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# Delaware Register of Regulations

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Issue Date: OCTOBER 1, 2017

Volume 21 - Issue 4, Pages 253 - 352

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



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

Cover Photo by  
Dolores Michels

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

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103 Delaware Health Care Claims Database Data Collection Regulation..... 21 **DE Reg.** 9 (Prop.)

**DEPARTMENT OF AGRICULTURE****Harness Racing Commission**

502 Delaware Standardbred Breeders' Fund Regulations..... 21 **DE Reg.** 146 (Final)

21 **DE Reg.** 173 (Prop.)

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1201 Nutrient Management Certification Regulations..... 21 **DE Reg.** 10 (Prop.)

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106A Teacher Appraisal Process Delaware Performance Appraisal System  
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107A Specialist Appraisal Process Delaware Performance Appraisal System  
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108A Administrator Appraisal Process Delaware Performance Appraisal System  
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292 Post Secondary Institutions and Degree Granting Institutions of Higher  
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21 **DE Reg.** 208 (Final)

613 Uniform Procedures for Processing Attorney General's Reports..... 21 **DE Reg.** 41 (Final)

728 Graduate Level Salary Increments..... 21 **DE Reg.** 76 (Prop.)

729 School Custodians..... 21 **DE Reg.** 2 (Prop.)

21 **DE Reg.** 209 (Final)

734 District School Board and Charter School Board Member Financial  
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736 Local School District and Charter School Citizen Budget Oversight  
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903 Best Interest Determination Process for School Placement - Students in  
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1009 DIAA High School Interscholastic Athletics..... 21 **DE Reg.** 147 (Final)

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1202 Delaware Teacher Corps Program..... 21 **DE Reg.** 15 (Prop.)

21 **DE Reg.** 219 (Final)

**Professional Standards Board**

1502 Graduate Level Salary Increments..... 21 **DE Reg.** 81 (Prop.)

1505 Standard Certificate..... 21 **DE Reg.** 86 (Prop.)

1511 Issuance and Renewal of Continuing License..... 21 **DE Reg.** 179 (Prop.)

1520 Early Childhood Teacher..... 21 **DE Reg.** 91 (Prop.)

1531 Middle Level English Language Arts Teacher..... 21 **DE Reg.** 93 (Prop.)

1532 Middle Level Mathematics Teacher..... 21 **DE Reg.** 95 (Prop.)

1533 Middle Level Science Teacher..... 21 **DE Reg.** 97 (Prop.)

1534 Middle Level Social Studies Teacher..... 21 **DE Reg.** 99 (Prop.)

1539 Health Education Teacher..... 21 **DE Reg.** 101 (Prop.)

1540 Secondary English Language Arts Teacher.....	21 DE Reg. 103 (Prop.)
1542 Secondary Mathematics Teacher.....	21 DE Reg. 105 (Prop.)
1544 Secondary Social Studies Teacher.....	21 DE Reg. 107 (Prop.)
1550 AgriScience Teacher.....	21 DE Reg. 109 (Prop.)
1551 Business Education Teacher.....	21 DE Reg. 111 (Prop.)
1553 Driver Education and Traffic Safety Education Teacher.....	21 DE Reg. 113 (Prop.)
1554 Family and Consumer Sciences Teacher.....	21 DE Reg. 115 (Prop.)
1555 Marketing Education Teacher.....	21 DE Reg. 117 (Prop.)
1557 Technology Education Teacher.....	21 DE Reg. 119 (Prop.)
1562 Teacher of English Learners.....	21 DE Reg. 121 (Prop.)

**DEPARTMENT OF FINANCE**

**Office of Unclaimed Property, State Escheator**

104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual.....	21 DE Reg. 123 (Prop.)
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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**Delaware Health Care Commission**

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**Division of Long Term Care Residents Protection**

3310 Neighborhood Homes for Persons with Developmental Disabilities.....	21 DE Reg. 229 (Final)
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**Division of Medicaid and Medical Assistance**

Dental Fee Schedule.....	21 DE Reg. 124 (Prop.)
DSSM 30000 Delaware Prescription Assistance Program.....	21 DE Reg. 127 (Prop.)
Inpatient Psychiatric Hospital Services For Individuals Under Age 21.....	21 DE Reg. 187 (Prop.)
Reasonable Limits on Care Expenses.....	21 DE Reg. 185 (Prop.)

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4453 Cosmetology and Barbering.....	21 DE Reg. 190 (Prop.)
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	21 DE Reg. 237 (Final)

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1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers.....	21 DE Reg. 196 (Prop.)
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**Office of the Commissioner**

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1322 Prevailing Wage Regulations.....	21 DE Reg. 22 (Prop.)
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1326 Workplace Fraud Act Regulations.....	21 DE Reg. 23 (Prop.)
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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

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

**PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "racing conditions" thereby allowing additional conditions and more racing opportunities for Delaware horsemen, reference 6.2.2.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on August 2, 2017, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On August 8, 2017, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to a 30-day comment period from October 1 to 31, 2017 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on November 14, 2017 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB October 31, 2017. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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

[http://regulations.delaware.gov/register/october2017/proposed/21 DE Reg 261RFA 10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21%20DE%20Reg%20261RFA%2010-01-17.pdf)

**501 Harness Racing Rules and Regulations  
(Break in Continuity of Sections)****6.0 Types of Races****(Break in Continuity Within Section)**

## 6.2 Overnight Events

# PROPOSED REGULATIONS

*(Break in Continuity Within Section)*

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

*(Break in Continuity Within Section)*

6.2.2.1.8 horse's claiming price in a horse's last one to three previous races specified number of previous races or during a specified period of time;

6.2.2.1.9 horse's purses raced for in a specified number of previous races or during a specified period of time;

~~6.2.2.1.9~~ 6.2.2.1.10 Delaware-owned or bred races as specified in 3 Del.C. §10032; or

~~6.2.2.1.10~~ 6.2.2.1.11 Delaware Owned or Bred Preferred; or

~~6.2.2.1.11~~ 6.2.2.1.12 any one or more combinations of the qualifications herein listed.

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

**501 Harness Racing Rules and Regulations**

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 290

#### PUBLIC NOTICE

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

### 290 Approval of Educator Preparation Programs

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 290 Approval of Educator Preparation Programs. This regulation is being amended to clarify the applications process for new alternative routes to teacher certification programs. In addition, minor formatting changes are made to comply with the Administrative Code drafting manual.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 6, 2017 to Susan K. Haberstroh, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](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 amendments do not 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? 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/october2017/proposed/21\\_DE\\_Reg\\_262RFA\\_10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21_DE_Reg_262RFA_10-01-17.pdf)

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

### **4.0 Program Approval Process**

4.1 Units must submit an application for new Program approval to the Administrator in a format and timeline determined by the Department as outlined in the Guide, to include the following documentation:

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

4.1.2 Documentation that the Program is SPA certified, or documentation of the non-SPA process in Section 5.0 of this regulation;

### **5.0 Program Approval Process Where No SPA is Available**

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

5.5 Review

5.5.1 Upon completion of the application review and any necessary on-site visit, the review team shall complete a report on the proposed Program. The report will contain the Department's determination of approval or disapproval of the proposed Program.

5.5.1.1 Proposed Programs approved by the process in this ~~Section~~ section may continue in the Program approval process as described in Section 4.0.

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

### **7.0 Renewal, Oversight, and Revocation**

7.1 Review

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

7.1.3 Programs which fail to meet the requirements and standards addressed in Section 6.0 above will be placed on probation.

### **8.0 Alternative Routes for Teacher Licensure and Certification Programs**

# PROPOSED REGULATIONS

## *(Break in Continuity Within Section)*

- 8.2 Any individual, public or private educational association, corporation or institution, which is approved by the Secretary of Education to operate an Alternative Routes to Teacher Licensure and Certification Program as set forth in subsection 8.1 above, shall in addition to the provisions of 14 **DE Admin. Code** 1507 and any applicable statute, comply with the following requirements:
- 8.2.1 Applications for approval will be accepted only when the Secretary of Education shall post a ~~Request For Proposals requesting the same~~ request for new program(s). The application process shall be competitive and the Secretary may elect to approve some, all or none of the applications.
- 8.2.2 Approved applicants shall be granted provisional approval and enter into a contract an agreement with the Department, on a form approved by the Department for an initial term of three (3) years, ~~renewable for an additional five (5) years at the discretion of the Department upon an analysis of the ARTC Program, during the final year of the contract, by the Department or by an external ARTC Program assessment entity selected by the Department.~~ Full (non-provisional) program approval may be granted after the submission and approval of data and reporting as noted in Section 6.0 for the first Annual Cohort to Exit the program.
- 8.2.3 Applications shall be responsive to the ~~Request for Proposals~~ application process and, in addition to any other requirements, shall address how the applicant will determine the coursework and experiences leading to its participants' application for certification to the Department, shall include intensive pre-service training, teacher evaluations conducted by school administrators, completion of coursework, and measures of teacher effectiveness based upon student performance data.
- 8.2.4 The Department shall evaluate approved ARTC Programs based upon the terms and conditions of the ~~Request for Proposals~~ program approval and the applicant's ~~contract~~ agreement with the Department.

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

**290 Approval of Educator Preparation Programs**

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## PROFESSIONAL STANDARDS BOARD

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

### PUBLIC NOTICE

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

## 1515 Hearing Procedures and Rules

### A. TYPE OF REGULATORY ACTION REQUESTED

Adopt New Regulation

### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Department of Education ("Department"), seeks the approval of the State Board of Education to adopt 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation concerns the hearing procedures and rules for license denial actions under 14 **Del.C.** §1217 and license disciplinary actions under 14 **Del.C.** §1218.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 31, 2017 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at

the Professional Standards Board's Office, located at the address above.

**C. IMPACT CRITERIA**

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

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

3. Will the new regulation help to ensure all student's health and safety are adequately protected? The new regulation addresses the Board's rules and procedures for hearings, not students' health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses the Board's rules and procedures for hearings, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the new 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/october2017/proposed/21 DE Reg 264RFA 10-01-17.pdf>

**1515 Hearing Procedures and Rules****1.0 Applicability, Construction, and Waiver**

1.1 This regulation shall apply to license denial actions under 14 Del.C. §1217 and license disciplinary actions under 14 Del.C. §1218.

1.2 This regulation shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's authority under 14 Del.C. Ch. 12 and with the Administrative Procedures Act under 29 Del.C. Ch. 101.

1.3 The Standards Board may waive any of the procedures and rules in this regulation upon application or upon its own initiative for good cause and to the extent consistent with the law.

**2.0 Definitions**

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

"Department" means the Delaware Department of Education.

"Executive Director" means the Executive Director of the Delaware Professional Standards Board.

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# PROPOSED REGULATIONS

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"Secretary" means the Secretary of the Delaware Department of Education.

"Standards Board" means the Delaware Professional Standards Board established pursuant to 14 Del.C. §1201 or its designee.

## **3.0 Requests for a Hearing**

- 3.1 A person may request a hearing by mailing or hand-delivering a written request for a hearing to the Executive Director.
  - 3.1.1 Requests shall not be sent by electronic mail, facsimile, or other electronic means.
- 3.2 The request shall:
  - 3.2.1 Be in writing;
  - 3.2.2 Be signed by the person making the request or the person's counsel;
  - 3.2.3 Set forth the grounds for action in reasonable detail;
  - 3.2.4 Identify the source of the Standards Board's authority to decide the matter; and
  - 3.2.5 Provide the person's preferred mailing address, phone number, and e-mail address.
- 3.3 Requests must be submitted to the Executive Director as follows:
  - 3.3.1 For license denial actions, requests must be postmarked or mailed within 20 calendar days from the date that the Department's notice under 14 Del.C. §1217(b) was mailed.
  - 3.3.2 For license disciplinary actions, requests must be submitted within 30 calendar days from the date that the Secretary's notice under 14 Del.C. §1218(k) was mailed.
- 3.4 A copy of the request shall be provided to the Department, in license denial actions, or to the Secretary, in license disciplinary actions.
- 3.5 The Executive Director shall provide the request for a hearing to the Standards Board at its next regularly scheduled meeting.
- 3.6 Upon receipt of a request that meets all of the requirements set forth in subsection 3.2, the Standards Board may decide to conduct the hearing itself or designate a hearing officer from a list of hearing officers approved by the Standards Board to conduct the hearing.
  - 3.6.1 The hearing officer designated shall have the same authority, powers, and duties as the Standards Board for the purpose of conducting the hearing.
- 3.7 The Standards Board may direct the person or agency taking official action to file a written response to the request for a hearing.

## **4.0 Prehearing Procedures and Rules**

- 4.1 Scheduling a Hearing
  - 4.1.1 Generally, hearings are scheduled for 1 full day from 8:30 a.m. to 4:30 p.m.
    - 4.1.1.1 If a party believes that the presentation of the party's case cannot reasonably be accomplished in one half of the allotted time or less, then the party may mail or hand-deliver a written request for additional time to the Executive Director. The request shall specify the reasons for the request. The party shall provide a copy of the request to the other party at the same time.
    - 4.1.1.2 The Standards Board may grant the request upon a showing of good cause.
- 4.2 Notice of the Hearing
  - 4.2.1 Notice of the date, time, and place of the hearing shall be mailed to the parties.
- 4.3 Requests for a Public Hearing
  - 4.3.1 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested.
    - 4.3.1.1 The request must be mailed or hand-delivered to the Executive Director within 5 business days of the receipt of the notice in subsection 4.2. A copy of the request shall be provided to the other party at the same time.
- 4.4 Subpoena Requests

4.4.1 Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing. A copy of the request shall be provided to the other party at the same time.

4.4.1.1 Requests for subpoenas for witnesses shall specify the witness' name and address.

4.4.1.2 Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.

4.4.2 The Standards Board shall issue subpoenas in accordance with the law.

4.4.3 The party requesting a subpoena is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed.

4.4.3.1 Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.

## 4.5 Requests for a Stenographic Reporter

4.5.1 Any party may request the presence of a stenographic reporter at the hearing.

4.5.1.1 The request shall be mailed or hand-delivered to the Executive Director at least 10 business days prior to the date of the hearing. A copy of the request shall be provided to the other party at the same time.

4.5.2 The requesting party shall be liable for the expense of the reporter and any transcript the party requests.

## 4.6 Witness List

4.6.1 A written list of witnesses a party intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to a hearing. A copy of the list shall be mailed to the other party at the same time.

4.6.2 The Standards Board may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

## 4.7 Exchange of Documents

4.7.1 The parties shall exchange documents they intend to introduce at the hearing at least 5 business days prior to the hearing.

4.7.2 The documents shall be labeled "Petitioner" or "Department" and numbered in sequential order (1, 2, 3).

## 4.8 Prehearing Conferences

4.8.1 The Standards Board may hold prehearing conferences and teleconferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes, and to regulate and expedite the course of the hearing.

## 4.9 Continuances, Adjournments, and Postponements

4.9.1 The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of a party or on its or his or her own initiative.

4.9.2 Any request to continue, adjourn, or postpone a proceeding shall be submitted to the Executive Director in writing at least 3 business days before the date scheduled for the hearing. A copy of the request shall also be provided to the other party at the same time.

## **5.0 Hearing Procedures and Rules**

5.1 A verbatim record of the proceedings before the Standards Board will be made either electronically or stenographically, if a party submits a request under subsection 4.5.

5.2 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.

5.2.1 In license denial actions, the applicant is the party with the burden of proof.

5.2.2 In license disciplinary actions, the Department is the party with the burden of proof.

5.3 The Standards Board may permit the parties to present opening and closing statements.

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# PROPOSED REGULATIONS

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- 5.4 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.
  - 5.4.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
  - 5.4.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 **Del.C.** §10125(b).
  - 5.4.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection.
- 5.5 Testimony shall be under oath or affirmation.
  - 5.5.1 The Standards Board may administer oaths to witnesses.
- 5.6 Any person who testifies as a witness shall also be subject to cross examination by the other party and by the Standards Board.
- 5.7 Witnesses may be sequestered upon a party's request.
- 5.8 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.
  - 5.8.1 The party offering the document into evidence shall provide a copy of the document to the other party, the Standards Board, and counsel for the Standards Board.

