons served under the waiver may receive case management services while they are still institutionalized, for up to 180 consecutive days prior to discharge. This case management service may be provided under the optional Targeted Case Management (TCM) authority of section 1915(g)(2) of the Social Security Act. TCM, defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution, to facilitate the process of transition to community services and to enable the person to gain access to needed medical, social, educational and other services in the community. TCM may be furnished during the last 180 consecutive days of a Medicaid eligible person's institutional stay if provided for the purpose of community transition. States may specify a shorter time period or other conditions under which TCM may be provided.

In the Epilogue of Delaware's FY17 Budget Act, the Division of Developmental Disability Services (DDDS) was directed to add Medicaid (HCBS) for individuals with intellectual developmental disabilities living with their family. DDDS intends to fulfill this requirement by amending the current DDDS HCBS 1915(c) waiver by adding additional waiver capacity and additional services targeted to meet the needs of families. Individuals receiving a DDDS day service will be targeted for new enrollment in the amended waiver which will be called the Lifespan Waiver. There will be no interruption in service to these individuals. DDDS intends to meet the CMS requirement for the delivery of case management and person-centered planning to waiver recipients by using the optional Targeted Case Management (TCM) authority of Section 1915(g)(2) of the Social Security Act. The proposed State Plan Amendments establish two TCM target groups: one for individuals with Intellectual Developmental Disabilities (IDD) who are receiving residential habilitation under the 1915(c) HCBS waiver and the other for individuals with IDD who are eligible for DDDS services and living at home.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to add Targeted Case Management (TCM) to the Delaware Medicaid State Plan under the authority of 1915(g)(2) of the Social Security Act. Delaware does not currently offer Targeted Case Management under the State Plan.

Summary of Proposed Changes

If implemented as proposed, this state plan amendment will accomplish the following, effective January 1, 2017: The SPAs will establish two TCM target groups: one for individuals with Intellectual Developmental Disabilities (IDD) receiving residential habilitation under the Division of Developmental Disability Services (DDDS) 1915(c) HCBS waiver and the other for individuals with IDD who are eligible for DDDS services and living at home. Individuals living at home are not currently covered under the DDDS HCBS Waiver. It is DDDS's intention, however, to submit an amendment to the DDDS waiver to CMS in FY17. This amendment will add certain individuals living at home to the DDDS waiver which will be called the Lifespan Waiver. Adding TCM to the State Plan will enable DDDS to meet the CMS requirement for the provision of case management and person-centered planning to new the waiver recipients living in their family home. Case management for individuals currently enrolled in the DDDS waiver is provided by DDDS employees as a Medicaid administrative activity, for which the state is reimbursed 50% of the cost of Medicaid allowable activities. If this SPA is approved, DDDS will convert administrative case management to TCM for individuals currently enrolled in the DDDS waiver.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input to the establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities. Comments must be received by 4:30 p.m. on October 31, 2016.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

No fiscal impact is projected. The Division of Developmental Disability Services (DDDS) has been contracting with individuals it calls "Family Support Specialists (FSS)" to help connect persons with intellectual and developmental disabilities and their families to community resources. This will be discontinued and replaced by Targeted Case Management, at which time the funds that were in use to contract with the FSS will be redirected to TCM.

***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/october2016/proposed/20 DE Reg 247RFA 10-01-16.pdf](http://regulations.delaware.gov/register/october2016/proposed/20%20DE%20Reg%20247RFA%2010-01-16.pdf)

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

[Target Case Management Services for Individuals with Intellectual and Developmental Disabilities](#)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)c (16 Del.C. §122(3)c)
16 DE Admin. Code 4462

PUBLIC NOTICE

4462 Public Drinking Water Systems

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems (4462). The regulations are being revised to include technical corrections to bring Delaware's regulations into full compliance with the Safe Drinking Water Act. On October 1, 2016, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the October 1, 2016 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, November 11, 2016, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
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/october2016/proposed/20 DE Reg 249RFA 10-01-16.pdf](http://regulations.delaware.gov/register/october2016/proposed/20%20DE%20Reg%20249RFA%2010-01-16.pdf)

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

4462 Public Drinking Water Systems

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1104

REGISTER NOTICE

SAN#: 2016-06

1104 Particulate Emissions from Fuel Burning Equipment

1. TITLE OF THE REGULATION:

Revise 7 DE Admin. Code 1104, Particulate Emissions from Fuel Burning Equipment.

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

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402

***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/october2016/proposed/20 DE Reg 250RFA 10-01-16.pdf>

1104 Particulate Emissions from Fuel Burning Equipment

~~11/11/2013~~ xx/xx/2016

1.0 General Provisions

- 1.1 The emission of particulate matter from fuel burning equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply where the heat input capacity of the equipment is less than 1,000,000 BTU per hour.
- 1.3 The provisions of this regulation shall not apply to equipment or operations whose emissions are controlled by 7 **DE Admin. Code** 1105 or 7 **DE Admin. Code** 1107 or 7 **DE Admin. Code** 1129.
- 1.4 For purposes of this Regulation, the heat input value shall be based upon the manufacturer's guaranteed maximum input or the Department's calculated input capacity.
- 1.5 The provisions of subsection 2.1 of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of Section 2.0 of 7 **DE Admin. Code** 1102.

~~02/01/1981~~ xx/xx/2016

2.0 Emission Limits

- 2.1 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two-hour average, from any fuel burning equipment.
- 2.2 No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum 30-day rolling average, from any fuel burning equipment.

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60, (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 1105

REGISTER NOTICE

SAN #2016-06

1105 Particulate Emissions from Industrial Process Operations

1. TITLE OF THE REGULATION:

Revise 7 **DE Admin. Code** 1105 "Particulate Emissions from Industrial Process Operations"

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

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees david.fees@state.de.us 302-739-9402

***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/october2016/proposed/20 DE Reg 251RFA 10-01-16.pdf>

1105 Particulate Emissions from Industrial Process Operations

~~02/01/1984~~ xx/11/2016

1.0 General Provisions

- 1.1 The emission of particulate matter from industrial process equipment shall be controlled to a limit that shall meet the ambient air quality requirements.
- 1.2 The provisions of this Regulation shall not apply to indirect heat exchangers which shall be controlled by 7 **DE Admin. Code** 1104.
- 1.3 For all tables in this Regulation, unless otherwise indicated, the emission limitation for a process weight rate between any two consecutive process weight rates shall be determined by linear interpolation.
- 1.4 For all tables in this Regulation, unless otherwise indicated, the emission limitation for process weight rate above the maximum process weight rate or below the minimum process weight rate shall be determined by linear extrapolation.
- 1.5 For purposes of this Regulation, the allowable mass emission rate of particulate matter shall be determined for individual units of equipment.
- 1.6 For operations involving similar units which are manifolded to a common stack, control techniques shall be such that no unit is emitting particulate matter at a rate which is in excess of the mass emission rate allowed by this Regulation.
- 1.7 The provisions of subsection 2.1 of this Regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of Section 2.0 of 7 **DE Admin. Code** 1102.

~~02/01/1981~~ xx/11/2016

2.0 General Restrictions

- 2.1 No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot.
- 2.2 No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot on a 30-day rolling average basis.

02/01/81

3.0 Restrictions on Hot Mix Asphalt Batching Operations

- 3.1 No person shall cause or allow particulate emissions from a hot mix asphalt batching plant into the atmosphere in excess of the quantity as listed in Table 3-1 of this regulation.

Table 3-1
Allowable Mass Emission Rate From Hot Mix Asphalt Batching Operation

Process Weight Rate (Pounds Per Hour)	Stack Emission Rate (Pounds Per Hour)
10,000	10
20,000	16
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000	50

~~02/01/1981~~ xx/11/2016

4.0 Restrictions on Secondary Metal Operations

- 4.1 No person shall cause or allow particulate emissions from secondary metal operations into the atmosphere in excess of the quantity as listed in Table 4-1 of this regulation.

Table 4-1
Allowable Mass Emission Rate From Secondary Metal Operations

Process Weight Rate (Pounds per Hour)	Stack Emission Rate (Pounds per Hour)
1,000	0.75
2,000	1.50
3,000	2.25
4,000	3.00
5,000	3.75
6,000	4.50

PROPOSED REGULATIONS

7,000	5.25
8,000	6.00
9,000	6.75
10,000	7.50
12,000	9.00
16,000	12.00
18,000	13.50
20,000	15.00
30,000	22.50
40,000	30.00
50,000	37.50

- 4.2 The provisions of subsection 4.1 of this regulation shall not apply to electric arc furnaces, and their associated dust-handling equipment, with a capacity of more than 100 tons.

~~02/01/1984~~ xx/11/2016

5.0 Restrictions on Petroleum Refining Operations

- 5.1 No person shall cause or allow particulate emissions from catalytic cracking operations into the atmosphere in excess of the quantities as indicated in Table 5-1 of this regulation.

Table 5-1
Allowable Mass Emission Rate From Catalytic Cracking Operations

Coke Burn-Off Rate (Pounds per Hour)	Mass Emission Rate (Pounds per Hour)
7,000	50
14,000	100
21,000	150
28,000	200
42,000	300
56,000	400
70,000	500

For the purpose of interpolation and extrapolation calculations, "Coke Burn-Off Rate" shall be construed to be equivalent to "Process Weight Rate."

- 5.2 No person shall cause or allow particulate emissions from fluid coking operations into the atmosphere in excess of the quantities as indicated in Table 5-2 of this regulation.

Table 5-2
Allowable Mass Emission Rate From Fluid Coking Operations

Process Weight Rate (Barrels per Day of Fresh Feed)	Mass Emission Rate (Pounds per Hour)
----------------------------------------------------------------	-------------------------------------------------

5,000	15
10,000	30
15,000	50
20,000	80
30,000	100
40,000	125
50,000	150

02/01/1981

6.0 Restrictions on Prill Tower Operation

- 6.1 No person shall cause or allow particulate emissions from prilling operations into the atmosphere in excess of the quantities as indicated in Table 6-1 of this regulation.

Table 6-1
Allowable Mass Emissions Rate From Prilling Operations

Process Weight Rate (Pounds per Hour)	Mass Emission Rate (Pounds per Hour)
5,000	25
10,000	50
15,000	75
20,000	100
25,000	125
50,000	250
75,000	375
100,000	500

02/01/1981

7.0 Control of Potentially Hazardous Particulate Matter

Persons responsible for a source operation from which potentially hazardous particulate matter may be emitted such as, but not limited to, lead, arsenic, beryllium, silica, asbestos, and other such materials shall list such contaminants and their exit concentrations in a written report to the Department. The Department shall assign emission limits on an individual basis.

PROPOSED REGULATIONS

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1124

REGISTER NOTICE SAN #2016-06

1124 Control of Volatile Organic Compound Emissions

1. TITLE OF THE REGULATION:

Revise 7 DE Admin. Code 1124 Control of Volatile Organic Compound Emissions

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

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees david.fees@state.de.us 302-739-9402

***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/october2016/proposed/20 DE Reg 256RFA 10-01-16.pdf>

1124 Control of Volatile Organic Compound Emissions

1.0 General Provisions

~~01/11/1993~~ xx/11/2016

- 1.1 This regulation, "Control of Volatile Organic Compound Emissions", replaces and supersedes Regulation No. 24, "Control of Volatile Organic Compound Emissions" dated July 3, 1990.
- 1.2 This regulation is applicable to the sources of Volatile Organic Compounds (VOCs) as set-forth herein, except:
 - 1.2.1 Sources, other than solvent metal-cleaning sources, whose emissions of Volatile Organic Compounds (VOCs) are not more than fifteen (15) pounds per day, unless other limits are

specified herein, provided the emission rates are determined and certified in a manner acceptable to the Department.

- 1.2.2 Sanitary landfills conforming to the State of Delaware Statewide Solid Waste Management Plan.
- 1.3 No owner or operator shall substitute either methyl chloroform or methylene chloride for any other Volatile Organic Compound (VOC) for any solvent metal cleaning purpose on or after the effective date of this regulation.
- 1.4 ~~The provisions of this regulation shall not apply to the startup and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during startup and shutdown are governed by an Operating Permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102. Reserved.~~

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

1124 Control of Volatile Organic Compound Emissions

DIVISION OF AIR QUALITY

Statutory Authority: 7 **Delaware Code**, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1125

REGISTER NOTICE SAN #2016-12

1125 Requirements for Preconstruction Review

1. TITLE OF THE REGULATION:

Section 1.9 "Definitions" of 7 **DE Admin. Code** 1125 Requirements for Preconstruction Review.

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

To bring Delaware's table of global warming potentials (GWP), as shown in Table 1-1 under the definition of greenhouse gases (GHG) in Section 1.9 up-to-date with the most current federal rules for calculating the CO₂ equivalent emissions (CO₂e) for regulated major sources emitting GHG. In 2010, the Delaware rule was revised to require GHG permitting consistent with EPA rules which included a method for calculating those emissions based upon GWP. GHG emissions, for the purposes of the federal rule, include the aggregate of six GHG; carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆). The mass of each of these components emitted is multiplied by the EPA determined GWP for each. EPA has added 30 new compounds to the prior list of GHG bringing the total compounds to 62 and revised the GWP of 24 of the original 32.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a public hearing on this proposed amendment on Tuesday October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested

PROPOSED REGULATIONS

parties may submit comments in writing to David Fees, Division of Air Quality, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees david.fees@state.de.us 302-739-9402

***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/october2016/proposed/20 DE Reg 257RFA 10-01-16.pdf>

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

[1125 Requirements for Preconstruction Review](#)

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)
7 **DE Admin. Code** 1142

REGISTER NOTICE

SAN # 2016-06

[1142 Specific Emission Control Requirements](#)

1. TITLE OF THE REGULATION:

Revise 7 **DE Admin. Code** 1142 Specific Emission Control Requirements

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

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 60.

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100

West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees david.fees@state.de.us (302) 739-9402

***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/october2016/proposed/20 DE Reg 258RFA 10-01-16.pdf>

1142 Specific Emission Control Requirements

~~42/42/2004~~ xx/11/2016

1.0 Control of NO_x Emissions from Industrial Boilers

1.1 Purpose

New Castle County and Kent County are part of the Philadelphia-Wilmington-Trenton 1-hour ozone non-attainment area. All areas of Delaware impact this non-attainment area. On December 19, 1999, the EPA identified an emission reduction "shortfall" associated with this non-attainment area. Promulgation of Section 1.0 of this regulation is one measure that the Department is taking to mitigate this shortfall.

In determining the applicability of Section 1.0 of this regulation, the Department attempted to minimize the impact on facilities that recently installed NO_x controls under 7 **DE Admin. Code** 1112 (NO_x RACT) and 7 **DE Admin. Code** 1137/1139 (NO_x Budget Trading Program). The Department did this by regulating only large sources that, as of the effective date of Section 1.0 of this regulation, emitted NO_x at a rate greater than the rate identified in Table 3-1 of 7 **DE Admin. Code** 1112, were not equipped with NO_x emission control technology, and were not subject to the requirements of 7 **DE Admin. Code** 1139. In effect, Section 1.0 of this regulation regulates sources that remain high NO_x emitters after the application of RACT and post RACT requirements, and that have not committed substantial capital funds to reduce NO_x emissions.

1.2 Applicability

1.2.1 The provisions of Section 1.0 of this regulation apply to any person that owns or operates any combustion unit with a maximum heat input capacity of equal to or greater than 100 million btu per hour, except that Section 1.0 of this regulation shall not apply to any unit that, as of the effective date of Section 1.0 of this regulation:

1.2.1.1 Emits NO_x at a rate equal to or less than the rate identified in Table 3-1 of 7 **DE Admin. Code** 1112.

1.2.1.2 Is equipped with low NO_x burner, flue gas recirculation, selective catalytic reduction, or selective non-catalytic reduction technology.

1.2.1.3 Is subject to the requirements of 7 **DE Admin. Code** 1139.

1.2.2 The requirements of Section 1.0 of this regulation are in addition to all other state and federal requirements.

1.2.3 Affected persons shall comply with the requirements of subsection 1.3 of this regulation as soon as practicable, but no later than May 1, 2004.

1.3 Standards.

1.3.1 The NO_x emission rate from any unit subject to Section 1.0 of this regulation shall be equal to or less than the following:

1.3.1.1 Between May 1st through September 30th of each year, inclusive: 0.10 lb/mmBTU, 24-hour calendar day average.

PROPOSED REGULATIONS

- 1.3.1.2 During all times that gaseous fuel is being fired: 0.10 lb/mmBTU, 24-hour calendar day average.
- 1.3.1.3 During all times not covered by subsection 1.3.1.1 and subsection 1.3.1.2 of this regulation: 0.25 lb/mmBTU, 24-hour calendar day average.
- 1.3.2 As an alternative to compliance with the requirements of subsection 1.3.1 of this regulation, compliance may be achieved through the procurement and retirement of NO_x allowances authorized for use under 7 **DE Admin. Code** 1139, as follows:
 - 1.3.2.1 The actual 24-hour calendar day average NO_x emission rate in pounds per million btu shall be determined for each day of unit operation, using CEMs operated in accordance with subsection 1.4 of this regulation.
 - 1.3.2.2 The actual heat input to each unit in million btu shall be determined for each day of unit operation, using methods proposed by the person subject to Section 1.0 of this regulation and acceptable to the Department.
 - 1.3.2.3 0.10 or 0.25, as applicable and consistent with subsection 1.3.1 of this regulation, shall be subtracted from the rate determined in subsection 1.3.2.1 of this regulation.
 - 1.3.2.4 To obtain the number of pounds of NO_x emitted for a particular day, the emission rate determined in subsection 1.3.2.3 of this regulation shall be multiplied by the heat input to the unit for that day determined in subsection 1.3.2.2 of this regulation. If the emission rate determined in subsection 1.3.2.3 of this regulation is equal to or less than zero, then the number of pounds of NO_x emitted for that day shall be zero.
 - 1.3.2.5 Not later than the 20th day of each month:
 - 1.3.2.5.1 The number of pounds of NO_x emissions calculated pursuant to subsection 1.3.2.4 of this regulation shall be summed for each calendar month, the result shall be divided by 2000, and shall be rounded to the nearest whole ton.
 - 1.3.2.5.2 For each ton of NO_x emissions calculated pursuant to subsection 1.3.2.5.1 of this regulation, records shall be maintained demonstrating that one NO_x allowance owned by the person subject to Section 1.0 of this regulation is identified and available, by serial number, for retirement.
 - 1.3.2.6 Not later than February 1 of each calendar year, the NO_x allowances identified pursuant to subsection 1.3.2.5.2 of this regulation for the previous calendar year, shall be submitted to the Department for retirement. Such submission shall detail the calculations specified in subsection 1.3.2.1 through subsection 1.3.2.5 of this regulation, and shall indicate the serial number of each allowance to be retired.
- 1.4 Monitoring Requirements. Compliance with the NO_x emission standards specified in Section 1.0 of this regulation shall be determined based on CEM data collected in accordance with the requirements of subsection 3.1.2 of 7 **DE Admin. Code** 1117 (Performance Specification 2), and in compliance with the requirements of 40 CFR, Part 60, Appendix F.
- 1.5 Recordkeeping and Reporting Requirements.
 - 1.5.1 Not later than 180 days after the effective date of Section 1.0 of this regulation, any person subject to Section 1.0 of this regulation shall develop, and submit to the Department for approval, a schedule for bringing the affected emission unit or units into compliance with the requirements of Section 1.0 of this regulation. Such schedule shall include, at a minimum, all of the following:
 - 1.5.1.1 The method by which compliance will be achieved
 - 1.5.1.2 The dates by which the affected person commits to completing the following major increments of progress, as applicable:
 - 1.5.1.2.1 Completion of engineering;
 - 1.5.1.2.2 Submission of permit applications;
 - 1.5.1.2.3 Awarding of contracts for construction or installation;
 - 1.5.1.2.4 Initiation of construction;

- 1.5.1.2.5 Completion of construction;
 - 1.5.1.2.6 Commencement of trial operation;
 - 1.5.1.2.7 Initial compliance testing;
 - 1.5.1.2.8 Submission of compliance testing reports;
 - 1.5.1.2.9 Commencement of normal operations (in full compliance).
- 1.5.2 Any person subject to Section 1.0 of this regulation shall submit to the Department an initial compliance certification not later than May 1, 2004. The initial compliance certification shall, at a minimum, include the following information:
- 1.5.2.1 The name and the location of the facility.
 - 1.5.2.2 The address and telephone number of the person responsible for the facility.
 - 1.5.2.3 Identification of the subject source or sources.
 - 1.5.2.4 The applicable standard.
 - 1.5.2.5 The method of compliance.
 - 1.5.2.6 Certification that each subject source is in compliance with the applicable standard
 - 1.5.2.7 All records necessary for determining compliance with the standards of Section 1.0 of this regulation shall be maintained at the facility for a period of five years.
- 1.5.3 Any person subject to Section 1.0 of this regulation shall, for each occurrence of excess emissions, within 30 calendar days of becoming aware of such occurrence, supply the Department with the following information:
- 1.5.3.1 The name and location of the facility.
 - 1.5.3.2 The subject source or sources that caused the excess emissions.
 - 1.5.3.3 The time and date of first observation of the excess emissions.
 - 1.5.3.4 The cause and expected duration of the excess emissions.
 - 1.5.3.5 The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions.
 - 1.5.3.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.
- 1.5.4 Any person subject to Section 1.0 of this regulation shall maintain all information necessary to demonstrate compliance with the requirements of Section 1.0 of this regulation for a minimum period of five years. Such information shall be immediately made available to the Department upon verbal and written request.

04/11/2014 xx/11/2016

2.0 Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries

2.1 Purpose

- 2.1.1 The purpose of Section 2.0 of this regulation is to reduce NO_x emissions from Delaware's large industrial boilers and process heaters that are located at petroleum refineries.
- 2.1.2 Under the 8-hour ozone national ambient air quality standard (NAAQS), the state of Delaware is part of the Philadelphia-Wilmington-Atlantic City, PA-DE-MD-NJ moderate non-attainment area (NAA). The entire NAA, including Delaware, is required by the Clean Air Act (CAA) to attain the 8-hour ozone NAAQS by 2010. After attainment, the area must maintain compliance with the NAAQS. By implementing Section 2.0 of this regulation, NO_x emission reductions from the affected boilers and heaters shall contribute to (1) attainment and maintenance of the 8-hour ozone standard, and (2) improvement of the ambient air quality, in both Delaware and the entire NAA.
- 2.1.3 Additionally, New Castle County of Delaware is a part of the Philadelphia-Wilmington-Camden, PA-DE-NJ NAA for the annual fine particulate matter (PM_{2.5}) NAAQS, and is required by the CAA

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to attain the NAAQS by 2010. Since NO_x is a significant precursor to PM_{2.5} formation, reducing NO_x emissions will also assist in attainment and maintenance of the PM_{2.5} standard.

2.2 Applicability and Compliance Dates

2.2.1 Section 2.0 of this regulation applies to any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 million BTUs per hour (mmBTU/Hour), which is operated or permitted to operate within a petroleum refinery facility on July 11, 2007. This comprises the following ten (10) units at the Delaware City refinery:

- 2.2.1.1 Crude Unit Vacuum Heater (Unit 21-H-2);
- 2.2.1.2 Crude Unit Atmospheric Heater (Unit 21-H-701);
- 2.2.1.3 Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3);
- 2.2.1.4 Steam Methane Reformer Heater (Unit 37-H-1);
- 2.2.1.5 Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1,2,3);
- 2.2.1.6 Boiler 1 (Unit 80-1);
- 2.2.1.7 Boiler 2 (Unit 80-2);
- 2.2.1.8 Boiler 3 (Unit 80-3);
- 2.2.1.9 Boiler 4 (Unit 80-4).
- 2.2.1.10 Fluid Catalytic Cracking Unit Carbon Monoxide (CO) boiler (Unit 23-H-3).

2.2.2 The requirements of Section 2.0 of this regulation are in addition to all other state and federal requirements.

2.2.3 The following units shall be in compliance with the requirements of Section 2.0 of this regulation on and after July 11, 2007: Crude Unit Atmospheric Heater (Unit 21-H-701), Steam Methane Reformer Heater (Unit 37-H-1) and Boiler 2 (Unit 80-2).

2.2.4 The following units shall be in compliance with the requirements of Section 2.0 of this regulation as soon as practicable, but not later than:

- 2.2.4.1 December 31, 2008: Boiler 1 (Unit 80-1) and Crude Unit vacuum Heater (Unit 21-H-2), and Fluid Catalytic Cracking Unit CO boiler (Unit 42-H-1, 2, 3).
- 2.2.4.2 May 1, 2011: Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4).
- 2.2.4.3 December 31, 2012: Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1, 2, 3).

2.3 Standards.

The owner or operator of any industrial boiler or process heater identified in ~~S~~subsection 2.2.1 of this regulation shall meet the applicable NO_x emission limitation identified in the following sections:

2.3.1 Except as provided for in subsection 2.3.2 of this regulation, the owner or operator of any industrial boiler or process heater identified in ~~S~~subsection 2.2.1 of this regulation shall not operate except in compliance with the applicable NO_x emission limitation identified in the following sections:

- 2.3.1.1 For the Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3), Reserved.
- 2.3.1.2 For the Steam Methane Reformer (SMR) Heater (Unit 37-H-1), Reserved.
- 2.3.1.3 For Boiler 1 (Unit 80-1), Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4), 0.015 lb/mmBTU, on a 24-hour rolling average basis.
- 2.3.1.4 For the Fluid Catalytic Cracking Unit CO boiler (Unit 23-H-3), 20 ppmvd @ 0 % O₂ on a 365 day rolling average basis, and 40 ppmvd @ 0 % O₂ on a 7-day rolling average basis.
- 2.3.1.5 For any unit not covered by 2.3.1.1, 2.3.1.2, or 2.3.1.3, or 2.3.1.4 0.04 lb/mmBTU, on a 24-hour rolling average basis.
- 2.3.1.6 ~~The standards set out in 2.3 of this regulation shall not apply to the start-up and shutdown of equipment when emissions from such equipment during a start-up and shutdown are addressed in an operation permit issued pursuant to the provisions of 7 DE Admin. Code 4402.~~

- 2.3.2 As an alternative to complying with one or more of the unit specific emission limitations specified in subsection 2.3.1 of this regulation the owner or operator of any industrial boiler or process heater identified in ~~subsection 2.2.1~~ of this regulation shall limit the NO_x emissions, from all NO_x emission sources at the facility, to equal to or less than the applicable emission cap specified in subsection 2.3.2.1 ~~through~~ through subsection 2.3.2.3 of this regulation.
- 2.3.2.1 2,525 tons per year, evaluated over each twelve (12) consecutive month rolling period, for each twelve (12) month rolling period commencing with the rolling twelve (12) consecutive month period comprised by calendar year (CY) 2011 and ending with the twelve (12) consecutive month rolling period that ends on December 31, 2013.
- 2.3.2.2 2,225 tons per year, evaluated over each twelve (12) consecutive month rolling period, comprising calendar year 2014.
- 2.3.2.3 1,650 tons per year, evaluated over each twelve (12) consecutive month rolling period, commencing with the twelve (12) month rolling period beginning on January 1, 2015 and ending on December 31, 2015, and continuing thereafter.
- 2.3.3 Neither the provisions of ~~subsection 2.3.2~~, nor this regulation more generally, shall limit in any way the Department's authority to establish a lower NO_x emission cap and more stringent NO_x emission limitations for any source subject to this regulation.
- 2.4 Compliance Requirements.
- 2.4.1 Compliance with the NO_x emission standards specified in subsection 2.3.1 of this regulation shall be determined based on CEM data collected in accordance with the appropriate requirements set forth in 40 CFR, Part 60, Appendix B, Performance Specification 2, and the QA/QC requirements in 40 CFR Part 60, Appendix F.
- 2.4.2 Compliance with the facility-wide NO_x emission cap specified in subsection 2.3.2 of this regulation shall be determined not later than the last day of each month, as follows.
- 2.4.2.1 The mass of NO_x (tons) emitted during the prior month from each emission source at the facility subject to the NO_x cap shall be accurately determined using the methods specified in subsection 2.4.2.1.1 through subsection 2.4.2.1.3 of this regulation, as approved by the Department.
- 2.4.2.1.1 Continuous emission monitoring systems (CEMS) that meet the requirements of subsection 2.4.1 of this regulation.
- 2.4.2.1.2 A NO_x emission factor that is based upon the results of the most recent performance testing conducted in accordance with a protocol approved by the Department.
- 2.4.2.1.3 Published NO_x emission factors for such source or category of sources, or any other method approvable by the Department.
- 2.4.2.2 NO_x emissions from each NO_x emission source at the facility shall be determined for all periods of startup, shutdown or malfunction. To the extent that such emissions are not measured by CEMS during such periods of startup, shutdown or malfunction, and to the further extent that performance testing for such source did not establish emission factors for such equipment reflective of operations during periods of startup, shutdown or malfunction, then the owner or operator shall estimate such emission rates from such source during any periods of startup, shutdown or malfunction in accordance with best engineering judgment.
- 2.4.2.3 The emissions calculated in subsection 2.4.2.1 and subsection 2.4.2.2 of this regulation shall be summed and aggregated with the calculation results for the preceding months as provided for in subsection 2.4.2.3.1 through subsection 2.4.2.3.4 below.
- 2.4.2.3.1 For any month before January 2014, the preceding eleven (11) consecutive months shall be included. No emissions occurring before January 1, 2011 shall be included.
- 2.4.2.3.2 For any month in calendar year 2014, only months in calendar year 2014 shall be included.

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- 2.4.2.3.3 For any month in calendar year 2015, only months in calendar year 2015 shall be included.
 - 2.4.2.3.4 For any month after December 31, 2015, the preceding eleven (11) consecutive months shall be included.
 - 2.4.2.4 Compliance shall be determined by comparing the results of the calculations in subsection 2.4.2.3 of this regulation with the appropriate NO_x emission cap specified in subsection 2.3.2 of this regulation. Following aggregation and summation of emission in accordance with subsection 2.4.2.3, fractions of tons shall be rounded up to the next higher number.
- 2.5 Recordkeeping and Reporting Requirements
- 2.5.1 Not later than October 7, 2011, any person subject to Section 2.0 of this regulation shall develop, and submit to the Department, a schedule for bringing the facility into compliance with the requirements of ~~S~~subsection 2.3 of this regulation. Such schedule shall include, at a minimum, all of the following:
 - 2.5.1.1 The method by which compliance will be achieved.
 - 2.5.1.2 For persons subject to the requirements of subsection 2.3.1 of this regulation, the dates by which the affected person plans to complete the following major increments of progress, as applicable:
 - 2.5.1.2.1 Completion of engineering;
 - 2.5.1.2.2 Submission of permit applications;
 - 2.5.1.2.3 Awarding of contracts for construction and/or installation;
 - 2.5.1.2.4 Initiation of construction;
 - 2.5.1.2.5 Completion of construction;
 - 2.5.1.2.6 Commencement of trial operation;
 - 2.5.1.2.7 Initial compliance testing;
 - 2.5.1.2.8 Submission of compliance testing reports;
 - 2.5.1.2.9 Commencement of normal operations (in full compliance).
 - 2.5.2 For persons subject to the requirements of subsection 2.3.2 of this regulation, the owner or operator shall submit to the Department an initial notice that contains all of the information specified in subsection 2.5.2.1 and subsection 2.5.2.2 of this regulation.
 - 2.5.2.1 The date that compliance with this regulation will begin pursuant to subsection 2.3.2 of this regulation. A permit application submitted pursuant to 7 **DE Admin. Code** 1102 or 1130 that contains this information may be used as a means to satisfy this requirement.
 - 2.5.2.2 A list of the emission units at the facility that are required to be included in the facility-wide NO_x cap.
 - 2.5.3 Any person subject to the requirements of subsection 2.3.1 of this regulation shall submit to the Department an initial compliance certification by the later of the following dates, or the date the unit first operates after the following date subject to the requirements of subsection 2.3.1: September 10, 2007 for units identified in ~~S~~subsection 2.2.3 of this regulation and, for units identified in ~~S~~subsection 2.2.4, by the compliance date specified in ~~S~~subsection 2.2.4. The initial compliance certification shall include, at a minimum, all of the following information:
 - 2.5.3.1 The name and the location of the facility;
 - 2.5.3.2 The name, address and telephone number of the person responsible for the facility;
 - 2.5.3.3 Identification of the subject source(s);
 - 2.5.3.4 The applicable standard;
 - 2.5.3.5 The method of compliance;
 - 2.5.3.6 Certification that each subject source is in compliance with the applicable standard.
 - 2.5.4 Any person subject to the requirements of subsection 2.3.2 of this regulation shall submit to the Department a semi-annual report by January 31 and July 31 of each calendar year that contains all of the information specified in subsection 2.5.4.1 through subsection 2.5.4.5 of this regulation.

At the request of the owner or operator, the Department may change the frequency of such reporting requirements, as may be necessary to harmonize them with reporting requirements of 7 DE Admin. Code 1130, Title V Operating Permits Program.

- 2.5.4.1 The identification of owner and operator of the facility.
- 2.5.4.2 A report of the monthly NO_x emissions for each source, the basis for determination of the emissions pursuant to subsection 2.4.2.1, and comparison of the rolling total NO_x emissions from the facility with the appropriate NO_x emission cap that was made pursuant to subsection 2.4.2.4 of this regulation, for each month in the reporting period.
- 2.5.4.3 An updated list of the emission units at the facility that are required to be included in the facility-wide NO_x cap.
- 2.5.5 Any person subject to Section 2.0 of this regulation shall, for each occurrence of excess emissions above the standards of ~~S~~subsection 2.3 of this regulation, including periods when monitoring data was not collected in accordance with procedures approved pursuant to subsection 2.4.2.1 of this regulation, within thirty (30) calendar days of becoming aware of such occurrence, supply the Department with the following information:
 - 2.5.5.1 The name and location of the facility;
 - 2.5.5.2 The subject source(s) that caused the excess emissions;
 - 2.5.5.3 The time and date of first observation of the excess emissions;
 - 2.5.5.4 The cause and expected duration of the excess emissions;
 - 2.5.5.5 The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions;
 - 2.5.5.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.
- 2.5.6 Any person subject to Section 2.0 of this regulation shall maintain all information necessary to determine and demonstrate compliance with the requirements of this section for a minimum period of five (5) years. Such information shall be immediately made available to the Department upon verbal and written request.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3500

**REGISTER NOTICE
SAN #2016-13****3500 Tidal Finfish****1. TITLE OF THE REGULATIONS:**

7 DE Admin. Code 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit

7 DE Admin. Code 3504 Striped Bass Possession Size Limit; Exceptions

7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements

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

This action proposes to amend Delaware's tidal finfish regulations pertaining to the recreational and commercial Striped Bass fisheries. The Department removed an unnecessary harvest constraint (slot size limit) on the commercial fishery that resulted in the needless waste of Striped Bass through Emergency Secretary's Order No. 2016-F-0027,

PROPOSED REGULATIONS

pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) (20 DE Reg. 6 (07/01/16)). This action proposes to adopt those measures through the normal regulatory process. In addition, the proposed amendments modify Striped Bass tagging requirements for consistency with the recently adopted 7 **Del.C.** §943. Specifically, the amendments provide for tagging of Striped Bass by commercial harvesters at any time prior to landing and clarify that recreational anglers are not required to tag Striped Bass. Several additional measures are proposed to address tracking, reporting and quota management in the commercial fishery, as noted in Addendum III to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan. Among the measures proposed are: lost tag reporting; application of weigh station tags within 12 hours of landing; and actions to be taken to ensure compliance with commercial reporting and tagging requirements.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §901(c & d), §903(e)(2)a & §903(h)

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin Code** 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit; 3504 Striped Bass Possession Size Limit; Exceptions; and, 3505 Striped Bass Commercial Fishing Season; Quotas; Tagging and Reporting Requirements will be open October 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on October 24, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 265RFA 10-01-16.pdf>

**3500 Tidal Finfish
Bass (Striped Bass; Black Sea Bass)
(Break in Continuity of Sections)**

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.

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

- 1.0 It is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- 3.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day (a day being 24 hours) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

-
- 4.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.
- 5.0 Notwithstanding 7 Del.C. §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.