## **6.0 Post-hearing Rules and Procedures**

- 6.1 The Standards Board may direct the parties to submit post-hearing briefs.
  - 6.1.1 Post-hearing briefs shall be filed as directed by the Standards Board.
- 6.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 **Del.C.** §10126.
- 6.3 The parties shall have 20 calendar days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments, and arguments respecting the proposed order.
  - 6.3.1 The parties may agree to shorten or waive the comment period.
  - 6.3.2 The parties may agree to consent to the hearing officer's proposed order.
    - 6.3.2.1 When the parties consent to the hearing officer's recommendation, they shall send written notice to the Executive Director.
- 6.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the parties.

## **7.0 Other Hearing Rules and Procedures**

- 7.1 Communications
  - 7.1.1 Pursuant to 29 **Del.C.** §10129, no member or employee of the Standards Board assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any person or party, except upon notice to and opportunity for all parties to participate.
    - 7.1.1.1 Subsection 7.1.1 does not apply to communications required for the disposition of ex parte matters authorized by law or to communications by and among members of the Standards Board, the Standards Board's staff, and the Standards Board's counsel.
  - 7.1.2 A copy of any document filed with or submitted to the Standards Board or the hearing officer shall be provided to the other party or the other party's counsel.
  - 7.1.3 Address of the Standards Board and Parties' Contact Information
    - 7.1.3.1 Hand-delivered submissions shall be delivered to the Standards Board at the Townsend Building, 401 Federal Street, 2nd Floor, Dover, Delaware 19901.

7.1.3.2 Mailed submissions shall be delivered to the Standards Board at 401 Federal Street, Suite 2, Dover, Delaware 19901.

7.1.3.3 Parties shall keep the Standards Board informed of their current mailing addresses, phone numbers, and email addresses.

## 7.2 Counsel

7.2.1 Any party to a proceeding before the Standards Board may be represented by counsel.

7.2.2 The attorney representing a party in a proceeding before the Standards Board shall notify the Executive Director of the representation in writing as soon as practical. A copy of the notice shall be provided to the other party at the same time.

7.2.3 Attorneys who are not members of the Delaware Bar may be admitted pro hac vice before the Standards Board pursuant to Rule 72 of the Rules of the Supreme Court of the State of Delaware.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512) 16 DE Admin. Code 20700

### PUBLIC NOTICE

#### Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

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 Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to *clarify internal policy and procedures*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2017. Please identify in the subject line: Division of Developmental Disabilities Services (DDDS) Lifespan Waiver.

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 Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to *clarify internal policy and procedures*.

#### Statutory Authority

- Social Security Act §1915(c), Home and community-based services
- 42 CFR 440.167, Personal care services

#### Background

On May 22, 2017 the Centers for Medicare & Medicaid Services (CMS) approved Delaware's request to amend the DDDS Lifespan Home and Community-Based Services (HCBS) Waiver effective July 1, 2017. The Waiver provides services and supports as an alternative to institutional placement for individuals with intellectual

developmental disabilities (IDD) (including brain injury), autism spectrum disorder or Prader-Willi Syndrome. The description of the waivers target group allows for inclusion of individuals with IDD that are not in immediate need of a waiver residential setting. This allows individuals living in the family home who are receiving DDDS day services to be enrolled in the waiver.

## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to clarify internal policy and procedures regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver.

### *Summary of Proposed Changes*

Effective for services provided on and after July 1, 2017 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding the Developmental Disabilities Services (DDDS) Lifespan 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 on the proposed regulation. Comments must be received by 4:30 p.m. on October 31, 2017.

### *Provider Manuals Update*

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 Delaware Medical Assistance Provider Portal website: <https://medicaid.dhss.delaware.gov/provider>.

## Fiscal Impact

The proposed regulation clarifies practice and procedures currently used by the Division of Medicaid and Medical Assistance and Division of Social Services and therefore will result in no fiscal impact.

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

<http://regulations.delaware.gov/register/october2017/proposed/21 DE Reg 269RFA 10-01-17.pdf>

## Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

### AMENDED

#### 20700.1 Division of Developmental Disabilities Services Lifespan Waiver

1. Only clients of the Division of Developmental Disabilities Services (DDDS) are eligible for this the Lifespan Waiver.

2. Individuals must be medically eligible.

~~Initial and ongoing medical eligibility is determined by DDDS staff. The DDDS Intake Coordinator makes a preliminary determination for each applicant for initial eligibility. Once an individual accepts a residential setting, the DDDS Social Service Benefits Administrator sends all waiver requests to the Division of Medicaid & Medical Assistance Medical Review Team (MRT) for review. Based on the information provided on the comprehensive Medical Report (MAP-25), Social Evaluation Form, Cost Projection Data Sheet and the Level of Care (LOC) form, the MRT will either concur with the initial decision to approve or deny the applicant for an ICF/MR level of care.~~

~~The MRT signs off on all forms sent by the DDDS Social Service Benefits Administrator.~~

3. Individuals must be financially and technically eligible.

If the client is not already Medicaid eligible as an SSI recipient, DDDS submits an application (individuals in residential placements) or referral packet (individuals residing in the family home) to the appropriate ~~Long Term Care~~ DMMA Operations Unit for the financial and technical eligibility determination. The financial and technical Eligibility determination is made by using ~~financial~~ criteria applied to those institutionalized and receiving Long Term Care (LTC) Medicaid.

## AMENDED

### 20720 Patient Pay Calculation

This policy applies to all individuals receiving Medicaid through the Division of Developmental Disabilities Services (DDDS) Lifespan Waiver and the Long Term Care Community Services (LTCCS) Program.

1. The Medicaid recipient's total income will be used in the post eligibility treatment of income. This includes income that is counted for eligibility and income that is excluded for eligibility.
2. Allowable deductions are given based on an individual's circumstances. Not all deductions will apply to all individuals.
3. Any amount of income remaining after allowable deductions is the patient pay amount. This amount must be paid on a monthly basis as indicated below:
  - Individuals receiving Residential Habilitation funded by the DDDS waiver will submit their patient pay amount directly to the provider of Residential Habilitation.
  - Individuals residing in an Assisted Living Facility will submit their patient pay amount directly to the Assisted Living Facility.

The following deductions from the Medicaid recipient's total gross income should be taken in the following order:

## AMENDED

### 20720.1 Daily Living Needs

Individuals receiving Medicaid under the Division of ~~Developmentally Disabled~~ Developmental Disabilities Services (DDDS) Lifespan Waiver who receive Residential Habilitation services are allowed a deduction equal to the current Adult Foster Care (AFC) rate. The AFC rate is based on the current SSI income level plus \$140.00.

Individuals receiving Medicaid under the Long Term Care Community Services program and are residing in an Assisted Living Facility are given a deduction based on the Adult Foster Care rate less an amount payable for room and board.

Individuals receiving Medicaid under the DDDS Lifespan Waiver who reside in the family home or in the Long Term Care Community Services (LTCCS) program are allowed an amount equal to their total income including income that is placed in a Miller Trust.

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## DEPARTMENT OF INSURANCE

### OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and Chapter 50 (18 **Del.C.** §311 & Ch. 50)  
18 **DE Admin. Code** 1801

### PUBLIC NOTICE

### 1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions

#### A. Type of Regulatory Action Required

Proposed Amendment

#### B. Synopsis of Subject Matter of the Regulation

THE DEPARTMENT OF INSURANCE hereby gives notice of a proposed amendment to Department of

Insurance Regulation 1801 relating to reporting forms and instructions for Insurance Holding Company System Regulation.

The purpose of the proposed amendment to Regulation 1801 is to add new subsection 4.5. This new subsection puts filers of reporting forms on notice that any statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 Del.C. Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also making edits to Section 8.0, Definitions, to comport with the Delaware Administrative Code Drafting and Style Manual.

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

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, 1<sup>st</sup> day, November, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
 Attn: Regulatory Docket No. 3607-2017  
 Delaware Department of Insurance  
 841 Silver Lake Drive  
 Dover, 19904  
 (302) 674-7379  
 Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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

<http://regulations.delaware.gov/register/october2017/proposed/21 DE Reg 271RFA 10-01-17.pdf>

## 1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions *(Break in Continuity of Sections)*

### 2.0 Purpose

The purpose of these regulations is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the NAIC Insurance Holding Company System Regulatory Act, 18 Del.C. Ch. 50 of the Insurance Code hereinafter referred to as "the Act." The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.

*(Break in Continuity of Sections)*

### 4.0 Forms - General Requirements

*(Break in Continuity Within Section)*

4.5 No statement shall be considered "filed" pursuant to the Act or this regulation until the Department determines that the statement is complete.

*(Break in Continuity of Sections)*

### 8.0 Definitions

- ~~8.3~~ Unless the context otherwise requires, other with the exception of the terms listed below, terms found in these regulations and in Section 5003 of the Act are used as defined in the Act. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code.
- 8.4 "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- 8.2 "Ultimate controlling person" means that person ~~which~~ who is not controlled by any other person.

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

**1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions**

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## 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 1123

#### REGISTER NOTICE

SAN # 2017-07

#### **1123 Standards of Performance for Steel Plants: Electric Arc Furnaces**

**1. TITLE OF THE REGULATIONS:**

7 DE Admin Code 1123, Standards of Performance for Steel Plants: Electric Arc Furnaces

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

The purpose of this action is to repeal 7 DE Admin Code 1123, pursuant to an HB-147 review. This regulation currently applies to no source in Delaware and other more restrictive State and Federal requirements would apply should a new electric arc furnace be constructed in the future.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. Ch. 60 Environmental Control

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on the proposed repeal will be held on October 25, 2017 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may present oral or written comments regarding the proposed changes at the public hearing, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. The hearing record will remain open until November 9, 2017.

**7. PREPARED BY:**

Renaë Held [Renaë.Held@state.de.us](mailto:Renaë.Held@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/october2017/proposed/21 DE Reg 273RFA 10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21%20DE%20Reg%20273RFA%2010-01-17.pdf)**

#### ~~1123 Standards of Performance for Steel Plants: Electric Arc Furnaces~~

02/01/1984

**1-0 Applicability**

The provisions of this regulation are applicable to existing electric arc furnaces over 100 tons capacity and their associated dust handling equipment in steel plants.

04/18/1983

## 2.0 Definitions

As used in this regulation, all terms not defined herein shall have the meaning given them in 7 ~~Del.C.~~, Ch. 60 and in 7 ~~DE Admin. Code~~ 1101.

**"Capture system"** means the equipment (including ducts, hoods, fans, dampers, etc.) used to capture or transport particulate matter generated by an EAF to the air pollution control device.

**"Charge"** means the addition of iron and steel scrap or other materials into the top of an electric arc furnace.

**"Charging period"** means the time period commencing at the moment an EAF starts to open and ending either three minutes after the EAF roof is returned to its closed position or six minutes after commencement of opening of the roof, whichever is longer.

**"Control device"** means the air pollution control equipment used to remove particulate matter generated by an EAF from the effluent gas stream.

**"Direct shell evacuation system"** means any system that maintains a negative pressure within the EAF above the slag or metal and ducts these emissions to the control device.

**"Dust handling equipment"** means any equipment used to handle particulate matter collected by the control device and located at or near the control device for an EAF subject to this regulation.

**"Electric arc furnace (EAF)"** means any furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. Furnaces from which the molten steel is cast into the shape of finished products, such as in foundry, are not applicable facilities included within the scope of this definition. Furnaces which, as the primary source of iron, continuously feed prerduced ore pellets are not applicable facilities within the scope of this definition.

**"Heat time"** means the period commencing when scrap is charged to an empty EAF and terminating when the EAF tap is completed.

**"Meltdown and refining"** means that phase of the steel production cycle when charge material is melted and undesirable elements are removed from the metal.

**"Meltdown and refining period"** means the time period commencing at the termination of the initial charging period and ending at the initiation of the tapping period, excluding any intermediate charging periods.

**"Shop opacity"** means the arithmetic average of 24 or more opacity observations of emissions from the shop taken from the applicable time periods in accordance with Method 9 set forth in Appendix A, 40 CFR Part 60, revised July 1, 1975. All sections of Method 9 not previously adopted are hereby adopted by reference.

**"Shop"** means the building which houses one or more EAFs.

**"Tap"** means the pouring of molten steel from an EAF.

**"Tapping period"** means the time period commencing at the moment an EAF begins to tilt to pour and ending either three minutes after an EAF returns to an upright position or six minutes after commencing to tilt, whichever is longer.

04/18/1983

## 3.0 Standard for Particulate Matter

- 3.1 No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from an electric arc furnace any gases which:
- 3.1.1 Exit from a control device and contain particulate matter in excess of 12 mg/dscm (0.0052 gr/dscf).
  - 3.1.2 Exit from a control device and exhibit 3% opacity or greater.
  - 3.1.3 Exit from a shop and, due solely to operations of any EAF or EAFs, exhibit greater than zero% shop opacity except:
    - 3.1.3.1 Shop opacity greater than zero%, but less than 20%, may occur during charging periods.

- ~~3.1.3.2 Shop opacity greater than zero%, but less than 40%, may occur during tapping periods for no longer than 13 minutes, with an additional three minute period of less than 10% opacity.~~
- ~~3.1.3.3 Where the capture system is operated such that the roof of the shop is closed during the charge and the tap, and emissions to the atmosphere are prevented until the roof is opened after completion of the charge or tap, the shop opacity standards under paragraph 3.1.3 of this regulation shall apply when the roof is opened and shall continue to apply for the length of time defined by the charging or tapping periods.~~
- ~~3.2 No owner or operator subject to the provisions of 3.0 of this regulation shall cause to be discharged into the atmosphere from dust handling equipment any gases which exhibit 10% opacity or greater.~~

02/01/1981

#### **4.0 Monitoring of Operations**

- ~~4.1 The owner or operator subject to the provisions of this regulation shall maintain records daily of the following information:
  - ~~4.1.1 Time and duration of each charge; all records shall be made available to the Department upon request.~~
  - ~~4.1.2 Time and duration of each tap; all records shall be made available to the Department upon request.~~
  - ~~4.1.3 All flow rate data obtained under 4.2 of this regulation, or equivalent obtained under 4.4 of this regulation; and~~
  - ~~4.1.4 All pressure data obtained under 4.5 of this regulation.~~~~
- ~~4.2 Except as provided under 4.4 of this regulation, the owner or operator subject to the provisions of 4.0 of this regulation shall install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood. The monitoring device or devices may be installed in any appropriate location in the exhaust duct such that reproducible flow rate monitoring will result. The flow rate monitoring device or devices shall have an accuracy of +/- 10% over its normal operating range and shall be calibrated according to the manufacturer's instruction. The Secretary may require the owner or operator to demonstrate the accuracy of monitoring device or devices relative to Methods 1 and 2 of Appendix A, 40 CFR Part 60, revised July 1, 1975.~~
- ~~4.3 When the owner or operator of an EAF is required to demonstrate compliance with the standard under 3.1.3 of this regulation and at any other time the Secretary may require the volumetric flow rate through each separately ducted hood shall be determined during all periods in which the hood is operated for the purpose of capturing emissions from the EAF using the monitoring device under 4.2 of this regulation. The owner or operator may petition the Secretary for reestablishment of these flow rates whenever the owner or operator can demonstrate to the Secretary's satisfaction that the EAF operating conditions upon which the flow rates were previously established are no longer applicable. The flow rates determined during the most recent demonstration of compliance shall be maintained (or may be exceeded) at the appropriate level for each applicable period. Operation at lower flow rates may be considered by the Secretary to be unacceptable operation and maintenance of the applicable facility.~~
- ~~4.4 The owner or operator may petition the Secretary to approve any alternative method that will provide a continuous record of operation of each emission capture system.~~
- ~~4.5 Where emissions during any phase of the heat time are controlled by use of a direct shell evacuation system, the owner or operator shall install, calibrate, and maintain a monitoring device that continuously records the pressure in the free space inside the EAF. The pressure shall be recorded as 15 minute integrated averages. The monitoring device may be installed in any appropriate location in the EAF such that reproducible results will be obtained. The pressure monitoring device shall have an accuracy of +/- 5 mm of water gauge over its normal operating range and shall be calibrated according to the manufacturer's instructions.~~
- ~~4.6 When the owner or operator of an EAF is required to demonstrate compliance with the standard under 3.1.3 of this regulation and at any other time the Secretary may require, the pressure in the free space inside the furnace shall be determined during the meltdown and refining period or periods using the~~