3504 Striped Bass Possession Size Limit; Exceptions.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length or any striped bass that measures greater than thirty-seven (37) inches in total length but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may only take two (2) striped bass measuring not less than twenty (20) inches in total length and not greater than twenty-five (25) inches in total length from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.
- 2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 3.0 It is unlawful for any person to possess a striped bass ~~that measures less than 28 inches in total length or a striped bass that measures greater than thirty seven (37) inches but less than forty four (44) inches, total length, except in accordance with Section 1.0 or 2.0 of this section or unless said striped bass is in one or more of the following categories:~~
- 3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill-net food fisherman and was legally taken and tagged by said commercial gill-net food fisherman ~~from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or~~
- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 3.4 It was legally ~~landed~~ taken and reduced to possession in another state for ~~non-commercial~~ noncommercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It is unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 ~~It is unlawful for any person to land any striped bass that measures less than twenty eight (28) inches in total length or a striped bass that measures greater than thirty seven (37) inches but less than forty four (44) inches, total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the~~

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~~Nanticoke River or its tributaries during the period from February 15 through the month of March. The words "take and reduce to possession" shall mean the removal of any striped bass from Delaware waters with the intent to keep or harvest the striped bass.~~

- 7.0 It is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period beginning at 12:01 A.M. on February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not ~~landed~~ taken and reduced to possession in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by ~~November~~ October 1 for the November 15 - December 31 gill net fishery.
- 2.0 It is unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. Except as otherwise provided, ~~A~~ commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by March 15.
- 3.0 It is unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to ~~take~~ land striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.
- 4.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department ~~shall be~~ as follows: 95% ~~of the State's commercial quota, as determined by the ASMFC,~~ for the February 15 - May 31 gill net fishery, 10% ~~of the State's commercial quota~~ for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.
- 5.0 It is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.
- 6.0 It is unlawful for any commercial food fisherman to possess any landed striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department. ~~Said tag shall be locked into place~~

~~immediately after taking said striped bass if said striped bass is taken by hook and line. Said tag shall be locked into place immediately upon completing fishing each gill net or gill net series if said striped bass is taken by anchor gill net or immediately after retrieving each gill net into the boat at the conclusion of each drift if said striped bass is taken by drift gill net.~~

- 7.0 The Department may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said ~~participants~~ participant's assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.
- 8.0 It is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.
- 9.0 It is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.
- 10.0 It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 11.0 It is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the ~~s~~State unless said striped bass has been weighed and tagged ~~by~~ at an official weigh station.
- 12.0 It is unlawful for a commercial food fisherman to retain or provide to another a landed striped bass unless the striped bass has been tagged in accordance with subsection 6.0 and weighed and lawfully tagged at a weigh station operating under contract with the Department within 12 hours of landing.
- 13.0 The Department may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations, if requested, shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.
- 134.0 Each commercial food fisherman participating in a striped bass fishery shall file a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Lost tags must be immediately reported to the Department. Failure to file a complete and accurate report or failure to return all unused tags ~~may~~ shall limit or disqualify the commercial food fishermen from participation in future striped bass fisheries, in addition to any other lawful enforcement action taken by the Department.
-

PROPOSED REGULATIONS

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)
9 DE Admin. Code 103

PUBLIC NOTICE

103 Family Child Care Homes

SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Rules for Family Child Care Homes and DELACARE: Rules for Large Family Child Care Homes. These regulations were combined into one regulation after it was determined that the majority of the content was the same. A comprehensive review process was held in which all providers were invited to attend public meetings in July 2016 to offer comments on the current Rules. After these meetings, a draft was created incorporating best practices and provided to a task force of providers and stakeholders. The task force met four times to discuss the draft and revise it.

COMMENTS

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 3411 Silverside Road, Concord Plaza, Hagley Building Wilmington, Delaware 19810, by email to Kelly.McDowell@state.de.us, or by using OCCL's website <http://kids.delaware.gov/occl/announcements.shtml>. Anonymous comments may be submitted by using OCCL's website. Comments must be submitted by the close of business on October 31, 2016. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations. Regulations 103 and 104 were stricken in their entirety.

*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/october2016/proposed/20 DE Reg 270RFA 10-01-16.pdf](http://regulations.delaware.gov/register/october2016/proposed/20%20DE%20Reg%20RFA%2010-01-16.pdf)

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

103 Family Child Care Homes

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)
9 DE Admin. Code 104

PUBLIC NOTICE

104 Large Family Child Care Homes

SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Rules for Family Child Care Homes and DELACARE: Rules for Large Family Child Care Homes. These regulations were combined into one regulation after it was determined that the majority of the content was the same. A comprehensive review process was held in which all providers were invited to attend public meetings in July 2016 to offer comments on the current Rules. After these meetings, a draft was created incorporating best practices and provided to a task force of providers and stakeholders. The task force met four times to discuss the draft and revise it.

COMMENTS

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 3411 Silverside Road, Concord Plaza, Hagley Building Wilmington, Delaware 19810, by email to Kelly.McDowell@state.de.us, or by using OCCL's website <http://kids.delaware.gov/occl/announcements.shtml>. Anonymous comments may be submitted by using OCCL's website. Comments must be submitted by the close of business on October 31, 2016. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations. Regulations 103 and 104 were stricken in their entirety.

*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/october2016/proposed/20 DE Reg 271RFA 10-01-16.pdf](http://regulations.delaware.gov/register/october2016/proposed/20%20DE%20Reg%20271RFA%2010-01-16.pdf)

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

104 Large Family Child Care Homes

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 **Del.C.** §9003(7); 31 **Del.C.** §§341-345)
9 DE Admin. Code 201

PUBLIC NOTICE

201 Child Placing Agencies

SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Regulations for Child Placing

PROPOSED REGULATIONS

Agencies. A comprehensive review process was held in which all providers were invited to attend public meetings in July 2016 to offer comments on the current regulations. After these meetings, a draft was created and provided to all of the child placing agencies in Delaware and the Division of Family Services for comment. The draft was revised based on these comments and a task force consisting of child placing agencies and the Division of Family Services met to discuss the revised draft and offer more comments. These proposed regulations reflect those changes.

COMMENTS

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 3411 Silverside Road, Concord Plaza, Hagley Building Wilmington, Delaware 19810, by email to Kelly.McDowell@state.de.us, or by using OCCL's website <http://kids.delaware.gov/occl/announcements.shtml>. Anonymous comments may be submitted by using OCCL's website. Comments must be submitted by the close of business on October 31, 2016. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations.

***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/october2016/proposed/20 DE Reg 271aRFA 10-01-16.pdf](http://regulations.delaware.gov/register/october2016/proposed/20%20DE%20Reg%20271aRFA%2010-01-16.pdf)

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

[201 Child Placing Agencies](#)

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3001

PUBLIC NOTICE

3001 Rules for Certification and Regulation of Electric Suppliers

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS TO IMPLEMENT THE
PROVISIONS OF 26 DEL. C. CH. 10 RELATING
TO THE CREATION OF A COMPETITIVE
MARKET FOR RETAIL ELECTRIC SUPPLY
SERVICE (OPENED APRIL 27, 1999; RE-
OPENED JANUARY 7, 2003; RE-OPENED
SEPTEMBER 22, 2009; RE-OPENED
SEPTEMBER 7, 2010; RE-OPENED JULY 17,
2012)

PSC REGULATION DOCKET NO. 49

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, RETAIL ELECTRIC CUSTOMERS AND OTHER INTERESTED PERSONS

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 Del. Admin. C. §3001, now entitled "Rules for Certification and Regulation of

Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules again. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket No. 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should file them using the Commission's DelaFile docketing and file management system on or before **November 16, 2016**. You may also submit an original and ten copies of such written materials with the PSC on or before **November 16, 2016** at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Regulation Docket No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to psc@state.de.us; include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before **November 16, 2016**.

The PSC will conduct a public hearing on the proposed regulations on **November 1, 2016 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8937 (September 20, 2016) (the "Order") and the proposed revised Supplier Rules in the October 2016 issue of the Delaware *Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules by going to DelaFile (<http://delafile.delaware.gov>), the Commission's docketing and file management system, and by searching for REG. 49.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, after the first 20 pages. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act ("FOIA") Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the FOIA Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 *Del.C.* ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE 19801, or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2555 to arrange for a time to review the documents at either of those locations. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to psc@state.de.us; please include "Reg. Doc. 49" as the subject of the email.

ORDER NO. 8937

AND NOW, this 20th day of September, 2016, the Delaware Public Service Commission (the "Commission") determines and orders the following:

WHEREAS, the Commission has promulgated certain regulations pertaining to certification of electric suppliers entitled "Rules for Certification and Regulation of Electric Suppliers." See 26 Del. Admin. C. §3001 (the "Supplier

Rules"); and

WHEREAS, the Supplier Rules have been amended several times since their original passage in 1999. (PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), 7435 (Sept. 2, 2008) and 7984 (June 7, 2011); and

WHEREAS, by Order No. 8187 dated July 17, 2012, the Commission re-opened PSC Regulation Docket 49 to consider further revisions to the existing Supplier Rules set forth in 26 Del. Admin. C. §3001; and

WHEREAS, by Order No. 8424 dated July 30, 2013, the Commission authorized the publication in the Delaware *Register of Regulations* the proposed amendments to the Supplier Rules; and

WHEREAS, the proposed amendments were published in the September 2013 Delaware *Register of Regulations* (17 DE Reg. 310 (9/1/13)); and

WHEREAS, the Commission received several comments on the proposed amendments; and

WHEREAS, by Order No. 8545 dated April 15, 2014, the Commission authorized the publication of proposed amendments to the Supplier Rules in the Delaware Register of Regulations; and

WHEREAS, the proposed amendments were published in the May 2014 Delaware Register of Regulations (17 DE Reg. 1052 (5/1/14)); and

WHEREAS, the Commission received several comments on the proposed amendments; and

WHEREAS, by Order No. 8830 dated December 15, 2015, the Commission authorized the publication of proposed amendments to the Supplier Rules in the Delaware Register of Regulations; and

WHEREAS, the Commission received several comments on the proposed amendments; and

WHEREAS, in response to Order No. 8830, the Division of the Public Advocate ("DPA") and the Retail Energy Supply Association ("RESA") have collaborated on a proposed revision of the Supplier Rules, which RESA's counsel provided to Commission Staff and Delmarva Power & Light Company ("Delmarva") on or about July 7, 2016; and

WHEREAS, on August 15, 2016, the DPA and RESA filed a "Joint Submission of the Division of the Public Advocate and the Retail Energy Supply Association to Revise 26 Del. C. §3001: Rules for Certification and Regulation of Electric Suppliers; and

WHEREAS, the Commission heard argument on the Joint Submission from RESA, the DPA, Commission Staff and Delmarva, and conducted public deliberations on the Joint Submission at its regularly-scheduled September 6, 2016 meeting;

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

1. That the relief requested in the Joint Submission is **GRANTED** in part and **DENIED** in part.
2. The DPA's and RESA's request to conduct the public hearing on their proposed revised Supplier Rules on September 6, 2016 is **DENIED**.
3. That the DPA's and RESA's request that the Commission publish for comment the proposed revised Supplier Rules attached to the Joint Submission is **GRANTED**.
4. That the Commission proposes to revise the Supplier Rules as set forth herein in Exhibit "A."
5. That, pursuant to 29 Del. C. §§1134 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the October 2016 Delaware *Register of Regulations* a copy of this Order; a copy of the existing Supplier Rules, showing the proposed changes (Exhibit "B"); and a copy of the Notice of Proposed Rulemaking attached hereto as Exhibit "C."
6. That the Secretary shall cause the Notice of Proposed Rulemaking attached as Exhibit "C" to be published in *The News Journal* and the *Delaware State News* newspapers on or before September 27, 2016. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the DPA; (b) the Department of Natural Resources and Environmental Control; (c) Delmarva; (d) all certificated electric suppliers; (e) RESA; and (f) each person or entity who has made a timely request for advance notice of rulemaking proceedings.
7. That pursuant to 29 Del.C. §10117, the Commission will conduct a public hearing on the proposed revisions to the Supplier Rules on Tuesday, November 1, 2016 beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.
8. That, pursuant to 29 Del.C. §§10115(a), 10116, and 10118, persons or entities may file written comments,

suggestions, compilations of data, briefs, or other written materials, on or before November 16, 2016.

9. That pursuant to 26 **Del.C.** §1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they will be charged the costs incurred in connection with this proceeding under the provisions of 26 **Del.C.** §114(b)(1).

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

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

K. F. Drexler, Commissioner

Mike Karia, Commissioner

ATTEST:

Donna Nickerson, Secretary

***Please Note:**

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

<http://regulations.delaware.gov/register/october2016/proposed/20 DE Reg 272RFA 10-01-16.pdf>

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

3001 Rules for Certification and Regulation of Electric Suppliers

OFFICE OF THE STATE TREASURER

INVESTMENTS AND CASH MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 2716 (29 **Del.C.** §2716)

1 DE Admin. Code 1201

PUBLIC NOTICE

1201 Objectives and Guidelines for the Investment of State of Delaware Funds

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

In accordance with the procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Cash Management Policy Board of the State of Delaware is proposing to adopt a regulation on objectives and guidelines for the investment of State funds as described in 29 **Del.C.** §2716. The proposed regulation sets forth the rules governing practices for those investments.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

29 **Del.C.** §2716.

OTHER REGULATIONS AFFECTED

None.

HOW TO COMMENT ON THE PROPOSED REGULATION

Members of the public may receive a copy of the proposed regulation at no charge by U.S. Mail by writing or calling [need name of person, address, phone and fax numbers. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Stephen McVay, at the Office of the State Treasurer, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904. Written comments must be received on or before October 31, 2016.

SUMMARY OF PROPOSED REGULATION

The Cash Management Policy Board (hereinafter the "Board") was created by 63 Del. Laws., Ch. 142, to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any State Pension Fund or the State Deferred Compensation Program, and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments. (29 Del.C. §2716(a)). This regulation was adopted by the Board on August 10, 2016, but the changes herein have not previously been through the process of adoption established by the Administrative Procedures Act. The Board determined that certain amendments to the regulations adopted August 12, 2015 are desirable. Those amendments are included as a part of this proposed 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/october2016/proposed/20 DE Reg 275RFA 10-01-16.pdf>

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

[1201 Objectives and Guidelines for the Investment of State of Delaware Funds](#)

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. This regulation is created pursuant to 14 **Del.C.** §122(b)(26) to provide uniform procedures for alternative placement meetings and expulsion hearings. This is one of a series of regulations being developed regarding alternative placement, expulsion and due process procedures and the handling of Attorney General Reports. This regulation is aligned with the recommendations and outcomes of the School Discipline Task Force.

Notice of the proposed regulation was first published on December 1, 2015. Due to the complexity of this issue, several comments were received and reviewed. One specific comment required a substantive change, which required the proposed regulation to be republished. Notice of the proposed regulation was republished in the *News Journal* and the *Delaware State News* on June 1, 2016, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities (SCPD), the Governor's Advisory Council for Exceptional Citizens (GACEC), the American Civil Liberties Union of Delaware (ACLU), the Delaware Department of Justice (DOJ) and the Department of Services for Children, Youth and Their Families (DSCYF). A very thorough review of each comment was undertaken. Comments received that resulted in a change to the regulation are related to: (1) the need to add the words "and assessment" within the definition of "Appropriate Educational Services" in order to clarify that both instruction and assessment are included in such services; (2) the need to add the words "a student" in the definition of Building Level Conference for clarification purposes. This was inadvertently removed when the definition was changed for the June republication; (3) the Due Process Grievance

Procedures not being posted on the DOE website as referenced in 6.2. The Guidelines will be posted when the regulation is finalized, and may be posted in draft form prior to that time; clarification was added to the definition and to Section 6.2 that the required grievance procedures similar to the Guidelines are only those applicable to this regulation; (4) clarification needed in 3.1.1.1 regarding removal of student from the classroom and initial due process procedures as per 4.2.1; (5) clarification of 7.2.1.8 that the mailing of the Notice of the Alternative Placement Meeting will be done at least five business days before the meeting; (6) clarification of 10.3.12 to include the student being able to waive their right to a hearing before the local Board of Education, and ensuring a written waiver is signed by parent and student and is submitted in acknowledgment that the student is knowingly and voluntarily waiving their right to the hearing; (7) adding a new 10.4.3 to clarify the process for permitting students and parents to submit, and the Board of Education to consider, written statements relative to expulsion decisions; and (8) the need to add the word "student" in the renumbered Section 10.4.6 for clarification regarding a board decision being put in writing to a student, in addition to a superintendent and parent. Other grammatical corrections were made as needed.

Due to the complexity and interest in this regulation, a letter will be sent to each entity with responses to comments they submitted.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings in order to provide uniform procedures for alternative placement meetings and expulsion hearings.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to create 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings attached hereto as Exhibit "B" is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings hereby created shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings created hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings 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 September 15, 2016. 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 September 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 15th day of September 2016

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings *(Break in Continuity of Sections)*

2.0 Terms and Definitions

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

(Break in Continuity Within Section)

"Appropriate Educational Services" means instruction [and assessment] provided by the district/charter and includes access to instructional materials, graded homework and communication with educators so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting a level of proficiency in that curriculum.

(Break in Continuity Within Section)

"Building Level Conference" means a meeting which is held by phone or in person between the Principal, other appropriate school staff members as determined by the Principal, [a student] and a student's Parent to discuss the student's misconduct relative to a recommendation for Suspension, Alternative Placement, or Expulsion.

(Break in Continuity Within Section)

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

(Break in Continuity Within Section)

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

(Break in Continuity Within Section)

3.0 Preliminary Discipline Investigation & Reporting Requirements

3.1 Investigatory Procedures & Timeline

3.1.1 In any instance when student Disciplinary Action which may result in removal of the student out of the Regular School Program for one day or more is contemplated, the Principal shall conduct a preliminary investigation to determine if there is reasonable basis to pursue Disciplinary Action.

3.1.1.1 The Principal may remove the allegedly offending student from the general student population while conducting the preliminary investigation if the student's presence in the School Environment poses a threat to the health, safety, or welfare to persons or property within the School Environment, as determined by the Principal. [Initial due process in accordance with subsection 4.2.1 of this regulation shall be provided.]

(Break in Continuity of Sections)

6.0 Requirement of Grievance Process

6.1 Each district/charter school shall have a written Grievance procedure. The district/charter school shall have the written Grievance procedures available for Parent review.

6.2 Grievance procedures, shall, at a minimum, be similar to the Grievance guidelines [applicable to this regulation] as posted on the Department of Education's website.

7.0 Assignment to an Alternative Program*(Break in Continuity Within Section)***7.2 Responsibilities for Student Referral Which May Lead to Alternative Program Placement**

7.2.1 When it is alleged that a student committed a violation of the Student Code of Conduct and may be subject to a recommendation for Alternative Placement, the following procedures shall occur:

(Break in Continuity Within Section)

7.2.1.8 ~~The Parent and the student shall, at a minimum, receive written notice via regular U.S. and certified mail, of the district/charter school Alternative Placement Meeting.~~ **Notice of the Alternative Placement Meeting shall be mailed to the Parent and the student via regular U.S. and certified mail at least five business days before the meeting is to occur.]**

*(Break in Continuity of Sections)***10.0 Procedures for the Expulsion of Students***(Break in Continuity Within Section)***10.3 Expulsion Hearing[s]***(Break in Continuity Within Section)*

10.3.12 In lieu of a formal Expulsion hearing, a **[Parent student]** may elect to waive the hearing and admit to the **[student's]** violation charge(s). The **[student and]** Parent shall submit a **[signed]** written hearing waiver **[which indicates that the student is knowingly and voluntarily waiving their right to the hearing]**. Such election may be exercised until the commencement of the hearing. This waiver does not absolve the student from required consequences under Federal or State Law or the Student Code of Conduct.