~~monitoring device under 4.5 of this regulation. The owner or operator may petition the Secretary for reestablishment of the 15-minute integrated average pressure whenever the owner or operator can demonstrate to the Secretary's satisfaction that the EAF operating conditions upon which the pressures were previously established are no longer applicable. The pressure determined during the most recent demonstration of compliance shall be maintained at all times the EAF is operating in a meltdown and refining period. Operating at higher pressures may be considered by the Secretary to be unacceptable operation and maintenance of the applicable facility.~~

- ~~4.7 Where the capture system is designed and operated such that all emissions are captured and ducted to a control device, the owner or operator shall not be subject to the requirements of 4.0 of this regulation.~~

~~02/01/1984~~

### ~~5.0 Test Methods and Procedures~~

- ~~5.1 Except as allowed pursuant to 4.4 of this regulation, reference method in Appendix A, 40 CFR Part 60, revised July 1, 1975, shall be used to determine compliance with the standards prescribed under 3.0 of this regulation as follows:~~
- ~~5.1.1 Method 5 for concentration of particulate matter and associated moisture content;~~
  - ~~5.1.2 Method 1 for sample and velocity traverses;~~
  - ~~5.1.3 Method 2 for velocity and volumetric flow rate; and~~
  - ~~5.1.4 Method 3 for gas analysis.~~
- ~~5.2 For Method 5, the sampling time for each run shall be at least four hours. When a single EAF is sampled, the sampling time for each run shall also include an integral number of heats. Shorter sampling times, when necessitated by process variables or other factors, may be approved by the Secretary. The minimum sample volume shall be 4.5 dscm (160 dscf).~~
- ~~5.3 For the purpose of 5.0 of this regulation, the owner or operator shall conduct the demonstration of compliance with 3.1.3 of this regulation and furnish the Secretary a written report of the results of the test.~~
- ~~5.4 During any performance test required by 5.0 of this regulation, no gaseous diluents may be added to the effluent gas stream after the fabric in any pressurized fabric filter collector, unless the amount of dilution is separately determined and considered in the determination of emissions.~~
- ~~5.5 When more than one control device serves the EAF or EAFs being tested, the concentration of particulate matter shall be determined by dividing the total of the particulate matter discharged from each control device, in mg/dscm, by the total of the volumetric flow rates of each effluent gas stream, in dscm/hour.~~
- ~~5.6 Any control device subject to the provisions of 5.0 of this regulation shall be designed and constructed to allow measurement of emissions using applicable test methods and procedures.~~
- ~~5.7 Where emissions from an EAF are combined with emissions from facilities not subject to the provisions of 5.0 of this regulation but controlled by a common capture system and control device, the owner or operator may use any of the following procedures during a performance test:~~
- ~~5.7.1 Base compliance on control of the combined emissions.~~
  - ~~5.7.2 Utilize a method acceptable to the Secretary which compensates for the emissions from the facilities not subject to the provisions of 5.0 of this regulation.~~
  - ~~5.7.3 Any combination of the criteria of 5.7.1 and 5.7.2 of this regulation.~~
- ~~5.8 Where emissions from an EAF are combined with emissions from facilities not subject to the provisions of 5.0 of this regulation, the owner or operator may use any of the following procedures for demonstrating compliance with 3.1.3 of this regulation:~~
- ~~5.8.1 Base compliance on control of the combined emissions.~~
  - ~~5.8.2 Shut down operation of facilities not subject to the provisions of 5.0 of this regulation.~~
  - ~~5.8.3 Any combination of the criteria of 5.8.1 and 5.8.2 of this regulation.~~

## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1136

### REGISTER NOTICE SAN # 2017-10

#### 1136 Acid Rain Program

**1. TITLE OF THE REGULATIONS:**

7 DE Admin Code 1136, Acid Rain Program

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

7 DE Admin Code 1136 adopts the federal acid rain regulations by reference. Pursuant to an HB-147 review DNREC has determined that there have been a number of updates to portions of 40 CFR Parts 72 -78 (Acid Rain Program provisions) that should be adopted. The purpose of this action is to update 7 DE Admin. Code 1136 to adopt the current federal requirements.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. Ch. 60 Environmental Control

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on the proposed amendment will be held on October 25, 2017 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may present oral or written comments regarding the proposed changes at the public hearing, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. The hearing record will remain open until November 9, 2017.

**7. PREPARED BY:**

Renae Held [Renae.Held@state.de.us](mailto:Renae.Held@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/october2017/proposed/21 DE Reg 277RFA 10-01-17.pdf>

#### 1136 Acid Rain Program

09/11/1996 xx/xx/2017

The provisions of Parts 72 through 78, of Title 40 of the Code of Federal Regulations, dated July 1, ~~1995~~ 2017, are hereby incorporated into this regulation by reference. Within this regulation, the term permitting authority shall mean the Secretary of Delaware Department of Natural Resources & Environmental Control.

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# PROPOSED REGULATIONS

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## DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 1140

### REGISTER NOTICE SAN # 2017-09

#### 1140 Delaware Low Emission Vehicle Program

#### 1. TITLE OF THE REGULATIONS:

7 DE Admin Code 1140 Delaware Low Emission Vehicle Program

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

Congress sought to reduce public health impacts due to air pollutants in various sections of the Clean Air Act. Under Subsection 202(a), Congress stipulated that the EPA promulgate standards applicable to the emissions of any pollutant from new motor vehicles or motor vehicle engines that contribute to the endangerment of the public health or welfare. To avoid disruption in the motor vehicle manufacturing industry, Congress prohibited State and local agencies from regulating new motor vehicles or motor vehicle engines under Subsection 209(a). Recognizing that California had been regulating this industry segment prior to March 30, 1966, Congress allowed California to continue adopting new motor vehicle standards, pending the EPA's review and approval of those standards under Subsection 209(b). Under Section 177, Congress allowed States in non-attainment areas to adopt new motor vehicle or motor vehicle engine standards, if such standards are identical to the California standards.

On December 1, 2013, Delaware adopted California's Low Emission Vehicle III standard and the Greenhouse Gas standard into 7 DE Admin Code 1140. On August 30, 2014, Delaware submitted 7 DE Admin Code 1140, requesting the EPA to incorporate this updated version of Delaware's low emission vehicle program into Delaware's State Implementation Plan (SIP). The EPA approved Delaware's low emission vehicle program SIP revision on October 14, 2015. California has subsequently revised 14 sections in those standards that Delaware incorporated by reference on December 1, 2013.

The purpose of this action is to update the adoption by reference of those 14 California sections in 7 DE Admin Code 1140 to ensure that Delaware's standards remained identical to the EPA approved California standards, as mandated in Section 177.

#### 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

#### 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60, Environmental Control

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

None

#### 6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, October 25, 2017 in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway, Dover, DE. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through November 9, 2017, unless a longer period is designated by the hearing officer at the public hearing.

This hearing will be one of four separate hearings being held in succession, beginning at 6:00PM. Persons interested in one or more of the hearings should arrive by 6:00PM, as these changes are expected to be non-controversial and the hearings may progress quickly.

DNREC - Division of Air Quality  
Subject: 1140 Public Hearing 10/25/17  
100 W. Water Street, Suite 6A  
Dover, DE 19904

## 7. PREPARED BY:

Jim Snead (302) 323-4542 [jsnead@state.de.us](mailto:jsnead@state.de.us) September 6, 2017

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

[http://regulations.delaware.gov/register/october2017/proposed/21 DE Reg 278RFA 10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21%20DE%20Reg%20278RFA%2010-01-17.pdf)

## 1140 Delaware Low Emission Vehicle Program (Break in Continuity of Sections)

~~42/41/2013~~ 12/11/17

### 3.0 Definitions

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

#### (Break in Continuity Within Section)

“**Fleet Average Emission**” means a vehicle manufacturer’s average vehicle emissions of all greenhouse gases, non-methane organic gases (NMOG), or NMOG plus oxides of nitrogen (NMOG + NOx), as applicable, from all new vehicles delivered for sale or lease in Delaware in any model-year.

#### (Break in Continuity of Sections)

~~42/41/2013~~ 12/11/17

### 5.0 New Vehicle Emission Requirements

- 5.1 No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck, and medium-duty passenger vehicles, or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:

#### (Break in Continuity of Sections)

~~42/41/2013~~ 12/11/17

### 7.0 Warranty

#### (Break in Continuity Within Section)

- 7.4 Each manufacturer of a vehicle subject to 2.1 of this regulation shall include the emission control system warranty statement that complies with the requirements of Title 13, CCR, Section 2039. Manufacturers may modify this statement as necessary to inform Delaware vehicle owners of the warranty applicability. The manufacturer shall provide a telephone number appropriate for Delaware residents.

#### (Break in Continuity of Sections)

~~42/41/2013~~ 12/11/17

### 10.0 Incorporation by Reference

#### (Break in Continuity Within Section)

- 10.2 The Low Emission Vehicle Program at 7 **DE Admin. Code** 4140, ~~refer 1140 refers~~ to various section sections of Title 13 of the California Code of Regulations (CCR). Wherever 7 **DE Admin. Code** 1140 refers to a specific section of the CCR, the reference is made to that version of the § section as of the section amended date provided for that section in ~~7-DE Admin. Code 4140: Table 40-1~~ Table 1 of this

# PROPOSED REGULATIONS

regulation. The Department hereby incorporates by reference each of the sections of Title 13 CCR that are listed in Table 1 as of such § section's respective ~~Amended Date~~ section amended date.

**(Break in Continuity Within Section)**

**Table 40-4 1**  
**California Code of Regulations (CCR)**  
**Title 13**  
**Provisions Incorporated by Reference**

Title 13, CCR	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices Article 1 General Provisions		
Section 1900	Definitions	<del>As effective December 31, 2012</del> <u>July 25, 2016</u>
Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
Section 1956.8(g) and (h)	Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles	<del>As effective December 31, 2012</del> <u>July 25, 2016</u>
Section 1960.1	Exhaust Emission Standards and Test Procedures – 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	<del>As effective December 31, 2012</del>
Section 1961	Exhaust Emission Standards and Test Procedures – 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<del>As effective December 31, 2012</del>
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles	<del>As effective August 7, 2012</del>
Section 1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<del>As effective December 31, 2012</del> <u>October 8, 2015</u>
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<del>As effective December 31, 2012</del>
Section 1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<del>As effective August 7, 2012</del> <u>October 8, 2015</u>
Section 1968.1	Malfunction and Diagnostic System Requirements – 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<del>As effective November 27, 1999</del>
Section 1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<del>As effective August 7, 2012</del> <u>July 25, 2016</u>
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	<del>As effective August 7, 2012</del> <u>July 25, 2016</u>
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<del>As effective December 31, 2012</del> <u>October 8, 2015</u>

# PROPOSED REGULATIONS

Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	<i>As effective <del>August 7, 2012</del> <u>October 8, 2015</u></i>
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	<i>As effective November 9, 2007</i>
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles; 1979 and Subsequent Model Year Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	<i>As effective <del>May 15, 1999</del> <u>December 5, 2014</u></i>
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>As effective <del>August 7, 2012</del> <u>December 5, 2014</u></i>
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>As effective August 7, 2012</i>
Section 2039	Emission Control System Warranty Statement	<i>As effective December 26, 1990</i>
Section 2040	Vehicle Owner Obligations	<i>As effective December 26, 1990</i>
Section 2041	Mediation; Finding of Warrantable Condition	<i>As effective December 26, 1990</i>
Section 2046	Defective Catalyst	<i>As effective February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing Article 1 Assembly Line Testing		
Section 2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>As effective August 7, 2012</i>
Article 2 Enforcement of New and In-use Vehicle Standards		
Section 2101	Compliance Testing and Inspection – New Vehicle Selection, Evaluation and Enforcement Action	<i>As effective <del>December 8, 2010</del> <u>November 27, 1999</u></i>
Section 2109	New Vehicle Recall Provisions	<i>As effective December 30, 1983</i>
Section 2110	Remedial Action for Assembly-Line Quality Audit Testing of Less than a Full Calendar Quarter of Production Prior to the 2001 Model Year	<i>As effective November 27, 1999</i>
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	<i>As effective December 8, 2010</i>
Section 2112	Definitions	<i>As effective <del>August 7, 2012</del> <u>December 5, 2014</u></i>
Appendix A to Article 2.1		
Section 2113	Initiation and Approval of Voluntary and Influenced Recalls	<i>As effective January 26, 1995</i>
Section 2114	Voluntary and Influenced Recall Plans	<i>As effective November 27, 1999</i>
Section 2115	Eligibility for Repair	<i>As effective January 26, 1995</i>
Section 2127	Notification of Owners	<i>As effective January 26, 1995</i>
Section 2128	Repair Label	<i>As effective January 26, 1995</i>
Section 2129	Proof of Correction Certificate	<i>As effective January 26, 1995</i>

# PROPOSED REGULATIONS

Section 2130	Capture Rates and Alternative Measures	<i>As effective November 27, 1999</i>
Section 2131	Preliminary Tests	<i>As effective January 26, 1995</i>
Section 2132	Communication with Repair Personnel	<i>As effective January 26, 1995</i>
Section 2133	Record keeping and Reporting Requirements	<i>As effective January 26, 1995</i>
Section 2135	Extension of Time	<i>As effective January 26, 1995</i>
Article 2.3 In-Use Vehicle Enforcement Test Procedures		
Section 2136	General Provisions	<i>As effective <del>January 8, 2008</del> December 8, 2010</i>
Section 2137	Vehicle <u>and Engine</u> Selection	<i>As effective December 28, 2000</i>
Section 2138	Restorative Maintenance	<i>As effective November 27, 1999</i>
Section 2139	Testing	<i>As effective <del>August 7, 2012</del> December 5, 2014</i>
Section 2140	Notification of In-Use Results	<i>As effective <del>August 7, 2012</del> December 5, 2014</i>
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	<i>As effective December 8, 2010</i>
Section 2142	Alternative Procedures	<i>As effective February 23, 1990</i>
Section 2143	Failure Levels Triggering Recall	<i>As effective November 27, 1999</i>
Section 2144	Emission Warranty Information Report	<i>As effective November 27, 1999</i>
Section 2145	Field Information Report	<i>As effective August 7, 2012</i>
Section 2146	Emissions Information Report	<i>As effective November 27, 1999</i>
Section 2147	Demonstration of Compliance with Emission Standards	<i>As effective <del>August 7, 2012</del> December 5, 2014</i>
Section 2148	Evaluation of Need for Recall	<i>As effective November 27, 1999</i>
Section 2149	Notification of Subsequent Action	<i>As effective February 23, 1990</i>
Chapter 3 Surveillance Testing		
Section 2150	Assembly-Line Surveillance	<i>As effective December 30, 1983</i>
Section 2151	New Motor Vehicle Dealer Surveillance	<i>As effective December 30, 1983</i>
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	<i>As effective <del>August 7</del> August 8, 2012</i>

~~12/11/2013~~ 12/11/17

## 11.0 Document Availability

Any of the documents incorporated by reference may be obtained either from the Department or from the State of California Office of Administrative Law, 300 Capitol Mall, Suite 1250 Sacramento, California 95814-4339 or at the California Office of Administrative Law website at: <http://www.oal.ca.gov/>.

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

**1140 Delaware Low Emission Vehicle Program**

**DIVISION OF WATER**  
**GROUND WATER DISCHARGES SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)  
7 DE Admin. Code 7102

**REGISTER NOTICE**  
**SAN #2012-21**

**7102 Regulations Governing Underground Injection Control**

**1. TITLE OF THE REGULATION:**

State of Delaware Regulations Governing Underground Injection Control.

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:**

The purpose of the proposed revisions is to bring the regulations into compliance with current federal requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the *Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware Regulations Governing Underground Injection Control is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities. The regulations were published in the May 1, 2017, Delaware *Register of Regulations* and a public hearing was held on May 25, 2017. As a result of additional review and comments received, changes were made to the initial proposed UIC regulations. Since changes were made by the Department subsequent to the hearing record having closed for public comment, the decision was made to republish this revised proposed regulation and to reopen the public comment period for an additional 30 days to provide complete transparency to the public.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Title 7, Delaware Code, Chapter 60, Environmental Control

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

State of Delaware Regulations Governing the Construction and Use of Wells.

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be re-opened October 1, 2017 for a 30-day public comment period ending at the close of business on October 31, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

**7. PREPARED BY:**

Katharyn Potter	Phone: (302) 739-9948
Delaware DNREC	Fax: (302) 739-7764
Ground Water Discharges Section	Email: <a href="mailto:katharyn.potter@state.de.us">katharyn.potter@state.de.us</a>
89 Kings Highway	
Dover, DE 19901	

**\*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/october2017/proposed/21 DE Reg 283RFA 10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21%20DE%20Reg%20283RFA%2010-01-17.pdf)

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# PROPOSED REGULATIONS

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

**7102 Regulations Governing Underground Injection Control**

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF GAMING ENFORCEMENT

Statutory Authority: 29 Delaware Code, Section 4866 (29 Del.C. §4866)

### PUBLIC NOTICE

#### Interactive Fantasy Sports Contests Regulations

The Delaware Division of Gaming Enforcement, pursuant to 29 **Del.C.** §4866, proposes to adopt the following regulations governing the practice of interactive fantasy sports contests in the State of Delaware. The Delaware Interactive Fantasy Contests Act was enacted on July 26, 2017. At that time the Governor designated the Delaware Division of Gaming Enforcement to promulgate regulations to implement the provisions of and effectuate the policy and objectives of the Act. These regulations are comprehensive, and all newly created.

Written comments regarding the proposed regulations should be sent to Gregory Nolt, Director of the Delaware Division of Gaming Enforcement, 655 S. Bay Road, Blue Hen Mall Corporate Center, Suite 1A, Dover, DE 19901. Written comments will be accepted until October 31, 2017 pursuant to 29 **Del.C.** §10118(a).

**\*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/october2017/proposed/21 DE Reg 284RFA 10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21%20DE%20Reg%20284RFA%2010-01-17.pdf)

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

**Interactive Fantasy Sports Contests Regulations**

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## OFFICE OF MANAGEMENT AND BUDGET DIVISION OF FACILITIES MANAGEMENT

Statutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))  
19 **DE Admin. Code** 4104

### PUBLIC NOTICE

#### 4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

In accordance and compliance with the procedures set forth at 29 **Del.C.** §§1131, et seq. and 29 **Del.C.** §§10101, et seq., the Director of the Office of Management and Budget is proposing to amend the following Regulation:

**I. Title of Regulation:**

19 **DE Admin. Code** 4104 (Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects)

<http://regulations.delaware.gov/AdminCode/title19/4000/4100/4104.pdf>

On June 1, 2017 (Volume 20, Issue 12), the Office of Management and Budget (OMB) published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** § 6908(a)(6). It was requested that written materials and suggestions from the public concerning the proposed amendments to 19 **DE Admin. Code** 4104 be delivered to OMB by July 18, 2017, or be presented at a public hearing on June 23, 2017, after which time OMB would review information, factual evidence and public comment to the proposed regulations. Considerable public comment was received by individuals representing the following groups:

- Jake Collins, President, Regulations Solutions Inc.
- Brandi Redrow, President, American Flag Inc.
- Tamara Curran, Vice President of Finance, SC&A Construction

The comments that were received have been considered and resulted in substantive changes to the form and content of the initially proposed amendments to the regulation. In accordance with 29 **Del.C.** §10118(c), the amended regulation is hereby proposed as a newly amended regulation.

Members of the public may receive a copy of the existing regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South  
Dover, DE 19901.

Or by email at: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

## **II. Brief Synopsis of the Subject, Substance, and Issues:**

The current regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that are incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

Proposed amendments to this regulation accomplish the following:

- A) Clarifies that a Contractor or Subcontractor's Program does not need to be Jobsite specific.
- B) Allows for a Contractor or Subcontractor to participate in a Consortium.
- C) Corrects and clarifies substances tested and thresholds.
- D) Increases pre-employment testing requirement from 60 - 180 days.
- E) Clarifies procedures for Accident Triggered Testing.
- F) Decreases the percentage of employees to be randomly tested per month from 10% to 5% for drugs, and from 10% to 2.5% for alcohol.
- G) Removes the requirement that a Contractor or Subcontractor must submit testing forms to the project Owner.
- H) Allows for alternate methods of data review by the Owner in lieu of on site auditing of Contractor/ Subcontractor records.

## **III. Possible Terms of the Agency Action:**

There is no sunset date for this Regulation.

## **IV. Statutory Basis or Legal Authority to Act:**

29 **Del.C.** §6908(a)(6), et seq.

## **V. Other Regulations that May Be Affected by the Proposal:**

None Known.

## **VI. Notice of Public Comment:**

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed new regulations must submit them to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901

Or

Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

no later than the close of business on November 3, 2017.

#### VII. Prepared By:

Robert Scoglietti

Director of Policy and External Affairs

Delaware Office of Management and Budget

**\*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/october2017/proposed/21 DE Reg 284aRFA 10-01-17.pdf](http://regulations.delaware.gov/register/october2017/proposed/21%20DE%20Reg%20284aRFA%2010-01-17.pdf)

### 4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

#### 1.0 Purpose

The Office of Management and Budget ("Office"), has developed these regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds pursuant to 29 **Del.C.** §6908(a)(6). The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

#### 2.0 Definitions

**"Consortium"/"Third Party Administrator" or "(C/TPA)"** means a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the drug and alcohol testing programs of its members.

**"Contractor"** means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for contracts awarded pursuant to 29 **Del.C.** §6962.

**"Division of Facilities Management"** and **"DFM"** means the Division of Facilities Management within the Office of Management and Budget.

**"Drug Testing Firm"** is an entity engaged in the business of providing drug testing services for businesses, individuals, governments or any entity that requires drug testing of Employees, applicants, licensees, etc., in compliance with these requirements.

**"Employee"** means an individual employed by a Contractor or Subcontractor who works on the Jobsite of a Large Public Works Contract but does not fulfill a clerical or administrative function. For the purpose of this definition, clerical or administrative functions shall refer to job responsibilities that do not generally require an employee to work outside of the Contractor's Jobsite office, home office or other employer-provided office. For the purposes of this regulation, the term "Employee" shall also include supervisors and foremen working on the Jobsite. The term "Employee" shall also include ~~delivery personnel employed by~~ employees of a Contractor or Subcontractor working on or delivering materials and equipment to and from a Jobsite.

**"Impairment" or "Impaired"** means symptoms that an Employee while working may be under the influence of drugs or alcohol that may decrease or lessen the Employee's performance of the duties or tasks of the Employee's job position, including symptoms of the Employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the Employee or others, or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.

“**Jobsite**” means the site or area directly or indirectly owned, operated or controlled by the Owner in which the Contractor or Subcontractor performs work or delivers services to the Owner. For the purpose of this definition, “Jobsite” does not mean a remote work site not under the direct or indirect control of the Owner in which work is performed to fulfill the Contractor’s or Subcontractor’s obligations.

“**Large Public Works Contract**” means a contract for a public works construction awarded pursuant to 29 **Del.C.** §6962.

“**Mandatory Drug Testing Program**” and “**Program**” means a defined set of basic procedures, requirements and rules that must be used by a Contractor or Subcontractor to test ~~Employees~~ employees for drugs in compliance with these requirements.

“**Owner**” is the state agency, school district or entity that awards a Large Public Works Contract to a Contractor pursuant to 29 **Del.C.** §6962.

“**Positive Test Result**” and “**Fail a Drug Test**” means the result reported by a Health and Human Services certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentration. For purposes of these regulations, an Employee shall not be considered to have a Positive Test Result nor shall an Employee be considered to “Fail a Drug Test”, unless the employee was impaired by marijuana at the Jobsite if:

- The Employee is a Registered Qualifying Patient and;
- The drug detected was marijuana, a component of marijuana, or marijuana metabolites.

“**Random Drug Testing**” means that an Employee is chosen at random for testing without advance notice, from a pool of Employees ~~working on the Jobsite or as a member of a Consortium~~. Specific requirements for random drug testing conducted under these regulations are described in Section 5.0.

“**Registered Qualifying Patient**” means a person (1) validly issued and in possession of an unexpired Registry Identification Card as defined by 16 **Del.C.** §4902A (14), and (2) subject to confirmation through a "verification system" as set forth at 16 **Del.C.** §4902A(17).

“**Subcontractor**” means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for, or supply services to a Contractor as defined in ~~section 2.4~~ Section 2.0.

~~“**Testing Result Forms**” means a form summarizing drug testing completed monthly by the Contractor and Subcontractor and submitted to the Owner in accordance with requirements contained in the bid solicitation.~~

### **3.0 Employee drug testing documentation requirements.**

3.1 The following documentation requirements apply:

3.1.1 At bid submission - A solicitation for a Large Public Works Contract must require each Contractor that submits a bid for the work to submit with the bid a signed individual affidavit(s) for the Contractor and each listed Subcontractor certifying that the Contractor and Subcontractor(s) has in place or will implement during the entire term of the contract a Mandatory Drug Testing Program ~~for their Employees~~ that complies with this regulation.

3.1.2 ~~Two~~ At least two business days prior to contract execution – The awarded Contractor shall provide to the Owner copies of the Employee Drug Testing Program for the Contractor and for all listed Subcontractors.

3.1.3 During contract execution – Contractors that employ additional Subcontractors on the jobsite may do so only after submitting a copy of the Subcontractor’s Employee Drug Testing Program. A Contractor or Subcontractor shall not commence work until the Owner has concluded the Employee Drug Testing Program complies with this Regulation as per ~~Section~~ subsection 3.2.

3.1.4 In the event of an emergency a Contractor may employ additional Subcontractors on the jobsite prior to submitting the Subcontractor’s Employee Drug Testing Program provided that said Program is submitted to the Owner as soon as practicable.

3.2 A Contractor or Subcontractor shall be treated as having a Mandatory Drug Testing Program that complies with this regulation if the Program includes the following:

# PROPOSED REGULATIONS

- 3.2.1 The Program meets the minimum standards in ~~section~~ Section 4.0 of this regulation.
- 3.2.2 The Program provides for the frequency of testing of Employees as per ~~section~~ Section 5.0 of this regulation:
- 3.2.3 The Program imposes disciplinary measures on an Employee who fails a drug test as per ~~section~~ Section 6.0 of this regulation.
- 3.3 Prequalified Contractors and Subcontractors – A Contractor or Subcontractor may meet the provisions of ~~Section~~ subsection 3.1 if they are Prequalified through the DFM Prequalification and if the DFM Prequalification includes provisions requiring an Employee Mandatory Drug Testing Program that meet the requirements of Sections 4.0, 5.0 and 6.0 of this Regulation
- 3.4 The State shall not be obligated to pay, and the Contractor or Subcontractor shall expressly agree that, any portion of work performed by a Contractor or Subcontractor commenced before that Contractor or Subcontractor has complied with ~~Sections~~ subsections 3.1 and 3.2, provided however that emergency work as referenced in subsection 3.1.4 may not be subject to this provision.

## 4.0 Minimum Standards for a Mandatory Drug Testing Program

- 4.1 Testing for the presence of drugs in an Employee's system and the handling of test specimens shall be conducted in accordance with guidelines for the collection, chain-of-custody procedures, laboratory testing, and Medical Officer Review procedures contained within the Mandatory Guidelines for Federal Workplace Drug Testing Programs published by the Substance Abuse and Mental Health Services Administration (SAMHSA). [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/mandatory\\_guidelines5\\_1\\_10.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/mandatory_guidelines5_1_10.html) (49 CFR Part 40).  
All tests must be processed by a federal Health and Human Services certified laboratory. Contractors must provide documentation detailing the procedures used in the collection, testing and reporting of drug tests sufficient to show conformance with SAMHSA guidelines.
- 4.2 Contractors and Subcontractors subject to these regulations may procure the services of an appropriate Drug Testing Firm to administer their program. A Contractor or Subcontractor may also participate in a Consortium. A Contractor or Subcontractor may also implement a Mandatory Drug Testing Program using in-house personnel and resources. ~~However a Contractor or Subcontractor doing so shall have to demonstrate that the program meets or exceeds the requirements specified herein to the satisfaction of the Owner.~~
- 4.3 Employees subject to drug testing shall be tested using at a minimum a seven-panel protocol testing plus alcohol screening for the following:

<b>Substance</b>	<b>Common Name</b>	<b>Cutoff</b>
Marijuana metabolite		50 ng/ml
Cocaine metabolite		150 ng/ml
Opiate metabolite		2000 ng/ml
Acetylmorphine	Heroin metabolite	10 ng/ml
Phencyclidine	PCP	25 ng/ml
Amphetamines (including Methamphetamines)	Meth	500 ng/ml
MDMA	Ecstasy	250 ng/ml
Alcohol		0.04% BAG

<u>Initial test analyte</u>	<u>Initial test cutoff concentration</u>	<u>Confirmatory test analyte</u>	<u>Confirmatory test cutoff concentration</u>
<u>Marijuana metabolites</u>	<u>50 ng/mL</u>	<u>THCA</u>	<u>15 ng/mL</u>
<u>Cocaine metabolites</u>	<u>150 ng/mL</u>	<u>Benzoylcegonine</u>	<u>100 ng/mL</u>
<u>Opiate metabolites</u>			
<u>Codeine/Morphine</u>	<u>2000 ng/mL</u>	<u>Codeine</u>	<u>2000 ng/mL</u>
		<u>Morphine</u>	<u>2000 ng/mL</u>
<u>6-Acetylmorphine</u>	<u>10 ng/mL</u>	<u>6-Acetylmorphine</u>	<u>10 ng/mL</u>
<u>Phencyclidine</u>	<u>25 ng/mL</u>	<u>Phencyclidine</u>	<u>25 ng/mL</u>
<u>Amphetamines</u>			
<u>AMP/MAMP</u>	<u>500 ng/mL</u>	<u>Amphetamine</u>	<u>250 ng/mL</u>
		<u>Methamphetamine</u>	<u>250 ng/mL</u>
<u>MDMA</u>	<u>500 ng/mL</u>	<u>MDMA</u>	<u>250 ng/mL</u>
		<u>MDA</u>	<u>250 ng/mL</u>
		<u>MDEA</u>	<u>250 ng/mL</u>
<u>Alcohol</u>	<u>0.04%</u>		

4.4 The frequency of Random Drug Testing and the methodology for selecting Employees to be screened are defined in ~~section~~ Section 5.0 and shall be incorporated into Contractor and Subcontractor mandatory testing procedures. A Contractor or Subcontractor may incorporate rules or requirements that exceed the requirements defined herein.

**5.0 Drug Testing Requirements – Frequency for the Testing of Employees**

5.1 Initial Drug Testing - Employees commencing work on a Jobsite must be tested with the exception that an Employee who has passed a random or scheduled drug test within the past ~~60~~ 180 days from the date of commencing work or an Employee who passed a pre-employment drug test administered pursuant to an Contractor's or Subcontractor's Program and is subject to testing as part of a Contractor's or Subcontractor's ongoing Program or as part of a Consortium shall be permitted to work at the Jobsite without further testing; however, the Employee is still subject to random testing.

5.2 Random Drug Testing - During the course of a project, each Contractor and Subcontractor with Employees on the Jobsite shall ~~implement Random Drug Testing according to the~~ maintain a Program that meets or exceeds the following requirements.

5.2.1 All Employees will be subject to random, unannounced testing.

5.2.2 The selection of Employees shall be made by a scientifically valid method of randomly generating an ~~Employee~~ employee identifier from a Contractor or Sub-contractor's entire pool of ~~Employees~~ employees, through those Employees working on a Public Works Jobsite or through the Contractor or Subcontractor's participation in a Consortium.

5.2.3 ~~No~~ A Contractor or Subcontractor's Program shall provide that no less than 10% than 5% of a Contractor's or Subcontractor's ~~anticipated workforce based on construction schedules validated by certified payrolls~~ employees shall be randomly selected each month for drug testing and no less than 2.5% of a Contractor or Subcontractor's employees be randomly selected for alcohol testing. Contractors or Subcontractors may participate in a Consortium provided that no less than 5% of the Consortium's pool shall be subject to drug testing each month and no less than 2.5% of the Consortium's pool shall be subject to alcohol testing each month. Contractors or Subcontractors with less than 10 ~~Employees~~ employees that do not participate in a Consortium shall test at least one of their ~~Employees~~ employees, selected randomly per month. Each ~~Employee~~ employee shall have an equal chance of selection each time the selection is made. Because the selection process is random, some Employees may not be tested within a year, while others may be tested more

than once. Nothing in this regulation shall require an Employee of a Contractor or Subcontractor not working or assigned to a Public Works Jobsite to be subject to random alcohol testing.