10.4 Expulsion Decision by Board of Education**10.4.1 Decision after Hearing Officer Presides over Hearing***(Break in Continuity Within Section)*

10.4.1.2 The Board of Education shall make its decision at the next scheduled public Board Meeting or additional scheduled public board meeting for the sole purpose of deciding on the student disciplinary matter in question.

10.4.1.2.1 The Board shall conduct a review of the Hearing Officer's recommendation. The Board may accept, reject, or modify the recommendation of the Hearing Officer. The Board's decision shall be in writing in accordance with subsection 10.4.5 of this regulation and shall be based solely upon the report from the Hearing Officer and the record of the Expulsion hearing, if any~~[, provided by the Superintendent, the student and Parent]~~.

*(Break in Continuity Within Section)***[10.4.3 Decision After Waiving of Hearing Rights and Admission to Violation Charges**

10.4.3.1 **Within five (5) business days following the waiving of hearing rights and admission of violation charges, the Superintendent shall prepare a report for the Board of Education's action at its next public board meeting or an additional scheduled public board meeting for the sole purpose of deciding on the student disciplinary matter in question.]**

10.4.[34] Eligible expelled students shall be placed in a Consortium Discipline Alternative Program in accordance with 14 **Del.C.** §1604 and 14 **DE Admin. Code** 611. The Board shall determine if the students not eligible for placement in a Consortium Discipline Alternative Program shall be expelled with or without Appropriate Educational Services.

10.4.[45] Any decision to expel a student shall be reported to the Delaware Department of Education within five (5) business days of the Board's decision to expel. When a Board of Education expels a student, but determines the student shall not be placed at a Consortium Discipline Alternative Program, the written decision shall address with specificity the reason for 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 business days of such decision, with a copy to the student's Parent.

10.4.~~56~~ Except as is otherwise provided herein, within ten (10) business days of the decision by the Board, the Board, through its designee, shall submit its decision to the Superintendent and Parent [and student] in writing. The written decision shall include notice of the right to appeal to the State Board of Education.

10.5 Calculation of Time

10.5.1 In calculating the period of time for the term of the Expulsion, school days will be used. Students ~~[adjudicated to a Delaware Division of Youth Rehabilitative Services (YRS) receiving residential services from a Department of Services for Children, Youth and Their Families (DSCYF)]~~ program shall have the amount of school days served in such program counted as part of the calculation of time for an Expulsion. This does not preclude a district/charter from transitioning a student from a YRS program to the Regular School Program through an Alternative Program. However, transition through an Alternative Program is not required.

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2016 issue of the *Register* at page 1057 (19 DE Reg. 1057). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

616 Uniform Due Process Procedures for Alternative Placement Meetings and Expulsion Hearings

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 706

REGULATORY IMPLEMENTING ORDER

706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States. This regulation is being amended to provide guidance and clarity relative to military service for salary calculations for employees paid under 14 **Del.C.** §1305, and as referenced in 14 **Del.C.** §1312(a).

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 1, 2016, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States in order to provide guidance and clarity relative to military service for salary calculations for employees paid under 14 **Del.C.** §1305, and as referenced in 14 **Del.C.** §1312(a).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 706 Credit for Experience for Full Time Active Duty Service in the Armed

Forces of the United States 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** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States 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 September 15, 2016. 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 September 2016.

Department of Education

Steven H. Godowsky, Secretary of Education

Approved this 15th day of September 2016

706 Credit for Experience for Full Time Active Duty Service in the Armed Forces [~~of the United States~~]

1.0 Purpose

The purpose of this regulation is to provide guidance relative to military service for salary calculations for employees paid under 14 **Del.C.** §1305, and as referenced in 14 **Del.C.** §1312(a).

2.0 Definitions

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

"Active Duty" means full-time duty in the active military service of the United States, to include, but not be limited to, full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the Secretary of a military department.

"Armed Forces" means the following branches of the United States armed forces: Army, Air Force, Marine Corps, Navy, and Coast Guard[;] or National Guard of the State.

"Course of Professional or Vocational Training" means work leading to the attainment of a certificate, diploma or degree, and offered by a public or private, non-profit or proprietary institution as approved or accredited by an appropriate State agency or National/Regional organization. A person engaged in such course of instruction shall have been enrolled on a full-time basis, under regulations of the institution in effect at the time of attendance, and shall have completed the course of instruction in which enrolled, by continuous attendance, so as to complete the course of instruction on a scheduled date. Interruption of attendance may be occasioned only by reason of personal medical problems which militate against regular attendance or full-time military duty during war or other declared emergency.

43.0 Credit for Active Duty Experience

43.1 Credit for Experience for full time aActive dDuty service, not in excess of six (6) years in the aArmed services Forces [~~of the United States~~], shall be granted provided the individual became a teacher, principal, or superintendent, or other administrative employee in a Delaware public school pursuant to 14 **Del.C.** Ch. 1305, and as referenced in 14 **Del.C.** §1312(a):

- ~~43.1.1~~ Within five (5) years after completion of a ~~tour of duty~~ being on Active Duty; or
- ~~43.1.2~~ Within five (5) years after completion of a ~~Course of p~~Professional or v~~ocational t~~raining, if such ~~e~~C~~ourse~~ was begun within five (5) years after completion of the individual's ~~tour of duty~~ being on Active Duty.

2-0 Instruction

~~Any instruction in Military Science given during years of enlistment shall be included in the six (6) years in the armed services of the United States.~~

34.0 Calculation of Service Time

- ~~34.1~~ Credit for service in the ~~a~~A~~rmed f~~orces ~~[of the United States]~~ shall be calculated as follows:
- ~~34.1.1~~ One (1) year of experience shall be allowed for each creditable year of full time ~~a~~A~~ctive e~~D~~uty~~ service.
- ~~3.1.2~~ In the case of a teacher, principal, superintendent or other administrative employee a combined total of ninety one (91) days of service and employment in any of these positions during any one school year will count as a year of experience.
- ~~34.1.3~~2 No more than one (1) year of experience may be credited for any one (1) calendar year.

(Non regulatory Note: See 14 **Del.C.** §1312(a) and §1327 Leave of Absence for Persons in Military Service).

(Non-regulatory Note: See State of Delaware Pension Plan FAQs)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Financial Institution Accounts – Delaware Achieving a Better Life Experience (ABLE) Accounts

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to *amend* the Delaware Social Services Manual (DSSM) regarding Financial Institution Accounts, specifically, *to add language that exempts Achieving a Better Life Experience (ABLE) accounts from being counted towards the determination of eligibility for state or local assistance programs*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the May 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Social Services Manual (DSSM) regarding Financial Institution Accounts, specifically, *to add language that exempts Achieving a Better Life Experience (ABLE) accounts from being counted towards the determination of eligibility for state or local assistance programs*.

Statutory Authority

- Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. 113-295, 128 Stat. 4010
- 26 USC §529A, *Qualified ABLE programs*
- §201 of the Social Securities Act, *Federal old-age and survivors insurance trust fund and federal disability insurance trust fund*
- §1602 of the Social Securities Act, *Basic eligibility for SSI benefits*
- 16 **Del.C.** Ch. 96A §9601A-§9608A, *Delaware Achieving a Better Life Savings Accounts*

Background

The Federal government approved the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014 in December of 2014. This act amends the federal tax code to allow Section 529 tax-exempt savings accounts, for disability-related expenses. These ABLE accounts can be used to help individuals and families save for qualified disability-related expenses of individuals with disabilities. The funds in these accounts are meant to supplement other benefits provided by State, Federal and private sources such as, but not limited to, Medicaid, Supplemental Security Income, and employment. In addition, the Stephen Beck, Jr., ABLE Act of 2014 specifies that the funds in these accounts, and qualified disability expenses withdrawn from these accounts, are not to be counted towards the determination of eligibility for state or local assistance programs.

An ABLE program can be established and maintained by a State or a State agency directly or by contracting with a private company. An eligible individual can open an ABLE account through the ABLE program in any State. However, an eligible individual can be the designated beneficiary of only one ABLE account, which must be administered by a qualified ABLE program.

26 USC §529A(b)(1) states that, the term "qualified ABLE program" means a program established and maintained by a State, or agency or instrumentality thereof-

- (A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,
- (B) which limits a designated beneficiary to 1 ABLE account for purposes of this section, and
- (C) which meets the other requirements of this section.

Delaware has published legislation addressing the implementation and administration of the Stephen Beck, Jr., ABLE Act of 2014, in Delaware under 16 **Del.C.** Ch. 96A, Delaware Achieving a Better Life Experience Savings Accounts. The purpose of 16 **Del.C.** Ch. 96A is to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

Summary of Proposal*Purpose*

To add language to the Delaware Social Services Manual (DSSM) that allows for ABLE accounts to be exempt from the 20330.2 Financial Institutions Accounts regulation when determining an individual's resource computation. Also, to add language to the DSSM regarding Delaware Achieving a Better Life Experience (ABLE) Savings Accounts.

Summary of Proposed Changes

If implemented as proposed, the amendment to the DSSM will accomplish the following, effective October 11, 2016:

Provide a provision that allows for ABLE accounts to be exempt from the countable resource computation of financial institutions accounts, as well as provide eligibility policy regarding the administration of Delaware ABLE accounts.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the Delaware Social Services Manual provisions regarding Delaware Achieving a Better Life

Experience (ABLE) Savings Accounts. Comments must be received by 4:30 p.m. on May, 31 2016.

Provider Manuals Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. DMAP provider manuals and official notices are available on the DMAP website: <http://www.dmap.state.de.us/home/index.html>

Fiscal Impact Statement

DMMA is proposing a revision of existing Long Term Care (LTC) program eligibility policy to address ABLE accounts. The proposed changes provide guidance about how ABLE accounts are viewed in the determination of eligibility for LTC benefits. There is no anticipated fiscal impact to the agency as a result of this proposed change in program eligibility policy.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

First, in §20330.2.1.1, the definition of "person with signature authority" merits reconsideration. The first sentence reads as follows:

"Person with signature authority" means a person who can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing an account.

The federal regulations do not require an adult to "be incapable of managing an account" to designate a "person with signature authority. See, e.g., the attached proposed regulation published at 80 Fed Reg. 35611 (June 22, 2015):

If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.

[emphasis supplied] A "competent" adult can simply choose to not exercise signature authority.

Agency Response: DMMA appreciates the Council's perspective on the wording of this particular definition, which was taken from Supplemental Security Income (SSI) policy (see SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts), on which Medicaid Long-Term Care (LTC) eligibility policy is based. We have modified this definition for the final regulation, substituting the phrasing above for the original version.

"Person with signature authority" means a person who can establish and control an ABLE account for a designated beneficiary. If the designated beneficiary is not able to exercise signature authority over his or her ABLE account, or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.

Second, in §20330.2.1.1, the definition of "ABLE program" refers to a program established or maintained "by a State (or agency or instrumentality thereof)..." This is consistent with the proposed federal regulation. See 80 Fed Reg. at 35612 (June 22, 2015). Many states are contemplating implementation through a consortium of states. Therefore, DMMA could consider expanding the reference as follows: "by a State or consortium of states (or agency or instrumentality thereof)..."

Agency Response: DMMA agrees with the suggested revision of this section of the proposed policy. We have revised the definition for the final regulation as follows:

“ABLE Program” means a program established and maintained by a State or consortium of states (or agency or instrumentality thereof) through which interested individuals can open ABLE accounts.

Third, for similar reasons, DMMA could consider amending the definition of “eligible individual” as follows: “a resident of this State, a contracting state, or a state participating in a consortium arrangement who is: ...”

Agency Response: DMMA agrees with the suggested broaden the language used in this definition. We have revised the definition for the final regulation as follows:

“Eligible Individual” means a resident of this State, or any state, in which an ABLE program is established who is:

- Entitled to benefits based on disability or blindness under Title II or XVI of the Social Security Act and such blindness or disability began before the age of twenty-six (26); or
- An individual with respect to whom a disability certification, meeting the requirements of the Stephen Beck, Jr., ABLE Act of 2014, is filed.

Fourth, for similar reasons, DMMA could consider amending §20330.2.1.2.2 as follows: “The State or consortium ABLE program that is administering the account.”

Agency Response: DMMA agrees with the suggested revision of this section of the proposed policy. We have revised this section for the final regulation as follows:

20330.2.1.2.2 *The State or consortium ABLE program that is administering the account;*

Fifth, in §20330.2.1.1, the definition of “eligible individual” requires the person to be a resident of Delaware or “a contracting state”. The proposed federal regulation would allow some persons (e.g. military) to keep an account even if the person is no longer a resident of the state. See attached 80 Fed Reg at 35608. Therefore, there is some “tension” between the “residency” requirement and the proposed federal regulation. Moreover, consistent with the attached January 11, 2016 article, Congress amended the law so an eligible person can open an account in any state, regardless of where the person resides.

Agency Response: DMMA appreciates the Council’s comment on this subject. However, we believe that the revised definition of “Eligible Individual” (see response to item three (3) above) is sufficiently broad to cover individuals who may be beneficiary of an ABLE Account, regardless of their state of residence.

Sixth, in §20330.2.1.3, second sentence, there is a plural pronoun (“their”) with a singular antecedent (“person”). This can be easily corrected by substituting “the person’s” for “their”.

Agency Response: DMMA agrees with the Council’s suggested revision. The final regulation will be revised as follows:

20330.2.1.3 *ABLE Account Contributions*

Contributions made to an ABLE account by persons other than the designated beneficiary shall not be excluded from the countable income of the person who makes the contribution. The fact that a person uses the person’s own income to contribute to an ABLE account does not mean that income is not countable for Medicaid purposes.

Seventh, in §20330.2.1.5, correct the grammar by substituting “the beneficiary’s” for “their”.

Agency Response: DMMA agrees with the Council’s suggested revision. The final regulation will be revised as follows:

20330.2.1.5 *ABLE Account Balance*

Exclude the balance of a designated beneficiary’s ABLE account from the beneficiary’s countable resource computation when determining the designated beneficiary’s eligibility.

Eighth, §§20330.2.1.6.1 and 20330.2.1.6.2 treat distributions for housing less favorably than other distributions. If a housing distribution is made on May 31 and paid to a landlord on June 1, the entire housing distribution would be considered a countable resource for the month of June. This is an unreasonable approach.

Agency Response: DMMA appreciates the Council’s feedback on this issue. However, LTC Medicaid eligibility policy is based on SSI policy. SSI policy treats distributions for housing expenses differently than other

Qualified Disability Expenses (QDE). 26 USC §529A Treatment of ABLÉ Accounts Under Certain Federal Programs (a)(1) states the following:

“(a) Account Funds Disregarded for Purposes of Certain Other Means-Tested Federal Programs.- Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLÉ account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, any contributions to the ABLÉ account of the individual, and any distribution for qualified disability expenses (as defined in subsection (e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLÉ account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.]-(1) a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded

Therefore, DMMA's LTC eligibility policy addresses QDEs relating to housing expenses in accordance with SI 01130.740(D)(2).

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

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Financial Institution Accounts, specifically, *to add language that exempts Achieving a Better Life Experience (ABLE) accounts from being counted towards the determination of eligibility for state or local assistance programs*, is adopted and shall be final effective October 11, 2016.

Rita M. Landgraf, Secretary, DHSS
September 16, 2016

DMMA FINAL ORDER #16-016a

REVISIONS:

20330.2 Financial Institutions Accounts

Financial institution accounts which include savings accounts, checking accounts, certificates of deposit, etc., are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the account is titled.

An exception to this policy would be for Achieving a Better Life Experience (ABLE) Savings Accounts. These accounts are not included in the countable resources computation. Please review 20330.2.1 for policy applicable to ABLÉ Savings Accounts.

If an individual is designated as sole owner by the account title, all of the funds are that individual's resource unless legal restrictions preclude the owner from using the funds for his or her support and maintenance. We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100% ownership.

If the account is in the name of a Medicaid applicant/recipient and another Medicaid applicant/recipient, assume all account funds belong to each individual in equal shares. If the account is in the name of a Medicaid applicant/recipient and another individual who is not applying for Medicaid or who is not a Medicaid recipient, then assume all of the funds belong to the Medicaid applicant/recipient.

If the applicant or recipient disagrees with the ownership presumption on jointly-held accounts, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Obtain the

individual's statement on a form containing the penalty clause regarding who owns the funds, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent. Inform the individual that he or she must submit the following evidence within 30 days:

A corroborating statement from the other account holder(s). If the other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account; account records showing deposits, withdrawals and interest paid for the months that ownership is an issue; if the individual owns none of the funds, evidence showing that he or she can no longer withdraw funds from the account; if the individual owns only a portion of the funds, evidence showing removal from the account of the individual's funds or removal of the funds owned by the other account holder(s) and redesignation of the account.

Any funds that the evidence establishes were owned by the other account holder(s) are not and were not the individual's resources. The effect of a successful rebuttal is retroactive as well as prospective.

DMMA FINAL ORDER #16-016b

NEW:

20330.2.1 Delaware Achieving a Better Life Experience (ABLE) Savings Accounts

Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014,
Pub. L. 113-295, 128 Stat. 4010

The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) of 2014 established a tax-advantaged account that can be used to save funds for the disability-related expenses of the account's designated beneficiary. The designated beneficiary must be blind or disabled by a condition that began prior to the individual's twenty-sixth (26th) birthday.

Eligible individuals can be the designated beneficiary of only one ABLE account. The Delaware Achieving a Better Life Experience (ABLE) Program is administered by the ~~[Achieving a Better Life Experience (ABLE) Plans Management]~~ Board as per 16 Delaware Code Ch. 96A.

Funds in qualifying ABLE accounts, and qualified disability expenses withdrawn from these accounts, are not to be counted towards the determination of eligibility for state or local assistance programs.

20330.2.1.1 Definitions

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

"ABLE Program" means a program established and maintained by a State [or consortium of states] (or agency or instrumentality thereof) through which interested individuals can open ABLE accounts.

"Contributions" means the deposit of funds into an ABLE account. Any person can contribute to an ABLE account. (Note that "person," as defined by the Internal Revenue Code, includes an individual, trust, estate, partnership, association, company, or corporation.) However, the Internal Revenue Service (IRS) limits the total annual contributions any ABLE account can receive from all sources to the amount of the per-donee gift-tax exclusion in effect for a given calendar year.

"Designated beneficiary" means the eligible individual who established and is the owner of the ABLE account.

"Distributions" means the withdrawal or issuance of funds from an ABLE account. The designated beneficiary or the person with signature authority determines when distributions are made. Distributions may be made only to or for the benefit of the designated beneficiary.

"Eligible Individual" means a resident of this State ~~[or a contracting state]~~ or any state in which an ABLE program is established,] who is:

- Entitled to benefits based on disability or blindness under Title II or XVI of the Social Security Act, and such blindness or disability began before the age of twenty-six (26); or

- An individual with respect to whom a disability certification, meeting the requirements of the Stephen Beck, Jr., ABLE Act of 2014, is filed.