- 5.2.4 Employees notified that they have been selected must report within four hours for testing to a site specified. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. Any failure to report for random testing, or to cooperate with the testing procedure shall be considered a positive result.
- 5.2.5 Purposely impeding or delaying an Employee's fulfillment of the testing requirements herein by a Contractor or Subcontractor may subject the Contractor or Subcontractor to sanctions listed in Section 8.0.
- 5.3 Reasonable Suspicion Testing – An Employee will be required to take a drug and/or alcohol test at any time his or her employing Contractor, Subcontractor or the Owner reasonably believes that he or she has an Impairment caused by drugs and/or alcohol. Further, an Employee may be required to take a drug and/or alcohol test at any time his or her employing Contractor, Subcontractor or the Owner finds drug paraphernalia and/or open alcohol containers on the Jobsite.
- 5.4 Return to Duty Testing – As required in Section 6.0.
- 5.5 Accident Triggered Testing – An Employee will be required to take a drug test and may be subject to an ~~onsite~~-alcohol breathalyzer test at any time there is a Jobsite accident involving loss or significant property damage, injury or death to an Employee of the Contractor, Subcontractor, or Owner or member of the public.
- 5.5.1 As soon as practicable following an accident, the Contractor will notify the Employee(s) whose performance could have contributed to the accident of the need for the test.
- 5.5.2 The appropriate Contractor shall ensure that an Employee, required to be tested under this section, ~~is tested~~ report to a testing center as soon as practicable, but no longer than 4 hours after the accident. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. If the drug test is not conducted within 4 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
- 5.5.3 An Employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- 5.5.4 If an Employee fails or refuses to be tested, he/she must be removed from the Jobsite and shall be subject to consequences in Section 6.0.
- 5.5.5 Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an Employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- 5.6 All testing required by this section shall be administered according to the standards outlined in Section 4.0.

## 6.0 Consequences of a Positive Test Result

- 6.1 The disciplinary measures contained within a Contractor's or Subcontractor's ~~drug testing program~~ Program for an employee who tests positive to a mandatory drug test must include at a minimum, all of the following:
- 6.1.1 The Employee is subject to an immediate suspension from any public works Jobsite.
- 6.1.2 The Employee is not eligible for reinstatement by the Contractor or Subcontractor to any public works Jobsite until 30 days after the Employee tests negative on a seven drug panel plus alcohol test certified by a medical review officer.
- 6.1.3 The Employee is subject to unscheduled monthly random testing ~~for at least one (1) year after reinstatement, or during the term of the Large Public Works Contract, whichever is less~~ as per subsection 5.2.
- 6.1.4 An Employee who has tested positive for more than one drug test within a three year period shall be permanently banned from working at public works Jobsites.

- 6.1.5 An Employee who has tested positive for marijuana, a component of marijuana, or marijuana metabolites and is a Registered Qualifying Patient shall be exempted from the disciplinary actions contained in this section unless:
  - 6.1.5.1 The Employee was Impaired by marijuana at the Jobsite
  - 6.1.5.2 Employment of the Registered Qualifying Patient would cause the Owner to lose monetary or licensing-related benefits under Federal law.
- 6.2 A Contractor or Subcontractor shall report the Positive Test Result to the Employee's professional licensing board, if applicable.

## **7.0 Contractor and Subcontractor Certification of Compliance with Regulations**

- 7.1 During the term of the contract:
  - 7.1.1 During the term of the contract, Contractors and Subcontractors on the Jobsite for more than 30 days shall submit Testing Report Forms to the Owner as set forth herein maintain testing data that includes but is not limited to the data elements contained in subsection 7.1.2:
    - ~~7.1.1.4 The Testing Report Forms shall be submitted to the Owner no less than quarterly.~~
    - ~~7.1.1.2 An Owner may require monthly submissions of the Testing Report Forms.~~
    - ~~7.1.1.3~~ 7.1.1.1 A Contractor or Subcontractor that is employed on the Jobsite for less than 30 days shall not be subject to the reporting requirements contained in ~~Sections 7.1.1 and subsection~~ 7.1.2 of this regulation, unless the Owner specifies that such reporting is required in the Invitation to Bid or Specifications relating to the work to be performed.
  - 7.1.2 The ~~forms data~~ data shall at a minimum contain the following ~~information elements~~ elements:
    - 7.1.2.1 The number of Employees who worked on the Jobsite during the previous month or quarter.
    - 7.1.2.2 The number of Employees subjected to random testing during the previous month or quarter.
    - 7.1.2.3 The number of negative results and the number of positive results.
    - 7.1.2.4 Action taken by the Contractor or Subcontractor on an Employee who failed or tested positive to a random test.
  - 7.1.3 ~~Testing Result Forms may be submitted electronically to an Owner. Test results must be kept by a Contractor or Subcontractor for a minimum of 1 year subsequent to the date of close out of the Public Works project.~~
  - 7.1.4 Any Positive Test Result of an Employee working on a Public Works Jobsite including the Employee name and action taken in response by a Contractor or Subcontractor must be reported by the Contractor or Subcontractor to the Owner in writing within 24 hours of the Contractor or Subcontractor receiving the test results. ~~A Positive Test Result must be submitted to the Owner in writing.~~
  - 7.1.5 The Owner shall have the right to periodically audit all Contractor and Subcontractor test results at the Contractor or Subcontractor's offices or by other means to make the data available for inspection by the Owner.
  - 7.1.6 The failure to comply with these reporting requirements shall may be considered a material breach of any agreement relating to the performance of work by the Contractor or Subcontractor.

## **8.0 Penalties**

- 8.1 A Contractor or Subcontractor on a Large Public Works contract that fails to implement a Mandatory Drug Testing Program in accordance with this regulation or falsifies testing results shall be subject to the following sanctions:
  - 8.1.1 Written warning (1<sup>st</sup> offense).
  - 8.1.2 Prohibition from bidding on new public works jobs for a period not to exceed three months (2<sup>nd</sup> offense) and one year (3<sup>rd</sup> offense).

8.1.3 For subsequent offenses, debarment or bond revocation.

8.2 Notwithstanding any other provision of this regulation, if any failure to comply with the requirements of this regulation are particularly flagrant or egregious, the Owner may seek a termination for cause, a temporary suspension, a determination that the Contractor or Subcontractor is not responsible, debarment or bond revocation, and any other statutory, common law, or equitable remedy.

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## Symbol Key

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

## Final Regulations

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

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

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## DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Sections 10306 & 10311-10315 (16 **Del.C.** §§10306, 10311-10315)

### ORDER

#### 103 Delaware Health Care Claims Database Data Collection Regulation

In accordance with 16 **Del.C.** §10306, and for the reasons set forth herein, the Delaware Health Information Network (DHIN) enters this Order adopting the Delaware Health Care Claims Database Data Collection Regulation.

### NATURE OF THE PROCEEDINGS

Pursuant to its authority under 16 **Del.C.** §10306, DHIN proposes to adopt a regulation to establish procedures for submission of claims data by a mandatory reporting entity and a template for a data submission and use agreement to be entered into between DHIN and each reporting entity. The agreement includes procedures for submission, collection, aggregation, and distribution of claims data, and a summary of how claims data may be used for geographic, economic, and peer group comparisons.

DHIN gave notice of its intent to adopt the proposed regulation in the July 1, 2017 issue of the Delaware *Register of Regulations*. DHIN solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

Highmark BCSD Inc. (Highmark Delaware) and UnitedHealth Group offered the following summarized observations. The Delaware Health Information Network (DHIN) has considered each comment and responds as

follows.

#		Feedback Received	DHIN Response
1	Definitions	"Claims data": Clarify that this term includes the capitalized term "Claims Data" as used in the proposed regulation and "Required Claims Data" as the term is defined in Section 2.	The definition of Claims Data in Section 2.0 is revised as follows: "Claims Data" includes Required Claims Data and any additional health care information that a voluntary reporting entity elects, through entry into an appropriate Data Submission and Use Agreement, to submit to the Delaware Health Care Claims Database.
2	Health Care Claims Database Committee	"Health Care Claims Database Committee": Include within the definition of this term that the Committee shall consist of at least two Mandatory Reporting Entities, and at least one of which shall be a national payer with experience participating in databases similar to HCCD.	As defined in 16 <b>Del.C.</b> §10314(a)(1), the Health Care Claims Database Committee shall be established by the DHIN Board of Directors. While this Regulation cannot usurp the authority of the Board to appoint this Committee, the Board has historically established subcommittees that include multidisciplinary stakeholders representing diverse voices and interests. Details on how the Committee will function will be included in a separate Regulation pertaining to Data Access.
3	Onboarding of new Mandatory Reporting Entities	Subsection 3.2: In order to begin the development and run up for data submission where a Mandatory Reporting Entity has not been actively reporting data due to membership levels being below the mandatory threshold level, we recommended ensuring the newly mandatory reporting for these entities be done in a mutually agreeable fashion in order to ensure that each party's expectations are aligned with respect to the work needed to begin data submissions.	As outlined in Subsection 3.2, onboarding of new Mandatory Reporting Entities will be based on a compliance schedule developed by the Health Care Claims Database Administrator and the newly Mandatory Reporting Entity.
4	Submission Timelines	Subsection 4.4.1: Corrected and conforming files should be due no less than 20 business days following notification from the HCCD Administrator. The current proposal of 10 business days leaves little time to investigate, build and correct data files that may require substantial reprogramming.	As outlined in Subsection 4.4.1, the Health Care Claims Database Administrator may grant extensions of deadlines in circumstances when additional time is required.
5	Sensitive Information	Subsection 5.1; Due to the potentially sensitive nature of the information being submitted to the HCCD, which includes trade secrets and commercial or financial information, including for example plan paid and allowed amounts, we strongly recommend updating this subsection to include reference to the section of Delaware law that protects this type of commercial and financial information from being classified as a Public Record under the Freedom of Information Act.	Additional language is inserted in into Subsection 5.1 which specifically references 29 <b>Del.C.</b> §10002(l)(2) and confirms that trades secrets and commercial or financial information of a privileged or confidential nature is not a Public Record under the Freedom of Information Act.

6	Reporting Schedule	<p>Historical Files: Required Claims Data files for calendar years 2013 and 2014 have been placed in archive and are not easily accessible and programmable for data submission to the HCCD. It would take approximately two years to retrieve such data from archive and submit to the HCCD in its required format. It would also be unduly burdensome for UnitedHealth Group to retrieve and submit it, because it is not archived in its original data format. For these reasons we strongly recommend limiting historical data submissions to the current and two previous calendar years (2015, 2016, and 2017).</p>	<p>To accommodate those instances when a Mandatory Reporting Entity is unable to comply with the Reporting Schedule or Submission Guide – most commonly when a payer’s system does not collect a required element or the payer would experience an unreasonable burden in providing the information – the HCCD Administrator may authorize Mandatory Reporting Entity-specific overrides and variances. This override and exception process is outlined in Section 4.3 of the Submission Guide.</p>
7	Data Submission and Use Agreement	<p>Subsection 4.1: In accordance with the HCCD's enabling statute, 16 <b>Del.C.</b> §10313(a)(4) which requires that DHIN and each mandatory reporting entity execute a mutually acceptable data submission and use agreement, we recommend mirroring the statutory language in order to ensure the intent of the legislature that such agreements be mutually acceptable.</p>	<p>By entering into the Data Submission and Use Agreement (DSUA), Mandatory Reporting Entities will be agreeing to the terms and conditions described therein, thereby rendering the DSUA “mutually agreeable.”</p>
8	Data Submission and Use Agreement	<p>In order to develop a mutually agreeable data submission and use agreement, we have provided a redlined copy of the DSUA with what we believe are the minimally necessary changes. These include for example:</p> <ul style="list-style-type: none"> <li>• Section 3b.: Because the DSUA is required under 16 <b>Del.C.</b> §10313(a)(4) to be mutually agreeable, where rights of the parties as mutually agreed upon between DHJN and the Mandatory Reporting Entity are greater in the DSUA than in the regulation, the terms of the DSUA should prevail since such terms have been agreed upon between the two parties. To allow DHIN to override a mutually agreeable DSUA through regulation would be contrary to the intent of the HCCD's enabling statute.</li> </ul>	<p>As stipulated in 16 <b>Del.C.</b> §10313(3), the DHIN shall promulgate a template form for a data submission and use agreement (DSUA) for the submission of required claims data by a Mandatory Reporting Entity. Attachment B of this Regulation serves as this template. In having a public comment period, DHIN has solicited feedback from Mandatory Reporting Entities and the general public regarding the content of this DSUA. DHIN will negotiate with Reporting Entities in good faith to reach mutually agreeable terms that generally conform to the template and meet the statutory intent. Terms that do not meet the overall requirements of the statute and regulation will not be mutually agreeable.</p> <p>By entering into the DSUA, Mandatory Reporting Entities will be agreeing to the terms and conditions described therein, thereby rendering the DSUA “mutually agreeable.”</p>

## FINAL REGULATIONS

		<ul style="list-style-type: none"> <li>Section 3c.: A new Section 3c. has been inserted to recognize that the parties to the DSUA will work in good faith with each other to meet data submission, reporting, and timeframes, and that where a Reporting Entity is unable to meet a requirement of the DSUA or HCCD Regulation, that the parties will work in good faith to find a mutually agreeable solution.</li> <li>Section 4a.: This section has been revised to reflect the intent of the enabling statute that specifically restricts the purposes for which a requesting party shall be permitted to use Claims Data, which includes "facilitating the design and evaluation of alternative delivery and payment models, including population health research and provider risk-sharing arrangements." See 16 <b>Del.C.</b> §10314(a). While the legislative purpose and intent of the HCCD, as articulated in 16 <b>Del. C.</b> §10311, includes "to achieve the Triple Aim" and to "improve the public health through increased transparency" these broad themes are limited to the specific purposes articulated in § 10314 when it comes to the use and disclosure of Claims Data to a requesting party.</li> </ul>	<p>Each requirement for data submission, reporting, and timeframes already includes a provision for mutual agreement and resolution in cases in which the Reporting Entity is unable to comply with the stated requirement. It is unnecessary to add an additional paragraph to that effect.</p> <p>The legislative intent "to achieve the Triple Aim" and "improve the public health through increased transparency" is included in the opening sections of 16 <i>Del.C.</i> Chapter 103 Subsection II which describe the overall purpose for the creation of the Health Care Claims Database. The fact that later sections do not specifically reference each element of the statutory purpose for enacting the HCCD should not be interpreted to restrict those purposes. The HCCD Committee members will represent the stakeholder groups and will ensure that data is only made available in conformance with the statutory purposes of the HCCD.</p>
9	Data Submission Guide	The DSG contains no thresholds. While a majority of fields are marked with an "R" and it appears the expectation is that data will be provided at 100% completion, it should be noted the data does not exist at 100% completion. Additional information will be necessary to identify the actual threshold being requested as well as information on the actual variance process.	The Submission Guide has been revised to include threshold levels for all data elements and more detail on the override and exception process (Section 4.3).

10	Data Submission Guide	<ul style="list-style-type: none"> <li>• In the eligibility file, there are a number of Primary Care Physician or PCP fields. UnitedHealth Group has limited PCP demographics.</li> <li>• The medical claim file requires a Claim Version number, Ambulatory Payment Classification, Present on Admission Indicator, Servicing Provider, Capitated Service Indicator, Provider Network Indicator data elements, which are not always available. A variance will be needed for these fields.</li> <li>• In the pharmacy claim file the Claim Version Number is a required field. This data element is unavailable in our claims data warehouse and will not be reportable. A variance will be needed for this field.</li> <li>• The provider file specifications require data for servicing provider. This data is available approximately 90% of the time. The Billing provider data is available approximately 95%. A variance will be needed.</li> </ul>	<p>The Submission Guide has been revised based on feedback received, and the updated version 0.3 dated September 17, 2017 has been posted to the DHIN website. If a Mandatory Reporting Entity is not able to comply with the requirements outlined in the Submission Guide, they will need to apply for an override or exception as outlined in Section 4.3 of the Submission Guide.</p>
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Highmark Feedback

1	Data Submission and Use Agreement	<p>Please explain how the proposed Regulation and the Data Submission and Use Agreement Template are consistent with 16 <b>Del.C.</b> §10313 which requires ‘a mutually acceptable data submission and use agreement’? By way of example, please consider the following additional questions regarding the DSUA.</p> <ul style="list-style-type: none"> <li>• Attachment B. Data Submission and Use Agreement Section 1. a. . . “The HCCD Regulations shall take precedence over any terms and conditions represented in this Agreement”.</li> </ul>	<p>As stipulated in 16 <b>Del.C.</b> §10313(3), the DHIN shall promulgate a template form for a data submission and use agreement (DSUA) for the submission of required claims data by a Mandatory Reporting Entity. Attachment B of this Regulation serves as this template. In having a public comment period, DHIN has solicited feedback from Mandatory Reporting Entities and the general public regarding the content of this DSUA. DHIN will negotiate with Reporting Entities in good faith to reach mutually agreeable terms that generally conform to the template and meet the statutory intent. The intent of this language is to ensure that the terms and intent of the statute and regulation cannot be circumvented or overridden through individual agreements or contract language.</p>
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# FINAL REGULATIONS

		<p>In light of this wording, is it your understanding that the DSUA can include clauses that the parties have agreed to involve matters that are either not addressed in the HCCD Regulations, or are not fully determined by the Regulation?</p> <ul style="list-style-type: none"> <li>• Attachment B. Data Submission and Use Agreement Section 3. b. “or as mutually agreed” While interested in retaining this clause, in light of the next sentence in the Regulation stating that ‘in case of conflict between this Agreement and the HCCD Regulations, the HCCD Regulations shall take precedence”, please explain a circumstance in which the contractual and regulatory reporting schedule would not override any mutual agreement to any other dates?</li> <li>• Attachment B. Data Submission and Use Agreement. In the absence of proposed regulatory wording addressing situations identified in §10314(e) in which data use requests are received from potential competitors of a reporting entity, please explain how DHIN will address these instances. We recommend a meeting to discuss this statutory obligation in order to assure whether (and possibly how) it must be included in the proposed regulation. This is made more important due to the DSUA item 1 statement that the Regulation takes precedence over any terms of the DSUA.</li> </ul>	<p>By entering into the DSUA, Mandatory Reporting Entities will be agreeing to the terms and conditions described therein, thereby rendering the DSUA “mutually agreeable.”</p> <p>The Data Submission and Use Agreement template duplicates the data submission schedule outlined in Attachment A to the HCCD Data Collection Regulation. Should the regulation be amended at some future time to modify the data submission schedule, this language ensures that the schedule as specified in the regulation takes precedence over the schedule in the DSUA without requiring the Parties to renegotiate the DSUA in its entirety.</p> <p>DHIN intends to promulgate a separate regulation on access to data through the HCCD. It will provide greater detail regarding the methods and process for requesting access to claims data and the situations in which such requests might be granted or denied. All statutory obligations regarding protection of and access to protected health information and sensitive business information will be addressed in the data access regulation.</p>
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2	Sensitive Information	Please explain why Social Security numbers are to be provided pursuant to the Data Submission Guide when the authorizing statute (16 Del.C. §10312 (8) a.) identifies only 'Basic demographic information, including the patient's gender, age and geographic area of residency.' as 'Required claims data'.	In the absence of a single identifier used by all Reporting Entities to uniquely identify patients, DHIN will use technology tools and matching algorithms to link data submitted by multiple Reporting Entities on the same person. DHIN has over a decade of experience in this activity due our work with linking clinical data into a longitudinal Community Health Record. We have found that including at least the last four digits of the patient's social security number improves the match rate very significantly. A clean match will be needed in order to link a patient's data across all of their insurance providers (e.g. coordination of benefits) and follow a patient's claims and enrollment historical longitudinally.
3	Data Elements	If a Mandatory Reporting Entity does have an optional data element in its records, is it obligated to report that data element? If not, what are the criteria that the submitter must satisfy in order to not report that element?	As outlined in Section 4.1 of the Submission Guide, a data element marked as "O" is optional but should be provided when available. Otherwise, the field may contain a null value.
4	Data Security	What special security protections are contemplated by DHIN as a result of collecting Social Security numbers?	As the Health Care Claims Database Administrator, DHIN will ensure that all data is stored in a highly secure environment, following both DHIN's HITRUST Certified Process and all CMS protocols for the secure storage of sensitive information.
5	Data Security	Concern regarding the alignment of Highmark Delaware's existing commitments to individuals and others regarding the sharing of data with the obligations of providing data to DHIN which will then share with others.	The Health Care Claims Database (HCCD) Administrator is committed to serving as a responsible steward of patient data and has invested heavily in its infrastructure and security safeguards to make sure that data arrives and resides securely. The HCCD Committee, appointed by the DHIN Board of Directors and comprised of multidisciplinary stakeholders, will further ensure that data is shared responsibly and only for the purposes of the enabling legislation.

6	Data Security	<p>In light of the fact that commercial and financial information of a privileged and confidential nature is being collected, how does DHIN commit to achieving and maintaining appropriately high security standards?</p> <p>Does the proposed Regulation contemplate allowing a DSUA which</p> <ul style="list-style-type: none"> <li>a. requires DHIN to maintain particular standards of security</li> <li>b. entitles data submitters to audit or otherwise have access to reasonably assure themselves regarding the security of their data</li> <li>c. may require imposing different terms in data use agreements depending upon the nature of the different potential users of an entity's data</li> <li>d. entitles a submitter to not provide optional information</li> </ul>	<p>The Health Care Claims Database (HCCD) Administrator is committed to serving as a responsible steward of patient data and has invested heavily in its infrastructure and security safeguards to make sure that data arrives and resides securely. DHIN is certified under the HITRUST security framework as following industry best practices in protecting the privacy and security of protected data. The HCCD Committee, appointed by the DHIN Board of Directors and comprised of multidisciplinary stakeholders, will further ensure that data is shared responsibly and only for the purposes of the enabling legislation. DHIN will negotiate the terms of the Data Submission and Use Agreement with Reporting Entities to arrive at mutually agreeable terms that do not undermine either the letter or spirit of the enabling statute and supporting regulations.</p>
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#### FINDINGS OF FACT

The public was given notice of DHIN's intention to adopt the proposed regulation and was given opportunity to provide DHIN with comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation was submitted. Public comments were received, considered, and response provided. Thus, the Delaware Health Information Network (DHIN) finds that the proposed regulation should be adopted as in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS SO ORDERED**, this 15<sup>th</sup> day of September, 2017, that the proposed Delaware Health Care Claims Database Data Collection Regulation 103 is adopted and shall become effective ten (10) days following publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(e) and (g).

Janice L. Lee, MD, Delaware Health Information Network

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

**103 Delaware Health Care Claims Database Data Collection Regulation**

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

### REGULATORY IMPLEMENTING ORDER

#### 728 Graduate Level Salary Increments

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

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 728 Graduate Level Salary Increments. This regulation is being adopted by the Department as the authority for such issue is

found under 14 **Del.C.** Chapter 13, §1315 and is within the Department's purview. Previously this was promulgated by the Professional Standards Board as 14 **DE Admin. Code** 1502 Graduate Level Salary Increments. At this time, no changes are being made from what was in effect under 14 **DE Admin. Code** 1502 Graduate Level Salary Increments as of July 1, 2017; however, the Department will be discussing possible amendments with stakeholders.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on August 2, 2017, in the form hereto attached as *Exhibit "A"*. Comments were received from five speech-language pathologists requesting clarification of the specialist description in the regulation. Specifically it was requested that the language of pending legislation regarding speech-language pathologists be included in the regulation. As noted above, the Department will be discussing possible amendments with stakeholders. However, in order to facilitate an efficient transition from the previous regulation 14 **DE Admin. Code** 1502 and to honor the legislative process the revisions requested are not appropriate at this time.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 728 Graduate Level Salary Increments. The new regulation is needed because the subject which is being regulated falls under the purview of the Department's authority.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 728 Graduate Level Salary Increments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 728 Graduate Level Salary Increments attached hereto as Exhibit "B" is added to 14 **DE Admin. Code**. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 728 Graduate Level Salary Increments hereby added 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** 728 Graduate Level Salary Increments hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 728 Graduate Level Salary Increments 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, 2017. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of September 2017.

### Department of Education

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

Approved this 15<sup>th</sup> day of September 2017

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 76 (21 DE Reg. 76). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**728 Graduate Level Salary Increments**

# FINAL REGULATIONS

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1502

### REGULATORY IMPLEMENTING ORDER

#### 1502 Graduate Level Salary Increments

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education ("Department"), seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** 1502 Graduate Level Salary Increments. This regulation concerns graduate level salary increments for educators pursuant to 14 **Del.C.** Ch. 13. It was determined that the Department has the authority to promulgate regulations concerning 14 **Del.C.** Ch. 13. The Department is working to have a regulation in place that addresses graduate level salary increments for educators pursuant to 14 **Del.C.** Ch. 13.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to repeal 14 **DE Admin. Code** 1502 Graduate Level Salary Increments subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to repeal 14 **DE Admin. Code** 1502 Graduate Level Salary Increments because it was determined that the Department has the authority to promulgate regulations concerning 14 **Del.C.** Ch. 13 and the Department is working to have a regulation in place that addresses graduate level salary increments for educators pursuant to 14 **Del.C.** Ch. 13.

#### III. Decision to Repeal the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to repeal 14 **DE Admin. Code** 1502 Graduate Level Salary Increments.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby repealed.

#### IV. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

#### Department of Education

Susan Bunting, Ed.D., Secretary of Education

#### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education.

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

\*Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 81 (21 DE Reg. 81). Therefore, the final regulation is not being

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republished. A copy of the final regulation is available at:

[1502 Graduate Level Salary Increments](#)

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## PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1520

### REGULATORY IMPLEMENTING ORDER

#### 1520 Early Childhood Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher. The regulation concerns the requirements for a Standard Certificate for Early Childhood Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; striking Limited Standard Certificate from subsection 3.1.1 to be consistent with the language of 14 **DE Admin. Code** 1505 Standard Certificate; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Early Childhood Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1520 Early Childhood Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher to add a definition of the term "passing score" to subsection 2.2; strike Limited Standard Certificate from subsection 3.1.1 to be consistent with the language of 14 **DE Admin. Code** 1505 Standard Certificate; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Early Childhood Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1520 Early Childhood Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1520 Early Childhood Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education.**

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 91 (21 DE Reg. 91). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1520 Early Childhood Teacher**

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**PROFESSIONAL STANDARDS BOARD**

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

**14 DE Admin. Code 1531**

**REGULATORY IMPLEMENTING ORDER**

**1531 Middle Level English Language Arts Teacher**

**I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for a Standard Certificate for Middle Level English Language Arts Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level English Language Arts Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

**II. Findings of Fact**

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level English Language Arts Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher in the *Administrative Code*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education.**

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

**1531 Middle Level English Language Arts 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 Middle Level English Language Arts Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary English Language Arts Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

**3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level English Language Arts 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 An educator shall have also met the following:
- 4.1.1 achieved on the *Praxis* Subject Assessment - Middle School English Language Arts (ETS Test # 5047) a Passing Score of 164.

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1532

### **REGULATORY IMPLEMENTING ORDER**

#### **1532 Middle Level Mathematics Teacher**

#### **I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for a Standard Certificate for Middle Level Mathematics Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level Mathematics Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### **II. Findings of Fact**

The Professional Standards Board finds that it is appropriate to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level Mathematics Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### **IV. Text and Citation**

The text of 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher in the *Administrative Code*.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

### Department of Education

Susan Bunting, Ed.D., Secretary of Education

### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education.

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

## 1532 Middle Level Mathematics 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 Middle Level Mathematics Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary Mathematics Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Mathematics 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 An educator shall have also met the following:
  - 4.1.1 achieved on the *Praxis* Subject Assessment - Middle School Mathematics (ETS Test # 5169) a Passing Score of 165.

**PROFESSIONAL STANDARDS BOARD**

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

**14 DE Admin. Code 1533**

**REGULATORY IMPLEMENTING ORDER****1533 Middle Level Science Teacher****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher. The regulation concerns the requirements for a Standard Certificate for Middle Level Science Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level Science Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1533 Middle Level Science Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

**II. Findings of Fact**

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level Science Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

**III. Decision to Amend the Regulation**

The Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 1533 Middle Level Science Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1533 Middle Level Science Teacher in the *Administrative Code*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

## Department of Education

Susan Bunting, Ed.D., Secretary of Education

### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

## 1533 Middle Level Science 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 Middle Level Science Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary Science Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Science 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 An educator shall have also met the following:
    - 4.1.1 achieved on the Praxis Subject Assessment - Middle School Science (ETS Test # 5440) a Passing Score of 150.
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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1534

### REGULATORY IMPLEMENTING ORDER

#### 1534 Middle Level Social Studies Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for a Standard Certificate for Middle Level Social Studies Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level Social Studies Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Middle Level Social Studies Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

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**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education**

Dennis L. Loftus, Ed.D., President  
Nina Lou Bunting, Vice President  
Gregory B. Coverdale, Jr. (absent)  
G. Patrick Heffernan

Liane M. Sorenson  
Barbara B. Rutt  
Terry M. Whittaker, Ed.D.

## **1534 Middle Level Social Studies 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 Middle Level Social Studies Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school. Notwithstanding the above requirement, the Secondary Social Studies Teacher Certification may be used for grades 6, 7 and 8 in a Middle Level school in lieu of this 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Social Studies 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 An educator shall have also met the following:
    - 4.1.1 achieved on the *Praxis* Subject Assessment - Middle School Social Studies (ETS Test # 5089) a Passing Score of 164.
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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1539

### REGULATORY IMPLEMENTING ORDER

#### 1539 Health Education Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1539 Health Education Teacher. The regulation concerns the requirements for a Standard Certificate for Health Education Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Health Education Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1539 Health Education Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1539 Health Education Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Health Education Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1539 Health Education Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1539 Health Education Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1539 Health Education Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

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**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education**

Dennis L. Loftus, Ed.D., President  
Nina Lou Bunting, Vice President  
Gregory B. Coverdale, Jr. (absent)  
G. Patrick Heffernan

Liane M. Sorenson  
Barbara B. Rutt  
Terry M. Whittaker, Ed.D.

## **1539 Health Education 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 Health Education Teacher. This certification is required for all Health Education Teachers in Delaware public schools.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Health Education 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 An educator shall have also met the following:
  - 4.1.1 achieved on the Praxis Subject Assessment:
    - 4.1.1.1 Health Education (ETS Test # 5551) a Passing Score of 162; or
    - 4.1.1.2 Health and Physical Education: Content Knowledge (ETS Test # 5857) a Passing Score of  
160.

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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1540

### REGULATORY IMPLEMENTING ORDER

#### 1540 Secondary English Language Arts Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher. The regulation concerns the requirements for a Standard Certificate for Secondary English Language Arts Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Secondary English Language Arts Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Secondary English Language Arts Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concludes that it is appropriate to amend 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

---

**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education**

Dennis L. Loftus, Ed.D., President  
Nina Lou Bunting, Vice President  
Gregory B. Coverdale, Jr. (absent)  
G. Patrick Heffernan

Liane M. Sorenson  
Barbara B. Rutt  
Terry M. Whittaker, Ed.D.

## **1540 Secondary English Language Arts 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 Secondary English Language Arts Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level English Language Arts Teacher certification in grades 6 to 8.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary English Language Arts 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 An educator shall have also met the following:
  - 4.1.1 achieved on the *Praxis* Subject Assessment - English Language Arts: Content Knowledge (ETS Test # 5038) a Passing Score of 167.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 Del.C. §§1203 & 1205(b))  
14 DE Admin. Code 1542

## REGULATORY IMPLEMENTING ORDER

## 1542 Secondary Mathematics Teacher

**I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher. The regulation concerns the requirements for a Standard Certificate for Secondary Mathematics Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Secondary Mathematics Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

**II. Findings of Fact**

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Secondary Mathematics Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher in the *Administrative Code*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

---

**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education**

Dennis L. Loftus, Ed.D., President  
Nina Lou Bunting, Vice President  
Gregory B. Coverdale, Jr. (absent)  
G. Patrick Heffernan

Liane M. Sorenson  
Barbara B. Rutt  
Terry M. Whittaker, Ed.D.