“Person with signature authority” means ~~[a person who can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary’s parent, legal guardian, or agent acting under power of attorney. We consider the designated beneficiary to be the owner of an ABLE account, regardless of whether someone else has signature authority over it,~~ a person who can establish and control an ABLE account for a designated beneficiary. If the designated beneficiary is not able to exercise signature authority over his or her ABLE account, or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary’s agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.]

“Qualified disability expense” or **“QDE”** means an expense related to the blindness or disability of the designated beneficiary and that are for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, the following types of expenses:

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and related services;
- Health;
- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for professional ABLE account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses.

“Qualified disability expense for housing” means expenses for purposes of an ABLE account are the same as they are for in-kind support and maintenance purposes, except that they do not include food. QDEs for housing are payments for:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; and
- Garbage removal.

“Rollover” means the distribution of all or some of the funds from one ABLE account to the ABLE account of a member of the original, designated beneficiary’s family. For the purposes of a rollover, a member of the designated beneficiary’s family means a sibling, which includes step-siblings and half-siblings, whether by blood or by adoption.

20330.2.1.2 ABLE Account Verification

When documenting whether an applicant is the designated beneficiary of an ABLE account, obtain evidence that contains the following information:

- 20330.2.1.2.1 The name of the designated beneficiary;
- 20330.2.1.2.2 The State [or consortium] ABLE program that is administering the account;
- 20330.2.1.2.3 The name of the person who has signature authority (if different from the designated beneficiary);

20330.2.1.2.4 The unique account number assigned by the State to the ABLÉ account;

20330.2.1.2.5 The account opened date; and

20330.2.1.2.6 The first-of-the-month account balance or information sufficient to derive a first-of-the-month balance.

If the available evidence does not provide this information, contact the appropriate ABLÉ program to obtain it.

20330.2.1.3 ABLÉ Account Contributions

ABLÉ account funds must be excluded from the countable resource computation when determining the designated beneficiary's eligibility. This includes rollovers from a family member's ABLÉ account to a recipient's ABLÉ account.

Contributions made to an ABLÉ account by persons other than the designated beneficiary shall not be excluded from the countable income of the person who makes the contribution. The fact that a person uses ~~their~~ the person's] own income to contribute to an ABLÉ account does not mean that income is not countable for Medicaid purposes.

20330.2.1.4 ABLÉ Account Earnings

The funds in an ABLÉ account are invested and can accrue interest, earn dividends, and otherwise appreciate in value. Such earnings increase the account's balance. Exclude any earnings an ABLÉ account receives from the countable resource computation when determining the designated beneficiary's eligibility.

20330.2.1.5 ABLÉ Account Balance

Exclude the balance of a designated beneficiary's ABLÉ account from ~~their~~ the beneficiary's] countable resource computation when determining the designated beneficiary's eligibility.

20330.2.1.6 ABLÉ Account Distributions

A distribution from an ABLÉ account is not considered income but rather a conversion of a resource from one form to another. Distributions are evaluated based on the criteria below, to determine if they are to be excluded from the designated beneficiary's countable resources.

20330.2.1.6.1 Exclusion of Retained Distributions for Non-Housing Qualified Disability Expenses (QDE)

Distributions for QDEs not related to housing should be excluded as a resource if retained beyond the month received. This exclusion applies for as long as:

20330.2.1.6.1.1 The designated beneficiary maintains, makes contributions to, or receives distributions from the ABLÉ account.

20330.2.1.6.1.2 The distribution is unspent; and

20330.2.1.6.1.3 The distribution is identifiable.

(NOTE: Excludable funds commingled with non-excludable funds must be identifiable in order to be excluded.)

20330.2.1.6.2 Retained Distributions for Housing-Related Qualified Disability Expenses (QDE) or Expenses That Are Not QDEs

Distributions from a designated beneficiary's ABLÉ account for housing-related QDEs or for expenses that are not QDEs that are retained into the month following the month of receipt are countable as a resource. If the distribution is spent within the month of receipt it has no effect on eligibility.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Medical Care and Other Types of Remedial Care - Behavioral Interventions to Treat Autism Spectrum Disorder

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding Medical Care and Other Types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder*. 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 July 2016 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 1, 2016 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance is proposing to amend the Title XIX Medicaid State Plan regarding Medical Care and Other Types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder*.

Statutory Authority

- §1905 of the Social Security Act (a)(4)(B), *Early and Periodic Screening, Diagnostic, and Treatment Services*
- §1905 of the Social Security Act (a)(6), *Remedial Care and any other type of remedial care (services of other licensed practitioners)*
- §1905 of the Social Security Act (a)(13)(c), *Preventive services*
- §1905 of the Social Security Act (r)(5), *Other necessary health care, diagnostic service, and other measures as described in section 1905(a)*
- 42 CFR §440.60(a), *Medical or other remedial care provided by licensed practitioners*
- 42 CFR §440.130(c), *Diagnostic, screening, preventive, and rehabilitative services*
- 42 CFR §447.205, *Public notice of changes in statewide methods and standards for setting payment rates*

Background

Autism Spectrum Disorder (ASD) is a developmental disorder that can cause significant social, communication, and behavioral challenges. A diagnosis of ASD now includes several conditions that used to be diagnosed separately: autistic disorder, pervasive developmental disorder not otherwise specified (PDD-NOS), and Asperger’s syndrome. These conditions are now all called Autism Spectrum Disorder.

Treatments for children with ASD can improve physical and mental development. Generally these treatments can be categorized in four categories: 1) behavioral and communication approaches; 2) dietary approaches; 3) medications; and 4) complementary and alternative medicine.

The federal Medicaid program may reimburse for services to address ASD through a variety of authorities. Services can be reimbursed through section 1905(a) of the Social Security Act (the Act), section 1915(i) state plan Home and Community-Based Services, section 1915(c) Home and Community-Based Services (HCBS) waiver

programs, and section 1115 research and demonstration programs.

State Plan Authorities

Under the Medicaid state plan, services to address ASD may be covered under several different section 1905(a) benefit categories. Those categories include: section 1905(a)(6) - services of other licensed practitioners; section 1905(a)(13)(c) - preventive services; and section 1905(a)(10) - therapy services. States electing these services may need to update the Medicaid State Plan in order to ensure federal financial participation (FFP) is available for expenditures for these services. In addition, for children, as discussed below, states must cover services that could otherwise be covered at state option under these categories consistent with the provisions at 1905(a)(4)(B) for Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT). The following information briefly describes these coverage categories for services to address ASD. Under these section 1905(a) benefit categories, all other state Medicaid plan requirements such as state-wideness and comparability must also be met.

1) Other Licensed Practitioner Services

Other Licensed Practitioner services, defined at 42 CFR 440.60(a), are “medical or remedial care or services, other than physicians’ services, provided by licensed practitioners within the scope of practice as defined under State law.” If a state licenses practitioners who furnish services to address ASD, the state may elect to cover those providers under this section of their state plan even if the providers are not covered under other sections of the plan (e.g., physical therapist, occupational therapist, etc.). A state would need to submit a state plan amendment (SPA) to add the new licensed provider to their Medicaid plan. The SPA must describe the provider’s qualifications and include a reimbursement methodology for paying the provider.

2) Preventive Services

Preventive Services, defined at 42 CFR 440.130(c) are “services recommended by a physician or other licensed practitioner of the healing arts within the scope of his practice under state law to—

- Prevent disease, disability, and other health conditions or their progression;
- Prolong life; and
- Promote physical and mental health and efficiency.”

A regulatory change that took effect January 1, 2014, permits coverage of preventive services furnished by non-licensed practitioners who meet the qualifications set by the state, to furnish services under this state plan benefit as long as the services are recommended by a physician or other licensed practitioner. Under the preventive services benefit, in the state plan, the state must 1) list the services to be provided to ensure that services meet the definition of preventive services as stated in section 4385 of the State Medicaid Manual (including the requirement for the service to involve direct patient care); 2) identify the type(s) of non-licensed practitioners who may furnish the services; and 3) include a summary of the state’s provider qualifications that make these practitioners qualified to furnish the services, including any required education, training, experience, credentialing, supervision, oversight and/ or registration.

3) Therapy Services

Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, may be covered under the Medicaid therapies benefit at 42 CFR 440.110. Physical and occupational therapy must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of his/ her practice under state law and provided to a beneficiary by or under the direction of a qualified therapist. Services for individuals with speech, hearing, and language disorders include diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law.

Summary of Proposal

Purpose

Effective October 1, 2016 Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) proposes to adopt provisions to establish coverage and reimbursement methodologies for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder pursuant to 42 CFR §440.60(a) and 42 CFR 440.130(c).

DMMA published a proposed regulation in the April 2016 Delaware Register. Due to the extensive comments received, and subsequent changes to the proposed regulation, DMMA chose to re-publish this rule as proposed in

the July 2016 Delaware *Register*.

The purpose of this proposal is to establish service descriptions, provider qualifications and reimbursement methodologies in the Medicaid State Plan for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the agency’s decision to establish coverage and reimbursement for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder. Comments were to be received by 4:30 p.m. on August 1, 2016.

CMS Review and Approval

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

Provider Manual Update

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. Provider billing guidelines or instructions to incorporate any new requirement may also be issued. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact

The following represents the potential increase in expenditures with the increased level of treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder effective October 1, 2016.

The following fiscal impact is projected:

	Federal Fiscal Year 2016 (1)	Federal Fiscal Year 2017
General (State) funds	\$ 301,710	\$ 1,223,105
Federal funds	\$ 450,120	\$ 1,784,218

(1) Represents July – September 2016 only

Summary of Comments Received with Agency Response

Comments were received from multiple parties. The Governor’s Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

First, councils question the change in wording from “services to treat Autism Spectrum Disorder” to “**behavioral** interventions” because you believe that the revised wording is more limiting in scope. Councils also indicated that ASD treatment is not limited to modification of behavior.

Agency Response: It was not DMMA’s intention to limit the scope of ASD services by using the words “behavioral interventions,” but we can understand why this language may appear to be more limiting. Accordingly, DMMA has changed the reference to “interventions” to “services” or “assessments and services” where appropriate. Council is correct that ASD treatment is not limited to modification of behavior. However, it was the intent of this SPA to establish and clarify coverage of behavioral services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of ASD. These services addressing behaviors have not heretofore been well articulated in the State Plan, and have been added to augment, not replace, other services already covered

under the State Plan. The practitioner types enumerated in the proposed regulation are consistent with the delivery of behavioral health services. However, non-behavioral ASD treatment services, such as therapies, physician services, and other licensed practitioner services are already, and continue to be, covered under other sections of the Medicaid State Plan.

Second, councils objected to language in the Plan that the councils believe confers unilateral control over caregiver participation in the implementation of a treatment plan to a “practitioner”. Councils proposed alternative language that indicates a more collaborative approach to determining the level of caregiver participation.

Agency Response: DMMA acknowledges this comment and has adopted the alternative language proposed. Page 6 Addendum 1e of Attachment 3.1-A, (c) ASD Treatment Services, (12) now reads:

“Include recommendations for training, support, and participation of the parent/guardian, and other persons chosen by the child as appropriate, to benefit the Medicaid eligible child, as described in the treatment plan. The expected level of participation of all caregivers shall be included in the Behavior Support Plan or ABA Treatment Plan. This participation also acts as training of the caregiver for the benefit of the child and enables the caregiver to be able to reinforce the services for the child in a clinically effective manner.”

Third, councils pointed out a grammatical error on page 20 of the proposed regulation.

Agency Response: DMMA has made this correction.

The Delaware Academy of Physician Assistants (DAPA) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

Although physician assistants are listed as licensed practitioners able to provide the initial medical/physical evaluation, they were not included under Qualified Providers or under practitioners able to prescribe Behavior Modifying Medication. DAPA feels that physician assistants should be included in these sections and recommends that these sections be revised as follows:

Page 6 Addendum 1f of Attachment 3.1-A: Qualified Providers, (a.) Licensed Practitioners,

(1.) The following qualified licensed practitioners under Delaware or other State regulation are licensed by the state and may provide ASD services without any other certification: Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), advanced practice nurses (APNS), medical doctors (MD and DO), physician assistants, psychiatrists and psychologists or their assistants. Psychological assistants may only practice under the supervision of a licensed practitioner.

Page 6 Addendum 1 of Attachment 3.1-A, (2.) ASD Treatment Services, (b.) Prohibited practices in the treatment of ASD include:

(6.) The use of Behavior Modifying Medications without a formal assessment and diagnosis of a corresponding mental health disorder by physician or advance practice nurse or a physician assistant.

It is within the education and training of a PA to diagnose autism and refer patients appropriately or supervise needed services. If you have any questions or believe, for some reason that PAs should not be included in this regulation we would welcome the opportunity for a further discussion.

Agency Response: DMMA has added the suggested language to Page 6 Addendum 1f of Attachment 3.1-A: Qualified Providers, (a.) Licensed Practitioners, to read:

(1.) The following qualified licensed practitioners under Delaware or other State regulation are licensed by the state and may provide ASD services without any other certification: Licensed Clinical Social Workers (LCSWs), Licensed Professional Counselors of Mental Health (LPCMH), advanced practice nurses (APNS), medical doctors (MD and DO), physician assistants, psychiatrists and psychologists or their assistants. Psychological assistants may only practice under the supervision of a licensed practitioner.

DMMA has also revised the language on Page 6 Addendum 1 of Attachment 3.1-A, under (2.) ASD Treatment Services, (b.) Prohibited practices in the treatment of ASD include, with a small change from the language suggested by the Delaware Academy of Physician Assistants to read:

(6.) The use of Behavior Modifying Medications without a formal assessment and diagnosis of a corresponding mental health disorder by physician, advance practice nurse, or a physician assistant with

prescriptive authority.

Autism Delaware offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

Autism Delaware expressed confusion over whether the language implied that a medical evaluation to establish a diagnosis of ASD must be performed every year or must only be done once. You recommended adding language to clarify that the diagnosis of ASD only needed to be established once.

Agency Response: DMMA has added language at the end of the paragraph in question clarifying that a diagnosis of ASD only needs to be established once. There is no expectation of an annual evaluation to reaffirm the diagnosis.

Autism Delaware requested clarification regarding whether the requirement for a medical/physical evaluation to establish a diagnosis of ASD stands alone or whether there is a requirement for another kind of evaluation.

Agency Response: In response to the language originally published in the April 2016 Register, several commenters questioned whether the two separate evaluations, a medical/physical evaluation and a comprehensive diagnostic evaluation that were originally required were both necessary and feasible. As a result, DMMA modified the requirement to require only the medical/physical evaluation. The medical/physical evaluation must use a validated ASD screening tool in order to establish a diagnosis of ASD.

A parent of a child with autism offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

My son, who is currently attending the DAP program for nonverbal Autism, has been receiving Applied Behavioral Analysis (ABA) therapy for 10 years now in order to augment what the team does in school. As a Physical Therapist (PT) myself, I know the importance of follow through. I hired a Board Certified Behavior Analysis (BCBA) several years ago to help me run the program and assist at least 1 time/month. I also hired a team of students at the University of Delaware, who BCBA and I trained. They run the program daily at home after school. It would be beneficial if Medicaid would allow the program to be run in this manner.

Agency Response: You proposed allowing unlicensed practitioners who do not have a certification by the BACB to assist in the implementation of a Behavior Support Plan that would be developed by a practitioner that is qualified to perform that function under the regulation. The regulation, as currently written, requires that all unlicensed practitioners must be certified by the Behavior Analyst Certification Board (BACB) as a Board Certified Behavior Analyst, Board Certified Assistant Behavior Analyst, or Registered Behavior Technician. This is consistent with the current state regulation that requires coverage of ASD services by private insurance carriers doing business in Delaware. This requirement was designed to ensure quality and safety in the provision of ASD services via a standardized certification process. Once implemented, DMMA will monitor the provision of ASD services under the SPA and will determine if the number of qualified providers is sufficient to meet the need.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2016 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Title XIX Medicaid State Plan regarding Medical Care and Other Types of Remedial Care, specifically, *to establish coverage and reimbursement methodologies for treatment services for Medicaid recipients up to twenty-one (21) years of age who have a diagnosis of Autism Spectrum Disorder*, is adopted and shall be final effective October 11, 2016.

Rita M. Landgraf, Secretary, DHSS
September 16, 2016

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

Behavioral Interventions to Treat Autism Spectrum Disorder

FINAL REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

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

Secretary's Order No.: 2016-WH-0030

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*

1301 Regulations Governing Solid Waste

Date of Issuance: September 13, 2016

Effective Date of the Amendment: October 21, 2016

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 1301, *Regulations Governing Solid Waste* ("RGSW"), to wit: *Scrap Tire Facility Management Provisions*. The Department's Division of Waste and Hazardous Substances ("WHS"), Solid and Hazardous Waste Management Section ("SHWMS"), commenced this regulatory development process with Start Action Notice 2016-02 dated March 15, 2016. The Department published its initial proposed regulation Amendments in the April 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on April 25, 2016. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through May 10, 2016.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to Delaware's existing RGSW to enable the Department to (1) address missing operational requirements not in Delaware's existing scrap tire regulations; (2) reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, while still ensuring the environmental risks related to fires and mosquitoes are mitigated; (3) provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming; and (4) provide additional clarification of these regulations to the regulated community.

Upon implementing the scrap tire facility provision effective January 1, 2016, the SHWMS identified several improvements necessary for program implementation and flexibility. Specifically, the Department has identified the benefit of allowing a conditional exclusion for those storing scrap tires in an enclosed trailer. The exclusion would allow those storing scrap tires in an enclosed trailer to be subject to less stringent requirements, including eliminating the need to obtain a permit, while still ensuring the environmental risks related to fires and mosquitoes are mitigated. Additionally, the SHWMS is proposing to reorganize Section 12.7 of the existing regulation related to operational standards, in order to help improve clarity for the regulated community and to require monthly inspections of the scrap tire facility. Lastly, the SHWMS is proposing an exemption from Section 12 of the existing regulation for farmers utilizing scrap tires for beneficial purposes related to farming.

Those affected by these proposed Amendments are the same as those currently regulated under Delaware's current RGSW *Scrap Tire Facility Management Provisions*. There will be no increased cost of doing business for scrap tire facilities, and those facilities implementing enclosed trailer storage will financially and operationally benefit from the promulgation of these proposed regulatory amendments.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on April 25, 2016, at which time the SHWMS provided an exhaustive review of the same, addressing (1) the Department's reasoning for promulgation of these proposed Amendments; (2) the persons affected by these

proposed Amendments; and (3) the particulars of the proposed Amendments, including a thorough discussion of all definitions and processes set forth therein. Members of the public attended the hearing on April 25, 2016, and comment was received by the Department at that time with regard to this proposed regulatory promulgation. It should be noted that all comment received was fully responded to by the Department at the time of the aforementioned hearing, and that no additional comment was received during the initial post-hearing phase of this promulgation. The hearing record formally closed with regard to public comment at close of business on May 10, 2016.