## **1542 Secondary Mathematics 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 Secondary Mathematics Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level Mathematics Teacher certification in grades 6 to 8.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### **3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary Mathematics 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 An educator shall have also met the following:
    - 4.1.1 achieved on the Praxis Subject Assessment - Mathematics: Content Knowledge (ETS Test # 5161) a Passing Score of 160.
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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1544

### REGULATORY IMPLEMENTING ORDER

#### 1544 Secondary Social Studies Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher. The regulation concerns the requirements for a Standard Certificate for Secondary Social Studies Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Secondary Social Studies Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Secondary Social Studies Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

**Department of Education**

Susan Bunting, Ed.D., Secretary of Education

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**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education**

Dennis L. Loftus, Ed.D., President  
Nina Lou Bunting, Vice President  
Gregory B. Coverdale, Jr. (absent)  
G. Patrick Heffernan

Liane M. Sorenson  
Barbara B. Rutt  
Terry M. Whittaker, Ed.D.

## 1544 Secondary Social Studies 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 Secondary Social Studies Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 and may be used in lieu of the Middle Level Social Studies Teacher certification in grades 6 to 8.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary Social Studies 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 An educator shall have also met the following:
    - 4.1.1 achieved on the *Praxis* Subject Assessment – Social Studies: Content Knowledge (ETS Test # 5081) a Passing Score of 157.
-

## PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1550

## REGULATORY IMPLEMENTING ORDER

## 1550 AgriScience Teacher

**I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 DE Admin. Code 1550 AgriScience Teacher. The regulation concerns the requirements for a Standard Certificate for AgriScience Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for AgriScience Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 DE Admin. Code 1550 AgriScience Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

**II. Findings of Fact**

The Professional Standards Board found that it is appropriate to amend 14 DE Admin. Code 1550 AgriScience Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for AgriScience Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 DE Admin. Code 1550 AgriScience Teacher.

Pursuant to 14 Del.C. §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

**IV. Text and Citation**

The text of 14 DE Admin. Code 1550 AgriScience Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 DE Admin. Code 1550 AgriScience Teacher in the *Administrative Code*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 Del.C. §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 19<sup>th</sup> day of September, 2017.

## Department of Education

Susan Bunting, Ed.D., Secretary of Education

### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

## 1550 AgriScience 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 AgriScience Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an AgriScience 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 An educator shall have also met the following:
    - 4.1.1 achieved on the *Praxis* Subject Assessment - Agriculture (ETS Test # 5701) a Passing Score of 147.
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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1551

### REGULATORY IMPLEMENTING ORDER

#### 1551 Business Education Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1551 Business Education Teacher. The regulation concerns the requirements for a Standard Certificate for Business Education Teacher. The proposed changes include striking the term "major in business" from subsection 2.2 as the term does not appear elsewhere in the regulation; adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Business Education Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1551 Business Education Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1551 Business Education Teacher to strike the term "major in business" from subsection 2.2 as the term does not appear elsewhere in the regulation; add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Business Education Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1551 Business Education Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1551 Business Education Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1551 Business Education Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

IT IS SO ORDERED the 19<sup>th</sup> day of September, 2017.

Department of Education

Susan Bunting, Ed.D., Secretary of Education

**Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education**

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

## 1551 Business Education 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 Business Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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~~ word and ~~terms~~ term, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:  
~~"Major in Business" means a major in business administration or management, or a related field, including, but not limited to, accounting, economics, finance or marketing.~~  
"Passing Score" means a minimum score as established by the Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Business Education 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 An educator shall have also met the following:
  - 4.1.1 achieved on the *Praxis* Subject Assessment - Business Education: Content Knowledge (ETS Test # 5101) a Passing Score of 154.

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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1553

### REGULATORY IMPLEMENTING ORDER

#### 1553 Driver Education and Traffic Safety Education Teacher

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher. The regulation concerns the requirements for a Standard Certificate for Driver Education and Traffic Safety Education Teacher. The proposed changes include adding a Standard Certificate issued prior to August 31, 2003 to satisfy the requirement under subsection 3.1.1 to be consistent with 14 **DE Admin. Code** 1505 Standard Certificate; adding "Technology and Teaching Driver's Education" under subsection 4.1.1.7 to allow educators an additional, optional area of professional development; and adding subsection 4.4 to specify that educators are not required to take an examination of content knowledge for this Standard Certificate.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### II. Findings of Fact

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher to add a Standard Certificate issued prior to August 31, 2003 to satisfy the requirement under subsection 3.1.1 to be consistent with 14 **DE Admin. Code** 1505 Standard Certificate; add "Technology and Teaching Driver's Education" under subsection 4.1.1.7 to allow educators an additional, optional area of professional development; and add subsection 4.4 to specify that educators are not required to take an examination of content knowledge for this Standard Certificate.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1553 Driver Education and Traffic Safety Education Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The

effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

## Department of Education

Susan Bunting, Ed.D., Secretary of Education

## Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

## 1553 Driver Education and Traffic Safety Education Teacher

### 1.0 Content

- 1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Driver Education and Traffic Safety Education Teacher.
- 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

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

### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Driver Education and Traffic Safety Education 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 An educator shall also have met the following:

4.1.1 Education requirements:

4.1.1.1 A minimum of twenty-one (21) credits, taken either as part of a degree program or in addition to it from a regionally accredited college or university, or their equivalent in professional development approved by the Department in the following areas:

4.1.1.1.1 Human Development (3 credits);

4.1.1.1.2 Identifying and Treating Exceptionalities (3 credits);

4.1.1.1.3 Effective Teaching Strategies (3 credits);

4.1.1.1.4 Cultural Diversity (3 credits);

4.1.1.1.5 Driver Education, Methods and Materials (3 credits);

- 4.1.1.1.6 Driver Education, In Car Training (3 credits); and
- 4.1.1.1.7 Three (3) credits selected from one (1) of the following areas:
- 4.1.1.1.7.1 Alcohol and Drug Education (3 credits);
  - 4.1.1.1.7.2 Current Issues in Driver Education (3 credits);
  - 4.1.1.1.7.3 Problems in Driver and Safety Education (3 credits);
  - 4.1.1.1.7.4 First Aid (3 credits);
  - 4.1.1.1.7.5 Teaching Students with Disabilities (3 credits); or
  - 4.1.1.1.7.6 Education for Safe Living (3 credits); or
  - 4.1.1.1.7.7 Technology and Teaching Driver's Education.
- 4.1.2 Driver's License Requirements.
- 4.1.2.1 The applicant shall hold a valid driver's license.
  - 4.1.2.2 The applicant's driving record shall have no more than five (5) points total from Delaware or any other jurisdiction at the time of application.
  - 4.1.2.3 The applicant's driver's license shall not have been suspended, revoked, or disqualified in Delaware or any other jurisdiction in the last five (5) years and the applicant's driver's license shall remain valid for the duration of the applicant's employment under this Standard Certificate.
- 4.1.3 The educator shall notify the Department immediately if they fail to meet the Driver's License Requirements.
- 4.1.4 Testing Requirement:
- 4.1.4.1 The applicant is not required to take and achieve a passing score on an examination of content knowledge.

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**PROFESSIONAL STANDARDS BOARD**

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

**14 DE Admin. Code 1554**

**REGULATORY IMPLEMENTING ORDER**

**1554 Family and Consumer Sciences Teacher**

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

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher. The regulation concerns the requirements for a Standard Certificate for Family and Consumer Sciences Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Family and Consumer Sciences Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

**II. FINDINGS OF FACT**

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Family and Consumer Sciences Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher in the *Administrative Code*.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

#### Department of Education

Susan Bunting, Ed.D., Secretary of Education

#### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

#### 1554 Family and Consumer Sciences 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 Family and Consumer Sciences Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

### 3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Family and Consumer Sciences 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 An educator shall have also met the following:

4.1.1 achieved on the Praxis Subject Assessment – Family and Consumer Sciences (ETS Test # 5122) a Passing Score of 153.

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## PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1555

### REGULATORY IMPLEMENTING ORDER

#### 1555 Marketing Education Teacher

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 DE Admin. Code 1555 Marketing Education Teacher. The regulation concerns the requirements for a Standard Certificate for Marketing Education Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Marketing Education Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 DE Admin. Code 1555 Marketing Education Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

## II. FINDINGS OF FACT

The Professional Standards Board found that it is appropriate to amend 14 DE Admin. Code 1555 Marketing Education Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Marketing Education Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of

instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1555 Marketing Education Teacher.

Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1555 Marketing Education Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1555 Marketing Education Teacher in the *Administrative Code*.

### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

#### Department of Education

Susan Bunting, Ed.D., Secretary of Education

#### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

### 1555 Marketing Education 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 Marketing Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

**3.0 Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Marketing Education 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 An educator shall have also met the following:
- 4.1.1 achieved on the Praxis Subject Assessment - Marketing Education (ETS Test # 5561) a Passing Score of 166.

**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))  
14 **DE Admin. Code** 1557

**REGULATORY IMPLEMENTING ORDER****1557 Technology Education Teacher****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1557 Technology Education Teacher. The regulation concerns the requirements for a Standard Certificate for Technology Education Teacher. The proposed changes include adding a definition of the term "passing score" to subsection 2.2; adding subsection 3.1.3; and adding Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Technology Education Teacher.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1557 Technology Education Teacher in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

**II. Findings of Fact**

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1557 Technology Education Teacher to add a definition of the term "passing score" to subsection 2.2; add subsection 3.1.3; and add Section 4.0 to specify the required examination of content knowledge and passing score for a Standard Certificate for Technology Education Teacher.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1557 Technology Education Teacher.

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Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1557 Technology Education Teacher amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1557 Technology Education Teacher in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

#### Department of Education

Susan Bunting, Ed.D., Secretary of Education

#### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

### 1557 Technology Education 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 Technology Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

"**Technology Education**" means a study of technology, which provides an opportunity for students to learn about the processes and knowledge related to technology that are needed to solve problems and extend human capabilities. This study includes the application of the Design Process, the Systems Model, technological resources, engineering design and Design Briefs. Technology Education is not a curricular area defined by the study and application of computer-based skills e.g., keyboarding, word processing, spreadsheets, data bases and/or multi-media presentations.

#### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Technology Education 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 An educator shall have also met the following:
- 4.1.1 achieved on the *Praxis* Subject Assessment - Technology Education (ETS Test # 5051) a Passing Score of 159.

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### **PROFESSIONAL STANDARDS BOARD**

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

14 **DE Admin. Code** 1562

#### **REGULATORY IMPLEMENTING ORDER**

#### **1562 Teacher of English Learners**

#### **I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1562 Teacher of English Learners. The regulation concerns the requirements for a Standard Certificate for Teacher of English Learners. The proposed changes include striking the non-regulatory note; adding subsection 4.1.3 to specify the required examination of content knowledge and passing score for a Standard Certificate for Teacher of English Learners; and striking Section 6.0 as the effective date referenced therein (January 1, 2017) applied to amendments that were published in 2016.

Notice of the proposed regulation was published in the *Register of Regulations* on August 1, 2017 in the form attached hereto as Exhibit "A." Persons who wished to present their views regarding the proposed regulation were invited to do so in writing by August 31, 2017. The Professional Standards Board did not receive written comments.

On September 7, 2017, the Professional Standards Board voted to propose for adoption by the Department of Education 14 **DE Admin. Code** 1562 Teacher of English Learners in the form attached hereto as Exhibit "A" subject to the State Board of Education's approval.

#### **II. Findings of Fact**

The Professional Standards Board found that it is appropriate to amend 14 **DE Admin. Code** 1562 Teacher of English Learners to strike the non-regulatory note; add subsection 4.1.3 to specify the required examination of content knowledge and passing score for a Standard Certificate for Teacher of English Learners; and strike Section 6.0 as the effective date referenced therein (January 1, 2017) applied to amendments that were published in 2016.

The Professional Standards Board believes that the proposed regulation serves to improve the quality of instruction for Delaware's children and that the amendments are designed to improve the quality of the Delaware educator workforce and to improve student performance.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board concluded that it is appropriate to amend 14 **DE Admin. Code** 1562 Teacher of English Learners.

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Pursuant to 14 **Del.C.** §§1203 & 1205(b), the regulation attached hereto as Exhibit "A" is hereby approved.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 1562 Teacher of English Learners amended shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1562 Teacher of English Learners in the *Administrative Code*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Professional Standards Board on September 7, 2017 and by the State Board of Education on September 19, 2017 pursuant to 14 **Del.C.** §§1203 & 1205(b). The effective date of the State Board of Education's Order will be ten (10) days from the date the Order is published in its final form in the *Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of September, 2017.

#### Department of Education

Susan Bunting, Ed.D., Secretary of Education

#### Approved this 19<sup>th</sup> day of September, 2017 by the State Board of Education

Dennis L. Loftus, Ed.D., President

Liane M. Sorenson

Nina Lou Bunting, Vice President

Barbara B. Rutt

Gregory B. Coverdale, Jr. (absent)

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

### 1562 Teacher of English Learners

~~Non-regulatory note: Passage on an examination of content knowledge may also be required to obtain this certification. Pursuant to 14 **Del.C.** §1220 and 14 **DE Admin. Code** 1505, an examination of content knowledge is required when applicable and available. An examination of content knowledge is applicable and available when it is required by the Professional Standards Board, in consultation with the Department, and with the approval of the State Board of Education. See the Department of Education's website for additional information.~~

#### 1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of English Learners. This certification is required for grades K to 12.
- 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 word and term, 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 Professional Standards Board, in consultation with the Department and with the approval of the State Board of Education.

#### 3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as Teacher of English Learners 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.

#### 4.0 Additional Requirements

- 4.1 An educator shall also have satisfied each of the following requirements:
- 4.1.1 Demonstrated oral and written proficiency in English by either:
    - 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; 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 the ACTFL Oral Proficiency Interview (OPI) in English and the ACTFL Writing Proficiency Test (WPT) in English; and
  - 4.1.2 Completion of either:
    - 4.1.2.1 A bachelor's, master's, or doctoral degree from a regionally accredited college or university with a major or its equivalent in Teaching English Learners 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 a state approval body employed the appropriate standards; or
    - 4.1.2.2 A minimum of fifteen (15) credits or the equivalent thereof in professional development as approved by the Department in the following content areas:
      - 4.1.2.2.1 Methods of Teaching English as a Second Language (3 credits);
      - 4.1.2.2.2 Second Language Acquisition (3 credits);
      - 4.1.2.2.3 Teaching Literacy for English Learners (3 credits);
      - 4.1.2.2.4 Second Language Testing (3 credits); and
      - 4.1.2.2.5 Structure of the English Language (3 credits).
  - 4.1.3 Achieved on the *Praxis* Subject Assessment - English to Speakers of Other Languages (ETS Test # 5362) a passing score of 149.

#### 5.0 Past Certification Recognized

The Department shall recognize a Standard Certificate English to Speakers of Other Languages (ESOL) 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 Teacher of English Learners.

#### 6.0 ~~Effective Date~~

~~This regulation shall be effective on January 1, 2017.~~

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## DEPARTMENT OF FINANCE

### OFFICE OF UNCLAIMED PROPERTY, STATE ESCHEATOR

Statutory Authority: 12 Delaware Code, Section 1132 (12 Del.C. §1132)

12 DE Admin. Code 100, 101, 102 & 103

#### ORDER

- 100 Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager**  
**101 Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property**  
**102 Regulation on Practices and Procedures for Records Examinations by the State Escheator**  
**103 Abandoned or Unclaimed Property Examination Guidelines**

#### SUMMARY OF REGULATION

This regulation repeals all existing regulations related to State of Delaware's Abandoned or Unclaimed Property program. The Department, in consultation with the Secretary of State, published new, revised regulations, at 104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual, to replace the existing regulations.