Upon performing its final review of the proposed regulatory amendments subsequent to the hearing record closing as noted above, the Department realized that certain specific deadlines (with regard to the formal implementation of these regulatory requirements) as set forth in the initial proposed regulatory amendments published in April 2016 had already passed. As a result of this review, the decision was made to change the actual implementation deadlines in Section 12.0 from the "date certain" deadlines of June 30, 2016 and September 30, 2016 to read "90 days after the effective date of these regulations" for Section 12.3.1.1, and "180 days after the effective date of these regulations" for Section 12.3.1.2, respectively. This substantive change allows for flexibility with regard to the actual implementation date of these regulations, and enhances the Department's ability to better work with the regulated community to bring affected facilities into compliance with the revised requirements. In the spirit of transparency, the Department deemed these post-hearing edits to be substantive, thus necessitating a re-noticing of the proposed regulation, and a re-publishing of the same for an additional 30 days to allow for public comment. Thus, this proposed regulatory promulgation was re-published in the *Register of Regulations* on August 1, 2016, and comment was accepted through August 31, 2016.

The comment period closed after the aforementioned re-publication of these proposed *revised* regulatory amendments as noted above, with no additional comment having been received by the Department concerning the same. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 9, 2016 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed regulatory Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed *revised* regulatory Amendments to 7 **DE Admin. Code** 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed revised regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to address missing operational requirements not in existing scrap tire regulations, reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, (while still ensuring the environmental risks related to fires and mosquitoes are mitigated), provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming, and provide additional clarification of these regulations to the regulated community.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed *revised* amendments to 7 **DE Admin. Code** 1301, pursuant to 7 **Del.C.** Chapter 60, specifically, at 7 **Del.C.** §6040(b);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.**, Chapter 60, to issue an Order adopting these proposed *revised* regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public

hearing held on April 25, 2016, and held the record open through close of business on May 10, 2016, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Due to substantive changes made to the proposed regulatory language, the Department caused the *revised* proposed regulatory amendments to be re-published in the State of Delaware *Register of Regulations* on August 1, 2016, provided the public with an additional 30 days to comment on the same, and held the record open through close of business on August 31, 2016, in order to consider all public comment on these proposed *revised* regulatory amendments before making any final decision;
5. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
6. Promulgation of the proposed revised regulatory amendments to 7 **DE Admin. Code** 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, will enable the Department's SHWMS to (1) address missing operational requirements not in Delaware's existing scrap tire regulations; (2) reduce compliance and financial burdens posed by the current regulations for those storing tires in an enclosed trailer, while still ensuring the environmental risks related to fires and mosquitoes are mitigated; (3) provide an exemption from Section 12 of the existing regulations for farmers utilizing scrap tires for beneficial purposes related to farming; and (4) provide additional clarification of these regulations to the regulated community;
7. The Department has reviewed these proposed *revised* regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104 (version applicable to all proposed regulations initially submitted to the Delaware Register of Regulations on or after January 1, 2016), and believes these proposed regulatory Amendments to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
8. The Department's proposed *revised* regulatory amendments, as published in the August 1, 2016 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the Delaware *Register of Regulations*; and
9. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1301: *Regulations Governing Solid Waste*, to wit: *Scrap Tire Facility Management Provisions*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 905 (19 DE Reg. 905), and as an Errata in the August 2016 issue of the *Register* at page 82 (20 DE Reg. 82). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at:

1301 Regulations Governing Solid Waste

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

5500 BAIL ENFORCEMENT AGENTS

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

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 6.0 – Training Requirements for Issuance of a License;
- Rule 7.0 – Continuing Education and Training, and
- Rule 8.0 – Apprehension Procedures,

the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to clarify that all training and testing be given by a Board approved facility, and will require a BEA to notify dispatch centers when clearing an address of apprehension attempt.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will clarify that all training and testing be given by a Board approved facility, and will require a BEA to notify dispatch centers when clearing an address of apprehension attempt.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to clarify that all training and testing be given by a Board approved facility, and will require a BEA to notify dispatch centers when clearing an address of apprehension attempt.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be October 11, 2016.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 25th day of August, 2016.

Major Melissa A. Zebley, Chairman
John Yeomans, Director
Rebecca L. Byrd, Esquire
Ms. Robin David

Mr. Michael J. Dellose
Mr. R. Dale Hamilton
Mr. Harry O. Jennings
Mr. Jack McGhee, II

August 25, 2016

***Please note that no changes were made to the regulation as originally proposed and published in the July 2016 issue of the *Register* at page 22 (20 DE Reg. 22). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

5500 Bail Enforcement Agents

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

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

ORDER

1000 Board of Pilot Commissioners

The Delaware Board of Pilot Commissioners pursuant to 23 Del.C. §102(1), proposed to revise Regulation 5.5. The proposed change puts all regulated licensees on notice of the specific required refresher trips for pilots not practicing their profession for any given number of days.

Summary of the Evidence and Information Submitted

Following publication in the Delaware *Register of Regulations* on April 1, 2016 a public hearing was held on May 20, 2016. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. No written comments were received and no public comments were made during the public hearing. At the public hearing, the Board marked as Exhibit 1 certifications of publication of the notice of public hearing, that ran in the *Delaware News Journal* and the *Delaware State News*.

Summary of the Findings of Fact

Pursuant to discussions held at open public Board meetings, the Board, pursuant to 23 Del.C. §102(1), proposed to revise regulation 5.5 to specify the exact number and nature of refresher trips that will be required for a Pilot who has not actively practiced for a given period of time. The nature and number of refresher trips correlates directly to the amount of time a Pilot has been out of practice. By specifying the number and nature of trips required, licensees can more quickly return to active practice without having to wait for the Board to rule on what will be required. Any pilot out of practice for 180 or more will still have to address the Board for a specific refresher plan, tailored to the specific facts pertinent to the that Pilot.

Decision of the Board

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

IT IS SO ORDERED this 19th day of August, 2016 by the Delaware Board of Pilot Commissioners

Bradford Schell, President, Professional Member
Mark Reardon, Vice President, Public Member
Penelope Marshall, Secretary/Treasurer,
Public Member (absent)
Stephen McGuinness, Professional Member

Joseph Morrissey, Professional Member
Maia Murphy, Public Member
Laura Phillips, Public Member

*Please note that no changes were made to the regulation as originally proposed and published in the April 2016 issue of the *Register* at page 913 (19 DE Reg. 913). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1000 Board of Pilot Commissioners

DIVISION OF PROFESSIONAL REGULATION

1900 BOARD OF NURSING

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

ORDER

1900 Board of Nursing

The Delaware Board of Nursing pursuant to 24 **Del.C.** §1904(c), proposed to revise Regulations 8.0, *et. seq.* The proposed changes update the regulations to reflect the current terminology from advanced practice nurse to advanced practice registered nurse and seek to bring the nursing regulations into line with a recent statutory change addressing advanced practice registered nurses' collaborative agreements, prescriptive authority, and independent practice.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on June 1, 2016 a public hearing was held on July 13, 2016. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence, marked and considered the following as the Board's Exhibits:

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

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

Board Exhibit 3 – June 6, 2016 email from Dr. Kathleen Riley-Lawless in regard to Regulation 8.9.1.1 regarding the required education level for nurse practitioners;

Board Exhibit 4 – July 21, 2016 correspondence from Mr. Dan Holleran of the Delaware Association of Nurse Anesthetists (DANA) regarding the definition of post-basic education programs; use of the abbreviation NP versus CNP; and the elimination of the inclusion of dentists as collaborators;

Board Exhibit 5 – July 13, 2016 email from Dr. Ron Castaldo, a DANA member echoing the concerns of the official July 21, 2016 DANA letter;

Board Exhibit 6 – July 28, 2016 email from Sharon Baptiste-Brown, a Delaware licensed APRN, regarding the metrics, benchmarks, and competencies; the requirement of new APRN graduates to maintain a collaborative agreement if seeking independent practice; and the description of a healthcare delivery system;

Board Exhibit 7 – July 22, 2016 email and letter from Veronica Wilbur, president of the Delaware Coalition for Nurse Practitioners (DCNP), regarding the potentially restrictive nature of the metrics, benchmarks, and competencies;

Board Exhibit 8 – July 8, 2016 letter from Elizabeth Shusherba of the American College of Nurse-

Midwives speaking to the lack of congruence between Delaware's newly enacted statutory provisions regarding APRNs and the recommended national standards; expressing agreement with the recommended competencies, benchmarks, and metrics; and requesting that a reference to the "ACNM Certification Council, Inc." in Regulations be changed to the new name, the "American Midwifery Certification Board (AMCB)."

At the time of the public hearing on July 13, 2016, Dr. Karen McDonald, a NICU APRN who has been involved with APRN legislation on national level is very in favor of this proposal as she believes it is good for the profession. She further stated that some of the people opposed to the new statute and regulations do not understand the changes.

In addition, Angeline Dewey, a CNS at Bayhealth stated that the legislation will greatly help the profession and allow for better patient care, such as consults, wound care, etc., and will help return patients to their homes more quickly.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The public comments from DANA and Dr. Riley-addressed the regulations references to "post-basic education" in the definition section of the regulations and Regulation 8.11.2. Insofar as the proposed regulations published in June did not include any changes to these enumerated regulations, the Board did not find that DANA's comments were a basis to change the current proposed regulatory amendments.

3. The public comments from DANA further noted that the statutory abbreviation for certified nurse practitioners is "CNP" and not "NP" as indicated in the definition section at Regulation 8.4

4. As such, the Board found that this inconsistency noted by DANA was a technical error that should be corrected via this Order pursuant to 29 *Del. C.* § 10113(b)(4). See *Council 81, American Federation of State, County and Municipal Employees, Afl-Cio, v. State Personnel Commission*, 1989 WL 100473 (Del.Super. Aug. 3, 1989). To that end, the definition of certified nurse practitioner at regulation 8.4 currently states the following:

"Nurse Practitioner (N.P.)" A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master's program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women's health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing"

but will be changed to state "CNP" so as to correct a technical error.

5. Finally, DANA's written comment argues that removing dentists from the list of approved collaborators creates a significant limitation for CRNAs as CRNAs are currently included in the Board of Dentistry and Dental Hygiene's regulations pertaining to anesthesia administration.

6. The Board disagreed with this comment, noting that dentists utilize CRNAs to administer anesthesia on their behalf, not to act as mentors or overseers of CRNAs. More importantly the Board noted that dentists and oral surgeons do not practice in the same role and population focus as a CRNAs as required under the statute; therefore, the Board voted not to undo the deletion of dentists as collaborators from the proposed regulations.

7. The Board next considered the written public comments from Sharon Baptiste-Brown in which Ms. Baptiste-Brown argued that the competencies, benchmarks, and metrics proposed by the Board are unduly burdensome. Ms. Baptiste-Brown stated that requiring APRNs and collaborators to review 10% of the APRNs cases would be overly onerous and take time away from the providers that should be spent on patient care and that requiring the nurse and collaborator to ultimately agree upon 95% of those cases provides the collaborator with too much control and liability in the process. Ms. Baptiste-Brown asked the Board to consider scenarios in which the collaborator and nurse would choose different treatment plans, both of which may be in the best interest of the patient.

8. The Board noted that the proposed regulations do not require the nurse and collaborator to choose the exact same course of action 95% of the time; rather that the collaborator agree that the nurse took a prudent

course of action 95% of the time. The Board further noted that collaborative process could outline how to handle potential disagreements in the learning process such that the underlying principles for collaboration will remain mostly the same.

9. Ms. Baptiste-Brown additionally sought clarification as to Regulations 8.12.3 and 8.17.2.4 as she found them to be in conflict. Specifically, Ms. Baptiste-Brown questioned whether under 8.12.3, an APRN must maintain a collaborative agreement until applying for independent practice, or whether under 8.17.2.4 there can be a break in time between when an APRN holds a collaborative agreement and when the nurse applies for independent practice.

10. The Board found Ms. Baptiste-Brown's comments helpful in pointing out an area ripe for clarification, but noted that Regulation 8.12.3 only applies to new APRN graduates, such that only those nurses who have graduated after July 1, 2015 are required to maintain a collaborative agreement until applying for independent practice. Furthermore, the Board noted that it would revisit this issue following the implementation of the new regulations. Overall, the Board found that it would not be necessary to amend the proposed regulations thus requiring a re-proposal.

11. The Board next considered the written public comments from the DCNP. The Board noted that the organization's comments were similar to Ms. Baptiste-Brown, and the Board's discussion on the potential impact on the regulations pertaining to chart review and collaborator consensus applied to the DCNP comments as well. As such, the Board found that the DCNP comments did not provide a basis to amend the proposed regulations.

12. Finally, the Board noted that the comments from the ACNM spoke to the statute, not the proposed regulatory changes; voiced support for the regulations regarding competencies, benchmarks, and metrics; and requested a technical change that can be addressed through this Order.

13. Pursuant to 24 **Del.C.** §1906(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

14. The proposed changes amend Board's Regulations 8.0 *et. seq.* seek to update the regulations to reflect the current terminology from advanced practice nurse to advanced practice registered nurse and seek to bring the nursing regulations into line with a recent statutory change addressing advanced practice registered nurses' collaborative agreements, prescriptive authority, and independent practice.

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

16. For the reasons stated above, the Board finds no reason to substantively amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the *Delaware Register of Regulations* on October 1, 2016.

IT IS SO ORDERED this 14th day of September, 2016 by the Delaware Board of Nursing.

Pam Tyranski, RN, President (absent)

Kathy L. Bradley, LPN

Madelyn Nellius, Public Member

Megan Williams, DNP

Linda Darling, RN (absent)

George Brown, Public Member

Ronald Castaldo, CRNA (absent)

Valerie Deveraux, RN, Vice President (absent)

Harland Sanders, Jr., Public Member (absent)

Dianne Halpern, RN

Sherry Lambertson, Public Member

Victoria Udealer, RN

David Salati, RN (absent)

Robert Contino, RN

1900 Board of Nursing
(Break in Continuity of Sections)

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Registered Nurse in the State of Delaware

(Break in Continuity Within Section)

8.4 Definitions

(Break in Continuity Within Section)

“Advanced Practice Registered Nurse Role and Population Focus” Advanced practice roles include the C.R.N.A., C.N.M., C.N.S. and **[C.]N.P.** Population foci include: adult/gerontology, family/individual across the lifespan, neonatal, pediatric, psychiatric/mental health, or women’s health/gender related.

(Break in Continuity Within Section)

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ~~[ACNM Certification Council, Inc.]~~ **American Midwifery Certification Board (AMCB)** or other nationally recognized, Board of Nursing approved certifying organization.

(Break in Continuity Within Section)

“[Certified] Nurse Practitioner ([C.]N.P.)” A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The **[C.]NP** designation is received after graduation from a Master’s program or from an accredited post-basic **[C.]NP** certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The **[C.]NP** must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

***Please note that no additional changes were made to the regulation as originally proposed and published in the June 2016 issue of the *Register* at page 1074 (19 DE Reg. 1074). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

1900 Board of Nursing

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);

(5 **Del.C.** §§121(b), 2112, 2210(e), 2741, and 2906(e))

5 **DE Admin. Code** 2101, 2201, 2701 and 2901

ORDER

2101 Operating Regulation

IT IS HEREBY ORDERED, this 7th day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB

286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

2101 Operating Regulation

5 Del.C. §§2102(b) and 2112

Effective Date: December 11, 2014

1.0 Applicability of Chapter

1.1 **5 Del.C.** Ch. 21 applies only to extensions of credit secured by one to four family residential owner-occupied property located in this State intended for personal, family, or household purposes.

1.2 **5 Del.C.** Ch. 21 does not apply to:

1.2.1 mortgage loans secured by any property of 25 acres or more; and

1.2.2 mortgage loans intended for commercial purposes.

2.0 Compliance with Applicable Laws

2.1 All licensees shall comply with **5 Del.C.** Ch. 21, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.

2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations.

2.3 Each licensed office shall maintain, either by paper copy or through electronic access, **5 Del.C.** Ch. 21 and the following regulations:

2.3.1 Regulation 101, Retention of Financial Institution Records;

2.3.2 Regulation 2101, Operating Regulation;

2.3.3 Regulation 2102, Minimum Records;

2.3.4 Regulation 2103, Schedule of Charges;

- 2.3.5 Regulation 2104, Minimum Disclosure and Agreement Requirements;
- 2.3.6 Regulation 2105, Report of Delaware Loan Volume;
- 2.3.7 Regulation 2106, Report of Delaware Assets;
- 2.3.8 Regulation 2107/2208, Guidance on Nontraditional Mortgage Product Risks;
- 2.3.9 Regulation 2108/2209, Statement on Subprime Mortgage Lending; and
- 2.3.10 Regulation 2401, Mortgage Loan Originator Licensing.

3.0 Display of License

~~Each licensed office open to the public shall prominently display its license issued under 5 Del.C. Ch. 21 in clear view of all customers.~~

4.03.0 Loan Closings in the Name of a Licensee

A mortgage loan shall not close in the name of a licensee unless such a closing is required by either a government agency or a government sponsored entity.

5.04.0 Mortgage Loan Originators

- 54.1 Each licensee shall insure that every person who it employs, or is affiliated with it, as a mortgage loan originator, as defined by 5 Del.C. Ch. 24, to provide mortgage loan originator services has complied with all the requirements of that chapter and the regulations issued thereunder.
- 54.2 Each licensee shall promptly notify the Commissioner of the cessation of employment or termination of affiliation of any mortgage loan originator who had been providing residential mortgage loan origination services for the licensee.
- 54.3 The unique identifier, issued by the Nationwide Mortgage Licensing System and Registry, of the applicable mortgage loan originator shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual.
- 54.4 A licensee may use its surety bond under 5 Del.C. Ch. 21 to cover mortgage loan originators who are its employees or exclusive agents if the bond conforms to all requirements of 5 Del.C. §2415 and §12.0 of Regulation 2401.
 - 54.4.1 A licensee's irrevocable letter of credit may not be used to cover mortgage loan originators.
 - 54.4.2 A licensee shall notify the Commissioner in writing of the names of the mortgage loan originators who are covered by its surety bond and of any change in such coverage for those originators.

6.05.0 Advertising

- 65.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 65.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.
- 65.3 A licensee shall not advertise any credit terms that are not actually available.
- 65.4 When a licensee advertises with respect to its services under 5 Del.C. Ch. 21, the advertisement may state that the licensee is licensed by the Delaware State Bank Commissioner to engage in business in this State and may specify the license number and expiration date of the license.

7.06.0 Internet Websites

If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

8.07.0 Reports

Each licensee shall submit to the Nationwide Mortgage Licensing System and Registry such reports of condition at such times, in such form and containing such information as that System shall require.

9-08.0 Information Security

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers related to the business governed by this regulation, including, but not limited to, all application information, account information, and information from any consumer report.

409.0 License Applications

- 409.1 The Nationwide Mortgage Licensing System and Registry, as the multi-state automated licensing system in which the Commissioner is participating pursuant to 5 **Del.C.** §2117, is authorized to act on behalf of the Commissioner to facilitate the application and licensing processes of 5 **Del.C.** Ch. 21, and in that capacity, the System may, with respect to that chapter:
- 409.1.1 process licensing applications;
 - 409.1.2 collect licensing payments;
 - 409.1.3 submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency;
 - 409.1.4 receive information and maintain records regarding applicants and licensees; and
 - 409.1.5 share information it maintains regarding applicants and licensees subject to the System with any other state participating in the System, if that state could have obtained that same information directly from the applicant or licensee under its own law for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to 5 **Del.C.** Ch. 21.
- 409.2 Any person seeking an initial or renewal license to engage in a business that requires a license under 5 **Del.C.** Ch. 21 shall submit the appropriate application and fees to the Commissioner through the Nationwide Mortgage Licensing System and Registry.
- 409.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 409.4 All applications, whether for a main company location or a branch location, must be submitted with the investigation fee of \$250, the annual licensing fee of \$500.00, and the Nationwide Mortgage Licensing System processing fee of \$100 (main company location) or \$20 (branch location) (or such other amount as the System may charge). The Nationwide Mortgage Licensing System processing fee and the investigation fee are non-refundable.
- 409.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 409.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 409.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

4410.0 Examination Fees and Supervisory Assessments

- 4410.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §§122 and 2110. The costs of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 4410.2 The Commissioner shall assess each licensee a supervisory assessment that is due and payable on August 1 each year, in accordance with 5 **Del.C.** §127(b).
- 4410.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §§127(a) and 127(b).

4211.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);
(5 Del.C. §§121(b), 2112, 2210(e), 2741, and 2906(e))
5 DE Admin. Code 2101, 2201, 2701 and 2901

ORDER**2201 Operating Regulation**

IT IS HEREBY ORDERED, this 7th day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB 286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

2201 Operating Regulation (Break in Continuity of Sections)

3.0 Display of License and Payday Loan Notice

- 3.1 ~~Each licensed office open to the public shall prominently display its license issued under 5 Del.C. Ch. 22 in clear view of all customers.~~
- 3.2 Each licensed office open to the public that provides short-term consumer loans as defined in 5 Del.C. §2227 shall also prominently post the following statement in plain view in an area easily accessible to its customers at the entrance to the office: "A payday loan is not intended to meet long-term financial needs."

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

2201 Operating Regulation

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);
(5 Del.C. §§121(b), 2112, 2210(e), 2741, and 2906(e))
5 DE Admin. Code 2101, 2201, 2701 and 2901

ORDER

2701 Operating Regulation

IT IS HEREBY ORDERED, this 7th day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB 286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

2701 Operating Regulation
5 Del.C. §2741
(Break in Continuity of Sections)

2.0 Display of ~~License and~~ Fee Schedule

Each licensed office, including all mobile units, shall prominently display in clear view of all customers:

- ~~2.1~~ its license issued under ~~5 Del.C. Ch. 27~~, and
- ~~2.2~~ the fee schedule set forth in 5 Del.C. §2742.

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

2701 Operating Regulation

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);
(5 Del.C. §§121(b), 2112, 2210(e), 2741, and 2906(e))
5 DE Admin. Code 2101, 2201, 2701 and 2901

ORDER

2901 Operating Regulation

IT IS HEREBY ORDERED, this 7th day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB 286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

2901 Operating Regulation

5 **Del.C.** §2906(e)

Effective Date: December 11, 2014

1.0 Applicability of Chapter

1.1 Lease Contracts. 5 **Del.C.** Ch. 29 applies to a lease contract only when:

1.1.1 The lessee contracts to pay a sum substantially equivalent to, or in excess of, the value of the motor vehicle for the use of the motor vehicle over the lease term;

1.1.2 The lessee is obligated to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract; and

1.1.3 The value for which the motor vehicle is to be sold at the end of the lease term is not paid in a single installment.

1.2 5 **Del.C.** Ch. 29 applies to all motor vehicles meeting the definition of that term in 5 **Del.C.** §2901(1) regardless of whether the intended use is personal or commercial.

2.0 Compliance with Applicable Laws

2.1 All licensees shall comply with 5 **Del.C.** Ch. 29, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.

2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations.

2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 29 and the following regulations:

2.3.1 Regulation 101, Retention of Financial Institution Records.

2.3.2 Regulation 2901, Operating Regulation;

2.3.3 Regulation 2902, Minimum Records;

2.3.4 Regulation 2903, Report of Delaware Loan Volume; and

2.3.5 Regulation 2904, Report of Delaware Assets.

3.0 Display of License

Each licensed office open to the public shall prominently display its license issued under 5 ~~Del.C.~~ Ch. 29 in clear view of all customers.

4.03.0 Security Interest Satisfaction

A licensee shall take all necessary action to discharge, satisfy or release a retained title, lien, or other security interest for a retail installment contract within 30 days of the date that the debt is satisfied or fully performed.

5.04.0 Insurance

54.1 Credit Life and Health Insurance

54.1.1 A licensee may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to Title 18 of the Delaware Code and all applicable Insurance Commissioner Regulations.

54.1.2 Every licensee offering credit life and health insurance whose charges do not conform to those authorized by Title 18 of the Delaware Code shall maintain in each office a copy of a submission to the Insurance Commissioner requesting the non-conforming charge and the Insurance Commissioner's approval of those charges.

54.1.3 Credit life insurance refunds shall be calculated as of the date of death except as permitted by 18 ~~Del.C.~~ §3705(b)(4).

54.1.4 Credit health insurance payments received by a licensee shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue if payment is received after the payment due date.

54.2 A licensee may offer, but not require, only such other insurance products as the State Bank Commissioner may, upon written approval, permit.

54.3 Any licensee may require proof of insurance coverage for any loan secured by a motor vehicle or other collateral. The borrower has the right to submit any existing policy(s) naming the licensee as beneficiary, provided such policy is acceptable to the licensee as to coverage, term and carrier. Upon notification to the licensee of cancellation of any policy, the licensee may place coverage to protect the licensee's interest. The borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. A licensee may, if requested by the borrower, place such insurance coverage as is necessary to protect the licensee's interest at the inception of the loan.

54.4 Any insurance authorized by this regulation, other than the insurance coverage authorized by ~~§5.3~~ §4.3 of this regulation, must be specifically requested by the borrower in writing. This request must be attached to, or part of, the loan application.

6.05.0 Negative Equity Financing

Inclusion of negative equity financing is permissible only if the amount of an existing lien in a credit sales transaction exceeds the value of a trade-in. In a negative equity trade-in transaction where no cash payment is involved, licensees must disclose a zero down-payment. The negative equity must not be disclosed as a negative number for the consumer's down-payment. Any negative equity to be financed under the retail installment sales contract must be disclosed under 5 ~~Del.C.~~ §2907(e)(4), and not 5 ~~Del.C.~~ §2907(e)(2).

7.06.0 Advertising

76.1 A licensee shall not advertise in any way that is false, misleading or deceptive.

76.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.

76.3 A licensee shall not advertise any credit terms that are not available.

8.07.0 Internet Websites

If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

9-98.0 Information Security

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers customer related to the business governed by this regulation, including, but not limited to, all application information, account information, and information from any consumer report.

409.0 Repossession Policy

Each licensee shall comply in all respects with 6 **Del.C.** Article 9, Secured Transactions, Part 6, Default.

4410.0 Examination Fees and Supervisory Assessments

4410.1 The Commissioner may examine licensees pursuant to 5 **Del.C.** §§122 and 2906. The cost of such examinations are assessed in accordance with 5 **Del.C.** §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.

4410.2 The Commissioner shall assess each licensee a supervisory assessment fee, which is due and payable on August 1 of each year, in accordance with 5 **Del.C.** §127(b).

4410.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 **Del.C.** §127(a) and (b).

4211.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

GENERAL NOTICES

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

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

STATEWIDE TRANSITION PLAN HOME AND COMMUNITY-BASED SERVICES SETTINGS TRANSITION PLAN UPDATES

In accordance with the public notice requirements of 42 CFR 441.301(6)(B)(iii), 42 CFR 441.710(3)(iii), and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to the state's plan to comply with new federal regulations governing the settings in which the delivery of services to Medicaid Home and Community-Based Services (HCBS) waiver recipients may be provided.

Purpose

The purpose of this posting is to provide public notice and elicit public input for consideration regarding Delaware Medicaid's Proposed Home and Community-Based Services (HCBS) Settings Statewide Transition Plan (the Plan), specifically the Plan updates.

Overview

The Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register (42 CFR 441.301(c)(4)-(6) on January 16, 2014, effective March 17, 2014, which changed the definition of Home and Community-Based Services (HCBS) settings. Because Delaware's 1115 Demonstration refers to the 1915(c) authority for HCBS services, the state must comply with these regulatory changes. Delaware does not have a 1915(k) waiver. The Plan must describe the process by which the state will ensure that service settings used in each of its home and community-based waivers meet "community-like" expectations. The final rule provides for a five-year transition process that will allow states to implement this rule in a manner that supports continuity of services for Medicaid recipients and minimizes disruptions in service during implementation; as such, all such services must be in compliance with CMS requirements before March 2019.

For additional information about the CMS HCBS final rule, use the following link to the CMS website:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>.

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) previously provided an opportunity for comment on Delaware's HCBS Transition Plan.

Transition Plan Update

The Department of Health and Social Services (DHSS) is updating the Delaware Statewide Transition Plan (the Plan) to reflect the current status of implementation activities as of September 2016. We direct you to the following sections of the Plan that contain updated information:

- Amendment to the Statewide Transition Plan including Milestones starting on page 16
- Statewide Transition Plan
- Attachment 6 updated state systemic assessments by settings 7-11-2016;
- DDDS State Self-Assessment Evidence of Compliance
- CMS DE STP Initial Approval Letter (including Attachment I-Summary of Technical Changes Made By State of Delaware to Its Systemic Assessment & Remediation Strategy... and Attachment II-Additional CMS Feedback on Areas Where Improvement Is Needed In Order to Receive Final Approval...)

Moving forward, we plan to update the Plan as needed to reflect the status of implementation activities as they occur.

Draft of Proposed Statewide 1915 HCBS Settings Transition Plan Update

This public notice, the updated Plan, and other related information is posted online at: http://dhss.delaware.gov/dhss/dmma/hcbs_trans_plan.html. Delaware will be submitting its updated Plan to CMS by November 18, 2016.

Hard copies are available by contacting Lauren Gunton at lauren.gunton@state.de.us.

Hard copies are available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 a.m. – 4:30 p.m.

Public Hearings

DHSS/DMMA will provide the following opportunities to the public to provide input on the proposed (HCBS) Settings Transition Plan Updates in person. Three (3) public hearings are scheduled. The detailed information for each public hearing is shown below.

1. **NEW CASTLE COUNTY**

Monday, October 24, 2016

12:00pm – 2:00pm

Delaware State Police

Troop 2

Robert Paris Community Room

100 Lagrange Avenue

Newark, Delaware 19702

Phone: 302-834-2620 - main line

(Visitor parking is in the front of the building)

2. **Sussex County**

Tuesday, October 25, 2016

9:30am-11:30pm

Thurman Adams State Service Center

(Formerly, Georgetown State Service Center)

546 South Bedford Street

Georgetown, Delaware 19947

Phone: 302-856-5211 or 302-856-5574

(Visitor parking is designated by signs and is close to the entrance of the building)

3. **Kent County**

Tuesday, October 25, 2016

1:30pm – 3:30pm

Delaware Department of Transportation

Administration Center

800 Bay Road

Dover, Delaware 19901

Phone: 302-760-2000

(Visitor parking is in the front of the building)

The State will take verbal and written comments at the public hearings. The input provided will be summarized and used to formulate Delaware's final statewide transition plan that will be submitted to CMS.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (e.g., sign language or wheelchair accessibility), please call the following contact at least ten (10) days prior to the hearing for arrangements:

Lauren Gunton at (302) 255-9561; lauren.gunton@state.de.us

The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance.

Public Comment Submission Process

As required by 42 CFR Part 441.301, DHSS/DMMA must provide, at a minimum, a thirty-day public notice and comment period. Per Del. Code, Title 29, Ch. 101 §10118(a), the public comment period will be extended to 15 days after the final public hearing. The public is invited to review and comment on the State's proposed Transition Plan Updates. Comments must be received by 4:30 p.m. on November 9, 2016. Comments and input regarding the draft transition plan may be submitted in the following ways:

By email: DMMA_PublicHearing@state.de.us or DHSS_HCBSTransition@state.de.us

By fax: 302-255-4481 to the attention of HCBS Transition Plan Updates

By written comments sent to:

HCBS Transition Plan Updates
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

Please identify in the subject line: Draft Home and Community-Based Services (HCBS) Settings Transition Plan Updates.

The summary of comments, in addition to a summary of modifications made in response to the public comments, will be added to the Delaware's updated HCBS Transition Plan. The state will post on the **DMMA website** (<http://www.dhss.delaware.gov/dhss/dmma/>) a summary of public comments and our responses and, the final updated transition plan with any modifications after the receipt of public comments.

Stephen M. Groff, Director
Division of Medicaid and Medical Assistance
September 14, 2016

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Chapter 25 (16 Del.C. Ch. 25)

Review of Agency Regulations 29 Del.C. §10407

House Bill 147, which was passed by the General Assembly and signed by Governor Markell in 2015 requires executive branch agencies to review their existing regulations to determine whether they should be amended or rescinded. The law requires agencies to solicit public input to identify regulations adopted four years ago or more for possible modification or elimination. **Do you have specific ideas about which regulations that should be modified or eliminated? If so, we want to hear from you.**

NOTICE IS HEREBY GIVEN that the Department of Health and Social Services will be holding public hearings to receive comment on regulations that were adopted or amended before 2012.

A Public Hearing will be held on Thursday, October 20, 2016, at 6:00 pm, at the DPH Office in the Edgehill Shopping Center, 43 S. DuPont Highway Dover, DE 19901.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing (eg: sign language) please call the following contact at least ten (10) days prior to the hearing for arrangements: Cindi Powell at (302) 255-9043.

Written comments can be submitted through October 31, 2016 using the form on the DHSS website: <http://www.dhss.delaware.gov/dhss/> or by sending them to Jamie Mack at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment Startup and Shutdown

1. TITLE OF SIP REVISION:

Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment Startup and Shutdown

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

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise the Delaware SIP to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

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

None.

6. NOTICE OF PUBLIC COMMENT:

There will be a hearing on this proposed SIP revision on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. PREPARED BY:

David Fees September 14, 2016

Revision to Satisfy EPA's State Implementation Plan (SIP) Call Related to Air Emissions During Equipment

Startup and Shutdown**PROPOSED****September 15, 2016****1. Introduction**

On June 12, 2015 the EPA, identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions (80 FR 33840). Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. The seven Delaware regulations are: **7 DE Admin. Code** 1104, 1105, 1108, 1109, 1114, 1124 and 1142.

Delaware does not agree with the EPA for the reasons cited in the comments Delaware made to the EPA docket. Despite this disagreement Delaware is revising the Delaware's SIP to comport with the EPA SIP Call to ensure the State is not subject to punitive CAA sanctions. This document details the revisions Delaware is making to the SIP, and demonstrates that these revisions comport with the EPA's interpretation of the CAA and are consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).

2. SIP Revision and Impact Analysis**2.1 7 DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment

2.1.1 Delaware requests that EPA revise **7 DE Admin. Code** 1104, Particulate Emissions from Fuel Burning Equipment, in the Delaware SIP as follows¹:

4.5 ~~The provisions of this Regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~

2.1 ~~Reserved. No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum two hour average, from any fuel burning equipment.~~

2.2 ~~No person shall cause or allow the emission of particulate matter in excess of 0.3 pound per million BTU heat input, maximum 30-day rolling average, from any fuel burning equipment.~~

2.1.2 Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.

2.2 7 DE Admin. Code 1105, Particulate Emissions from Industrial Process Operations

2.2.1 Delaware requests that EPA revise **7 DE Admin. Code** 1105 Particulate Emissions from Industrial Process Operations, in the Delaware SIP as follows²:

4.7 ~~The provisions of this Regulation shall not apply to the start up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~

-
1. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.5 and 2.1) will be retained and enforced by Delaware through the State regulation.
 2. Along with the new provision (i.e., 2.2) the two provisions that are removed from the SIP (i.e., 1.7 and 2.1) will be retained and enforced by Delaware through the State regulation.

- 2.1 ~~Reserved. No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot.~~
- 2.2 ~~No person shall cause or allow particulate emissions into the atmosphere from any source not provided for in subsequent sections of this Regulation in excess of 0.2 grains per standard cubic foot on a 30-day rolling average basis.~~
- 2.2.2 Impact on attainment and maintenance of NAAQS. This revision provides the opportunity for any subject source to compensate for higher emission rates during startup or shutdown events by operating at corresponding lower rates during normal operations, so long as continuous compliance is demonstrated on a 30-day rolling average basis. This revision does not change the existing continuous emission limit in the SIP, nor will it result in any increase in emissions on a tons per year basis.
- 2.3 **7 DE Admin. Code 1108**, Sulfur Dioxide Emissions from Fuel Burning Equipment. For **7 DE Admin. Code 1108** the provision EPA identified as deficient (i.e., 1.2) was removed from the Regulation under Secretary's Order (2013-A-0021), which was signed on 6/11/2013 and submitted to the EPA as a SIP revision. Since this SIP Call only deals with 1.2 of 1108, and since the revised regulation which does not include 1.2 was submitted to the EPA as a SIP revision, no further action is required under this SIP Call by Delaware relative to **7 DE Admin. Code 1108**.
Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all National Ambient Air Quality Standards (NAAQS).
- 2.4 **7 DE Admin. Code 1109**, Emissions of Sulfur Compounds from Industrial Operations. For **7 DE Admin. Code 1109** Delaware requests that the EPA remove the entire regulation from the Delaware SIP ³.
Delaware believes existing federal requirements like, for example, New Source Performance Standards are adequate to ensure attainment and maintenance of sulfur related NAAQS in Delaware. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the EPA's interpretation of the CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.
- 2.5 **7 DE Admin. Code 1114**, Visible Emissions. For **7 DE Admin. Code 1114** Delaware requests that the EPA remove the entire regulation from the Delaware SIP ⁴.
Delaware believes existing federal requirements like, for example, New Source Performance Standards regulate visible emissions, plus other Delaware SIP regulations that regulate fine particulate matter and fine particulate matter precursors (e.g., 1108 and 1146) are adequate to ensure attainment and maintenance of any particulate related NAAQS in Delaware. Further, there is no quantifiable relationship between visibility emissions and fine particulate matter emissions. Delaware believes that removal of this regulation from the SIP will not result in any increase in emissions on a ton per year basis, and that this revision comports with the EPA's interpretation of CAA and is consistent with the EPA's approach for attainment and maintenance of all NAAQS.
- 2.6 **7 DE Admin. Code 1124**, Control of Volatile Organic Compound Emissions. For **7 DE Admin. Code 1124** Delaware requests that the EPA remove the provision EPA identified as deficient (1.4) from the Delaware SIP as follows:
- 1.4 ~~Reserved. The provisions of this regulation shall not apply to the startup and shutdown of equipment which operates continuously or in an extended steady state when emissions from such~~

3. The regulation will be retained and enforced by Delaware.

4. The regulation will be retained and enforced by Delaware.

GENERAL NOTICES

~~equipment during startup and shutdown are governed by an Operating Permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.~~

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the EPA's interpretation of the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

2.7 **7 DE Admin. Code** 1142, Section 2.0, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries. For **7 DE Admin. Code** 1142 Delaware requests that the EPA remove the provision EPA identified as deficient (2.3.1.6) from the Delaware SIP as follows:

2.3.1.6 ~~Reserved. The standards set out in 2.3 of this regulation shall not apply to the start up and shutdown of equipment when emissions from such equipment during a start up and shutdown are addressed in an operation permit issued pursuant to the provisions of 7 DE Admin. Code 1102.~~

Since the cited provision has been removed from the Delaware Regulation, and because the EPA has indicated the cited provision allows for excess emissions, this revision should be considered as strengthening the SIP and one which comports with the CAA and is consistent with EPA's approach for attainment and maintenance of all NAAQS.

3. Conclusion

Based on the analysis in the previous section of this document, Delaware concludes that this regulatory revision including the identified SIP revision will not have any adverse impact on Delaware's overall efforts for attaining and maintaining all NAAQS. Therefore, this SIP revision and its analysis meet the anti-backsliding provision of CAA Sec. 110(1).

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

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

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

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

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

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

A public hearing was held on November 17, 2015 before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on January 19, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing was originally scheduled for September 20, 2016 but has been rescheduled for November 15, 2016 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be November 30, 2016,

which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

Nature of the Proceedings

A public hearing was held before the Board on November 17, 2015 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 **Del.C.** §10118(a), the written public comment period was held open until December 2, 2015, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on January 19, 2016.

Summary of the Evidence

At the November 17, 2015 hearing, the following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

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

Exhibit 3: October 22, 2015 letter from Robert Overmiller of the Governor's Advisory Council for Exceptional Citizens.

Mr. Overmiller requested a limited exception to Section 10.2.1.2 to permit occasional telepractice sessions with a regular client in the jurisdiction where the client is located.

Exhibit 4: October 28, 2015 letter from Daniese McMullin-Powell of the State Council for Persons with Disabilities.

Ms. McMullin-Powell shared the concerns set forth in Exhibit 3.

Exhibit 5: November 6, 2015 letter from Judith Page, of the American Speech Language Hearing Association.

Ms. Page expressed concern regarding the requirement that the client be located in Delaware. She also commented that Delaware licensees, who may be recognized in their field, would be limited to providing services to clients located in Delaware. Ms. Page made a number of suggestions for inclusion in the proposed rules and regulation: Telepractice services must be equivalent to face-to-face services; licensees must comply with professional standards and must have the knowledge and skill to deliver services by telepractice; the use of technology must be appropriate for each client; include calibration of instruments; assess client's candidacy; provide written notification of the right to refuse services by telepractice; and maintain the confidentiality of records;

Exhibit 6: Undated written comments from the Delaware Speech Hearing Association.

The comments include a request that Section 10.2.1.2 be amended to reflect the client's legal status as a Delaware resident and to include a consultation exemption.

Exhibit 7: November 17, 2015 email and written comments from Illene Courtright.

Ms. Courtright objected to the geographic borders requirement and suggested using instead the legal resident status of the client. She requested an exemption to this requirement for episodic services or informal consultation. Ms. Courtright commented that the informed consent requirement should include the risks and limitations of telepractice.

In addition, testimony was presented, as follows:

Leia Heckman, from the Delaware Speech Hearing Association, addressed the Board regarding her concerns with the proposed regulations. Specifically, Ms. Heckman noted that services provided by telepractice must be equivalent to services face-to-face. Ms. Heckman objected to the requirement that the client must be located in the State of Delaware. This proposed language would limit services for clients who leave the state. Ms. Heckman suggested inclusion of ASHA's model language pertaining to informed consent. Ms. Heckman advised the Board that DSHA supports ASHA's model language, and requested that the Board consider adopting the consultation exemption.

Christine Cook, a Delaware speech/language pathologist, addressed the Board regarding her concerns pertaining to proposed Section 10.2.4.2, which requires that consultations be conducted face-to-face. Ms. Cook stated that the Board had advocated for an increase in access to services. This section will limit access. Clients should be able to consult with out of state providers by telepractice. Ms. Cook requested the elimination of Section 10.2.4.2.

Liesel Looney, an audiologist from the Nemours Children's Hospital, addressed the Board with her concerns pertaining to proposed Section 10.2.4.2. Ms. Looney reported that there is only one audiologist in Kent and Sussex County who is conducting follow-ups for newborns who fail hearing screenings. Due to the shortage, children are not getting subsequent follow-up appointments. Section 10.2.4.2 would prevent the provision of services by telepractice to this population. There is a need for providing remote services to families who live far from the hospital and lack transportation. Children in underserved areas aren't getting infant hearing screenings and timely intervention. The professional should be responsible for assessing appropriate care.

During the 15-day window for submission of additional written comments, as required by 29 **Del.C.** §10118(a), the Board received the following documents, which were marked as Exhibits on January 19, 2016:

Exhibit 8: December 1, 2015 letter from Michael Kurliand of Nemours, Alfred I. DuPont Hospital for Children.

Mr. Kurliand objected to inclusion of Sections 10.2.4.2 and Section 10.2.4.1. These sections require face-to-face meetings for initial evaluation, re-evaluations and scheduled discharges. Mr. Kurliand stated that these Sections will dramatically limit access to care, particularly in underserved southern Delaware. Mr. Kurliand also objected to Section 10.2.1.2, which requires clients to be located within the borders of Delaware. Mr. Kurliand suggested that the proposed rules and regulations be amended to permit a Delaware licensee to follow established patients that are not physically in the state of Delaware.

Exhibit 9: December 1, 2015 letter from Yell Inverso of Nemours, Alfred I. DuPont Hospital for Children.

Ms. Inverso objected to the face-to-face requirements in Section 10.2.4.2. Ms. Inverso stated that this language will limit access to care for many patients, including patients in southern Delaware. Ms. Inverso commented on the impact on audiology services. Due to the limited access to audiology services in southern Delaware, infants are not receiving hearing screenings and recommended follow-up services.

Findings and Conclusions

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

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

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

The Board declined to amend Section 10.2.1. Care occurs where the client is physically located. A licensee who is licensed in Delaware only would be engaging in unlicensed practice if permitted to treat a client who has left Delaware and is located in another state. The Board would have no jurisdiction with respect to care provided in another state. Section 10.2.1 serves the interests of public protection by ensuring that clients located in Delaware receive care from practitioners properly licensed by the Board.

The Board also addressed the benefits and disadvantages regarding Section 10.2.4.2, which requires that all evaluations be done in a face to face setting. The Board recognized the access problem presented by this language, and decided to amend this Section to specify that only initial evaluations must be performed face to face and not through telepractice. The method of treatment for subsequent evaluations will be left to the discretion of the licensed professional.

The Board noted that other concerns voiced by members of the public are addressed in proposed Section 10.0. In the delivery of services by telepractice, the licensee must meet all standards and requirements applicable to onsite care. See Section 10.2.4.3. The licensee who deliver services by telepractice must possess the specialized knowledge and skills needed for the particular technology. See Section 10.2.4.5. The licensee is responsible for determining that telepractice is appropriate for the particular client. See Section 10.2.4.1. The proposed rules and regulations also require that licensees obtain written, informed consent which includes an outline of the risks of telepractice. See Section 10.2.2.

Finally, the Board decided to strike the last sentence of Rule 10.1 as unnecessary.

*Please Note: As the proposed amendments published in the August 2016 issue of the *Register* at page 107 (20 DE Reg. 107) are not being changed, they are not being published. A copy of the text from the proposed amendment is available at:

<http://regulations.delaware.gov/register/august2016/proposed/20 DE Reg 107 08-01-16.htm>

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

DELAWARE STANDARDBRED BREEDERS' FUND

PUBLIC NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 **Del.C.** §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 **Del.C.** §10115. The proposed amended regulation under 4.2 and 9.2 removes the four (4) year old bonus program beginning with the foals of 2018 who would be four (4) year olds in 2022. This is a financial move to keep the "Fund" viable in the future.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by November 1, 2016.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, October 20, 2016 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Target Case Management Services for Individuals with Intellectual and Developmental Disabilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding Targeted Case Management, specifically, *to establish coverage and reimbursement methodologies for targeted case management services for individuals with intellectual disabilities.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Kimberly.Xavier@state.de.us, or by fax to 302-255-4425 by October 31, 2016. Please identify in the subject line: Target Case Management Services.

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4462 Public Drinking Water Systems

Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems (4462). The regulations are being revised to include technical corrections to bring Delaware's regulations into full compliance with the Safe Drinking Water Act. On October 1, 2016, HSP plans to publish as proposed the amended regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the October 1, 2016 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Jamie Mack by Friday, November 11, 2016, at:

Jamie Mack
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: jamie.mack@state.de.us
Phone: (302) 744-4951

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**
DIVISION OF AIR QUALITY
PUBLIC NOTICE

1104 Particulate Emissions from Fuel Burning Equipment

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF AIR QUALITY
PUBLIC NOTICE

1105 Particulate Emissions from Industrial Process Operations

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100

West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF AIR QUALITY**PUBLIC NOTICE****1124 Control of Volatile Organic Compound Emissions**

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF AIR QUALITY**PUBLIC NOTICE****1125 Requirements for Preconstruction Review**

To bring Delaware's table of global warming potentials (GWP), as shown in Table 1-1 under the definition of greenhouse gases (GHG) in Section 1.9 up-to-date with the most current federal rules for calculating the CO₂ equivalent emissions (CO₂e) for regulated major sources emitting GHG. In 2010, the Delaware rule was revised to require GHG permitting consistent with EPA rules which included a method for calculating those emissions based upon GWP. GHG emissions, for the purposes of the federal rule, include the aggregate of six GHG; carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆). The mass of each of these components emitted is multiplied by the EPA determined GWP for each. EPA has added 30 new compounds to the prior list of GHG bringing the total compounds to 62 and revised the GWP of 24 of the original 32.

There will be a public hearing on this proposed amendment on Tuesday October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF AIR QUALITY**PUBLIC NOTICE****1142 Specific Emission Control Requirements**

EPA, in 80 FR 33840 (6/12/2015 - final) identified the State Implementation Plans (SIPs) of 36 states as inadequate because they allegedly allowed unregulated excess emissions. Seven Delaware regulations were cited in this SIP Call because the EPA believes the regulations do not appropriately restrict emissions during start-up or shutdown events. This action is to revise one of the cited Delaware's regulations to comply with the EPA SIP Call and avoid the imposition of federal sanctions.

There will be a hearing on this proposed amendment and the other EPA cited Delaware rules on October 25, 2016 beginning at 6pm in the Dover DAQ offices at State Street Commons, 100 West Water Street, Suite 6A, Dover, DE 19904. Interested parties may submit comments in writing to David Fees, Division of Air Quality, 100

West Water Street, Suite 6A, Dover, DE 19904 and/or statements and testimony may be presented either orally or in writing at the public hearing.

DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE
3500 Tidal Finfish

This action proposes to amend Delaware's tidal finfish regulations pertaining to the recreational and commercial Striped Bass fisheries. The Department removed an unnecessary harvest constraint (slot size limit) on the commercial fishery that resulted in the needless waste of Striped Bass through Emergency Secretary's Order No. 2016-F-0027, pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) (20 DE Reg. 6 (07/01/16)). This action proposes to adopt those measures through the normal regulatory process. In addition, the proposed amendments modify Striped Bass tagging requirements for consistency with the recently adopted 7 **Del.C.** §943. Specifically, the amendments provide for tagging of Striped Bass by commercial harvesters at any time prior to landing and clarify that recreational anglers are not required to tag Striped Bass. Several additional measures are proposed to address tracking, reporting and quota management in the commercial fishery, as noted in Addendum III to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan. Among the measures proposed are: lost tag reporting; application of weigh station tags within 12 hours of landing; and actions to be taken to ensure compliance with commercial reporting and tagging requirements.

The hearing record on the proposed changes to 7 **DE Admin Code** 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit; 3504 Striped Bass Possession Size Limit; Exceptions; and, 3505 Striped Bass Commercial Fishing Season; Quotas; Tagging and Reporting Requirements will be open October 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on October 24, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
PUBLIC NOTICE
103 Family Child Care Homes
104 Large Family Child Care Homes

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Rules for Family Child Care Homes and DELACARE: Rules for Large Family Child Care Homes. These regulations were combined into one regulation after it was determined that the majority of the content was the same. A comprehensive review process was held in which all providers were invited to attend public meetings in July 2016 to offer comments on the current Rules. After these meetings, a draft was created incorporating best practices and provided to a task force of providers and stakeholders. The task force met four times to discuss the draft and revise it.

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 3411 Silverside Road, Concord Plaza, Hagley Building Wilmington, Delaware 19810, by email to Kelly.McDowell@state.de.us, or by using OCCL's website <http://kids.delaware.gov/occl/announcements.shtml>. Anonymous comments may be submitted by using OCCL's website. Comments must be submitted by the close of business on October 31, 2016. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations. Regulations 103 and 104 were stricken in their entirety.

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
PUBLIC NOTICE
201 Child Placing Agencies

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Regulations for Child Placing Agencies. A comprehensive review process was held in which all providers were invited to attend public meetings in July 2016 to offer comments on the current regulations. After these meetings, a draft was created and provided to all of the child placing agencies in Delaware and the Division of Family Services for comment. The draft was revised based on these comments and a task force consisting of child placing agencies and the Division of Family Services met to discuss the revised draft and offer more comments. These proposed regulations reflect those changes.

Interested parties wishing to offer comments on these proposed regulations or submit written suggestions, data, briefs, or other materials concerning the proposed regulations must submit them to Kelly McDowell, Office of Child Care Licensing, 3411 Silverside Road, Concord Plaza, Hagley Building Wilmington, Delaware 19810, by email to Kelly.McDowell@state.de.us, or by using OCCL's website <http://kids.delaware.gov/occl/announcements.shtml>. Anonymous comments may be submitted by using OCCL's website. Comments must be submitted by the close of business on October 31, 2016. It is anticipated that this will be the final opportunity to offer comments on these proposed regulations.

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
PUBLIC NOTICE

3001 Rules for Certification and Regulation of Electric Suppliers

In 1999 the Delaware Public Service Commission ("PSC") has promulgated certain regulations pertaining to certification of electric suppliers in 26 *Del. Admin. C.* §3001, now entitled "Rules for Certification and Regulation of Electric Suppliers ("Supplier Rules"). The PSC has revised the Supplier Rules several times since then.

The PSC now proposes to revise the Supplier Rules again. The purpose of the proposed revisions are to ensure electric choice for customers is more competitive and in compliance with the terms of the settlement agreement entered into by the parties in PSC Docket No. 10-2; to provide additional protection for customers; to require electric suppliers to include additional details regarding the rates, terms, and conditions of service in their offers to customers to provide electric supply services; to clarify sections of the Supplier Rules; and to make the certification process for electric suppliers more uniform.

The PSC is soliciting comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its Supplier Rules. If you wish to file any such materials, you should file them using the Commission's DelaFile docketing and file management system on or before **November 16, 2016**. You may also submit an original and ten copies of such written materials with the PSC on or before **November 16, 2016** at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Regulation Docket No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-ROM or sent as an attachment to an e-mail addressed to psc@state.de.us; include "Reg. Doc. 49" as the subject of the email. The Commission encourages the public to submit written comments on or before **November 16, 2016**.

The PSC will conduct a public hearing on the proposed regulations on **November 1, 2016 at 1:00 P.M.** at the PSC's office at the address set forth above.

You may review PSC Order No. 8937 (September 20, 2016) (the "Order") and the proposed revised Supplier

Rules in the October 2016 issue of the Delaware *Register of Regulations*. You may also review the Order and the proposed revised Supplier Rules by going to DelaFile (<http://delafile.delaware.gov>), the Commission's docketing and file management system, and by searching for REG. 49.

Any materials submitted in connection with the proposed revised Supplier Rules will be available for public inspection and copying (to the extent they are "public records" under the Freedom of Information Act, 29 **Del.C.** §10002(g)) at the PSC's Dover office identified above during normal business hours. The fee for copying is \$.10 per page, after the first 20 pages. If you wish to request copies of documents in this matter, please submit a Freedom of Information Act ("FOIA") Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the FOIA Request Form on the PSC's website, <http://depssc.delaware.gov/default.shtml>. The PSC will respond to your request in accordance with the Freedom of Information Act, 29 *Del.C.* ch. 100. The Regulations may also be reviewed by appointment at the office of the Public Advocate, 820 N. French Street, 4th Floor, Carvel State Office Building, Wilmington, DE 19801, or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2555 to arrange for a time to review the documents at either of those locations. The Regulations will also be available on the PSC's website: <http://depssc.delaware.gov/electric.shtml>.

Any individual with disabilities who wishes to review submissions or to participate in this docket should contact the PSC to discuss any auxiliary aids or services to facilitate such review or participation. Such contact may be in person, in writing, by telephone, e-mail, or by other means.

If you have questions about this matter, you may call the PSC at 1-800-282-8574 (toll-free in Delaware) or 302-736-7500 (voice and text telephone). You may also send questions regarding this matter by e-mail addressed to psc@state.de.us; please include "Reg. Doc. 49" as the subject of the email.

OFFICE OF THE STATE TREASURER

INVESTMENTS AND CASH MANAGEMENT

PUBLIC NOTICE

1201 Objectives and Guidelines for the Investment of State of Delaware Funds

In accordance with the procedures set forth in 29 **Del.C.**, Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Cash Management Policy Board of the State of Delaware is proposing to adopt a regulation on objectives and guidelines for the investment of State funds as described in 29 **Del.C.** §2716. The proposed regulation sets forth the rules governing practices for those investments.

Members of the public may receive a copy of the proposed regulation at no charge by U.S. Mail by writing or calling [need name of person, address, phone and fax numbers. Members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Stephen McVay, at the Office of the State Treasurer, 820 Silver Lake Boulevard, Suite 100, Dover, DE 19904. Written comments must be received on or before October 31, 2016.