#### **These Regulations repeal the following existing provisions in the Delaware Administrative Code:**

12 DE Admin. Code 100, *Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager*

12 DE Admin. Code 101, *Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property*

12 DE Admin. Code 102, *Regulation on Practices and Procedures for Records Examinations by the State Escheator*

12 DE Admin. Code 103, *Abandoned or Unclaimed Property Examination Guidelines*

#### **These Regulations repeal the following existing Regulations:**

*Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Program, 9 DE Reg. 771 (11/01/05). Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program, 10 DE Reg. 699 (10/01/06) (Final). Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager, 15 DE Reg. 1323 (03/01/12) (Final).*

*Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property, 15 DE Reg. 1330 (03/01/12).*

*Regulation on Practices and Procedures for Records Examinations by the State Escheator, 16 DE Reg. 530 (11/01/12) (Final).*

*Abandoned or Unclaimed Property Audit Examination Guidelines, 16 DE Reg. 630 (12/01/12) (Final).*

#### **STATUTORY AUTHORITY**

Delaware Code, Title 12 §1132

#### **PROCEDURAL HISTORY AND FINDINGS OF FACT**

On January 29, 2015, the Governor of Delaware signed into law Senate Bill 11 of the 148<sup>th</sup> General Assembly, which directed the Delaware Secretary of Finance to complete the development of a detailed manual containing procedural guidelines for the conduct of Delaware unclaimed property examinations. On February 2, 2017, the Governor of Delaware signed into law Senate Bill 13 of the 149<sup>th</sup> General Assembly, which revised and updated the Delaware Abandoned and Unclaimed Property Law. Section 1176(b) directed the Secretary of Finance, in consultation with the Secretary of State, to promulgate regulations to create consistency in any examination or voluntary disclosure. On June 29, 2017, the Governor signed into law Senate Substitute 1 for Senate Bill 79, which

further updated the Delaware Abandoned or Unclaimed Property Law and clarified portions of Senate Bill 13.

On April 1, 2017, the Department of Finance published a Proposed Regulation related to the State of Delaware's Abandoned or Unclaimed Property Law, which sought to repeal all existing regulations related the Delaware Abandoned and Unclaimed Property Law. The Department received no comment on the regulation.

The Department of Finance, acting through the State Escheator, finds that the following repeal of existing regulations is necessary as Regulation 104, Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual is adopted and shall be final effective October 11, 2017.

**THEREFORE IT IS ORDERED** that the following Regulation, which strikes all previous regulations, is adopted and shall be final effective October 11, 2017 and shall apply to all reporting and examinations not complete as of that date.

David M. Gregor, State Escheator  
Department of Finance

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2017 issue of the *Register* at page 764 (20 DE Reg. 764). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Regulations 100, 101, 102 and 103**

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**OFFICE OF UNCLAIMED PROPERTY, STATE ESCHEATOR**

Statutory Authority: 12 Delaware Code, Section 1132 (12 Del.C. §1132)

**ORDER**

**104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual**

**SUMMARY OF REGULATION**

This regulation replaces all existing regulations (which have been repealed by separate regulation) on abandoned or unclaimed property reporting and examination by the State Escheator as described in Chapter 11 of Title 12 of the Delaware Code. The Department of Finance, in consultation with the Secretary of State, has promulgated this regulation to establish instructions and guidelines for the administration of the State of Delaware's Abandoned and Unclaimed Property Program. The regulation provides a framework to ensure that Holders of abandoned or unclaimed property have an understanding of the processes available to them and the State's expectations. The regulation is to be implemented consistently, to ensure fair and uniform treatment of Holders.

**STATUTORY AUTHORITY**

12 Delaware Code, Section 1132: "...[T]he State Escheator may make such rules and regulations as the State Escheator may deem necessary to administer and enforce this chapter."

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

On January 29, 2015, the Governor of Delaware signed into law Senate Bill 11 of the 148<sup>th</sup> General Assembly, which directed the Delaware Secretary of Finance to complete the development of a detailed manual containing procedural guidelines for the conduct of Delaware unclaimed property examinations. On February 2, 2017, the Governor signed into law Senate Bill 13 of the 149<sup>th</sup> General Assembly, which revised and updated the Delaware Abandoned or Unclaimed Property Law. Section 1176(b) directed the Secretary of Finance, in consultation with the Secretary of State, to promulgate regulations to create consistency in any examination or voluntary disclosure. On June 29, 2017, the Governor signed into law Senate Substitute 1 for Senate Bill 79, which further updated the Delaware Abandoned or Unclaimed Property Law and clarified portions of Senate Bill 13.

On April 1, 2017, the Department of Finance published Proposed Regulations related to the State of

Delaware's Abandoned or Unclaimed Property Law. After receiving comments that led to substantive changes, the Department of Finance re-published Proposed Regulations on August 1, 2017. Following the re-publishing, written comments were received from the following persons or organizations: the American Payroll Association; Diane Green-Kelly, Esquire, of Reed Smith LLP; the Investment Company Institute; RBC Bearings, the Unclaimed Property Professionals Association; and the U.S. Chamber Institute for Legal Reform. The Department of Finance thoughtfully reviewed all submitted comments.

The Department of Finance, acting through the State Escheator, finds that the following regulation: (1) are rules of practice and procedure used by the State Escheator and the Office of Unclaimed Property and (2) are consistent with Chapter 11 of Title 12 of the Delaware Code.

**THEREFORE IT IS ORDERED** that the following Regulation 104, Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual is adopted and shall be final effective October 11, 2017 and shall apply to all reporting and examinations not complete as of that date.

David M. Gregor, State Escheator  
Department of Finance

**\*Please note that no changes were made to the regulation as originally proposed and published in the August 2017 issue of the *Register* at page 123 (21 DE Reg. 123). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**104 Department of Finance Abandoned or Unclaimed Property Reporting and Examination Manual**

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

### 1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))  
24 DE Admin. Code 1100

#### FINAL ORDER ADOPTING REGULATION CHANGES

#### 1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene pursuant to 24 **Del.C.** §1106(a)(1), proposed to revise its regulations. The proposed amendments to regulation eight add regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed changes to Regulation 11 eliminate several crimes that are listed as substantially related to the practice of dentistry and dental hygiene, and the proposed addition of Regulation 13 adds provision for the practice of teledentistry pursuant to 24 **Del.C.** §1101(19).

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on February 1, 2017, a public hearing was held on March 18, 2017, at a regularly scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene to receive verbal comments regarding the Board's proposed amendments to its regulations. No comments were submitted at that time.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

There was no verbal testimony given at the public hearing on March 18, 2017. No written comments were received by the Board during the initial thirty-day public comment period; nor were any written comments received

after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §1106(a)(1) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to regulation eight add regulatory provisions for inactive status pursuant to 24 **Del.C.** §1126(e). The proposed changes to Regulation 11 eliminate several crimes that are listed as substantially related to the practice of dentistry and dental hygiene, and the proposed addition of Regulation 12 adds provision for the practice of teledentistry pursuant to 24 **Del.C.** §1101(19).
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

## DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §1106(a)(1) and for the reasons set forth above, the Board of Dentistry and Dental Hygiene does hereby ORDER that the regulations be, adopted and promulgated as set forth in the Delaware *Register of Regulations*. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g). The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 17<sup>th</sup> day of August, 2017.

### **BOARD OF DENTISTRY AND DENTAL HYGIENE**

Thomas A. Mercer, DMD, President	Brian McAllister, DDS, Secretary
Erin Cox, DDS	Bruce Mathews, DDS (absent)
Ryan Barhart, DDS	Carol Argo, RDH (absent)
Nathaniel Gibbs, Public Member (absent)	Rozi Berberian, Public Member (absent)
June Ewing, Public Member	Buffy Parker, RDH, Hygiene
Bonnie Thomas, RDH, Hygiene Advisory	Mary Trinkle, RDH, Hygiene Advisory

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2017 issue of the *Register* at page 621 (20 DE Reg. 621). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1100 Board of Dentistry and Dental Hygiene**

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

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

## ORDER

**3100 Board of Funeral Services**

On January 1, 2017 the Delaware Board of Funeral Services published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 20, Issue 7. The notice indicated that written comments would be

accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 28, 2017 at a regularly scheduled meeting of the Board of Funeral Services to receive verbal comments regarding the Board's proposed amendments to its regulations.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

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

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

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

## FINDINGS OF FACT AND CONCLUSIONS

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

## DECISION AND ORDER CONCERNING THE REGULATIONS

**NOW THEREFORE**, pursuant to 24 **Del.C.** §3105(a)(1) and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on January 1, 2017. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

**SO ORDERED** this 23<sup>rd</sup> day of May, 2017.

### DELAWARE BOARD OF FUNERAL SERVICES

Keith Parsell, President

Duwayne Casini (absent)

Chad Chandler (absent)

William Torbert

Jane Hovington

Elizabeth Happoldt

Danna Levy (absent)

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2017 issue of the *Register* at page 540 (20 DE Reg. 540). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3100 Board of Funeral Services**

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# GENERAL NOTICES

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

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

#### NOTICE

#### State Implementation Plan (SIP) Revisions

**1. TITLE OF SIP REVISION:**

State Implementation Plan (SIP) Revision to certify that Delaware Emission Statement program and Preconstruction Review program meet all 2008 Ozone NAAQS requirements.

State Implementation Plan Revision regarding a negative declaration for EPA's 2016 Oil and Gas Control Techniques Guidelines.

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

DNREC is proposing to submit to the EPA two revisions to its SIP. The SIP revisions are: 1) to certify that Delaware Emission Statement program under 7 **DE Admin. Code** 1117, and Preconstruction Review program under 7 **DE Admin. Code** 1125 meet all 2008 Ozone NAAQS requirements, and 2) to adopt a negative declaration that certifies Delaware has no existing sources covered by EPA's 2016 Oil and Gas Control Techniques Guidelines.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 **Del.C.** Ch. 60 Environmental Control

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

N/A

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on the proposed SIP revision will be held on October 25, 2017 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may present oral or written comments regarding the proposals at the public hearing, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. The hearing record will remain open until November 9, 2017.

**7. PREPARED BY:**

Renaë Held      [Renaë.Held@state.de.us](mailto:Renaë.Held@state.de.us)      (302) 739-9402

*Proposal*

**Delaware State Implementation Plan Revision  
Under the 2008 Ozone National Ambient Air Quality Standard**

**Negative Declaration for Emission Sources Specified in Oil and Gas Industry Control Technique Guidelines**

**Submittal To**

**U.S. Environmental Protection Agency**

**Submitted By**

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## Delaware Department of Natural Resources and Environmental Control

September 2017

### 1. Introduction

In October 2016, the US Environmental Protection Agency (EPA) issued the Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry (Reference 1, hereafter referred to as the 2016 Oil and Gas CTG). This document provides the states with ozone non-attainment areas and states in the Ozone Transport Region (OTR) a technical guideline for implementing controls to reduce volatile organic compound (VOC) emissions from leaks in the oil and natural gas production and processing industry.

Section 184 (b) of the Clean Air Act (CAA) requires states in the OTR, including Delaware, to revise their State Implementation Plans (SIP) to implement the CTG control techniques, as a Reasonably Available Control Technology (RACT) control measure, with respect to all covered sources of VOC emissions in the states. When a state confirms there are no applicable sources within its boundary, the revision to its SIP can be a negative declaration regarding the inapplicability of the CTG in the state, and therefore there is no need for implementing the CTG control (Reference 2).

This document is Delaware's negative declaration, as a SIP revision to its RACT SIP under the 2008 Ozone National Ambient Air Quality Standard (NAAQS) (Reference 3), regarding the 2016 Oil and Gas CTG. The agency with the direct responsibility for developing and submitting this SIP revision is Division of Air Quality (DAQ) within Delaware Department of Natural Resources and Environmental Control (the Department, or DNREC).

### 2. Determination on Non-Existence of Relevant Sources

The 2016 Oil and Gas CTG was developed to address VOC leaks in the oil and natural gas production and processing industry. Historically, and at present, Delaware has no facilities involved in industrial activities for oil and natural gas production and processing. Several facilities exist in Delaware for natural gas transmission and distribution only.

After issuing the 2016 Oil and Gas CTG, the EPA conducted an information collection request (ICR) of oil and gas facilities under the authority of section 114 of the Clean Air Act (CAA) to support the development of emission standards for existing oil and gas facilities under section 111 of the CAA. The EPA identified from its file three companies in Delaware that fell under the gas and oil segments: Penn-OK Corporation, Eastern Shore Natural Gas Company, and Delmarva Power & Lighting Company. The ICR was sent to all three companies and the Department in November 2016 and January 2017, respectively.

After receiving the ICR, the Department investigated the current status of the listed companies and their facilities, if any, in Delaware by either contacting the facilities or reviewing facility permit and emission files. The investigation has demonstrated the following.

(1) Penn-OK Corporation, identified in the ICR Part 1, was not recorded in Delaware's emission inventory. A search from Delaware Division of Corporations (DDC) found that this company was incorporated in Delaware in 1991 and closed on a later date (closing date unidentified, see Attachment 1). As shown in the DDC record, its location identified in the ICR (6 Fox Run Dr., Hockessin, DE 19707) was its registration agent's address. A further search in Google Map indicated that this address represented a single family house in a residential area.

(2) Eastern Shore Natural Gas Company, identified in the ICR Part 2, is not an oil or natural gas production and processing facility, but has two boosting stations (Permits#: APC-1996/0895-Operation, and APC-2005/0031-Construction/Operation) as part of the local natural gas transmission and distribution system. Upon request, the company provided the Department its status regarding the 2016 Oil and Gas CTG RACT summary sheet (see Attachment 2).

(3) Delmarva Power & Light Company in Wilmington, identified in the ICR Part 2, does not have any oil or natural gas production and processing facilities in Delaware. As shown in its permit file (Permit#: APC-2009/0002-Construction/Operation), the company has a natural gas distribution facility which stores liquefied natural gas and vaporizes/distributes it to the distributing system on peak-demand days.

In addition, the Department reviewed its air permits, emissions inventory files and Delaware business listings, and found no other facilities in Delaware that are currently involved in oil and gas production and processing activities.

### 3. Negative Declaration

Delaware hereby declares that it does not have any facility that has sources being covered by the 2016 Oil and Gas CTG. Therefore, a new Oil and Gas RACT rule will not be developed and incorporated into Delaware's RACT SIP under the 2008 ozone NAAQS. Delaware's RACT SIP under the 2008 ozone NAAQS (Reference 3) is still valid and sufficient.

**References**

1. Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16-001, US Environmental Protection Agency, October 2016. <https://www.epa.gov/sites/production/files/2016-10/documents/2016-ctg-oil-and-gas.pdf>

2. The 2016 Oil and Gas CTG link:

<https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/2016-control-techniques-guidelines-oil-and>

3. Delaware Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) under the 2008 Ozone National Ambient Air Quality Standard (NAAQS), submittal to EPA by Delaware Department of Natural Resources and Environmental Control, effective August 2014.

**Attachment 1**

Status of Peen-OK Corporation

Search result from Del. Division of Corporation search: The facility closed.

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# GENERAL NOTICES

343

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From: <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>

## Entity Details

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<a href="#">File Number:</a>	<b>2266643</b>	<a href="#">Incorporation Date / Formation Date:</a>	<b>6/24/1991</b> (mm/dd/yyyy)
<a href="#">Entity Name:</a>	<b>PENN-OK CORPORATION</b>		
<a href="#">Entity Kind:</a>	<b>Corporation</b>	<a href="#">Entity Type:</a>	<b>Closed Corp</b>
<a href="#">Residency:</a>	<b>Domestic</b>	<a href="#">State:</a>	<b>DELAWARE</b>

## REGISTERED AGENT INFORMATION

<a href="#">Name:</a>	<b>SCOTT S. MALONEY</b>		
<a href="#">Address:</a>	<b>6 FOX RUN DRIVE</b>		
<a href="#">City:</a>	<b>HOCKESSIN</b>	<a href="#">County:</a>	<b>New Castle</b>
<a href="#">State:</a>	<b>DE</b>	<a href="#">Postal Code:</a>	<b>19707</b>
<a href="#">Phone:</a>			

### Attachment 2

Facility information provided by Eastern Shore Natural Gas (ESNG) Company upon the Department request.

# GENERAL NOTICES

<b>Final VOC Control Techniques Guidelines for the Oil and Natural Gas Industry</b> <b>Summary of RACT Recommendations</b> <b>for Ozone Nonattainment Areas Classified as "Moderate" and Above,</b> <b>and States in the Ozone Transport Region</b> <small>NOTE: Please read the <a href="#">CTG</a> for additional detail.</small>	
Sources Covered	Reasonably Available Control Technology (RACT) Recommendation
<b>Storage Tanks</b>	
<ul style="list-style-type: none"> <li>Individual storage tanks with a potential to emit (PTE) ≥ 6 tons per year (tpy) of VOCs.</li> </ul>	<p>ESNG does not have any large storage tanks. A few small tanks are used to temporarily contain waste oil from engine oil changes and/or any liquids captured by pipeline filtration and liquid separation vessels that is then collected for recycling. These tanks have a maximum capacity of 500 gallons each.</p> <p>emissions remain below 4 tpy.</p>
<b>Pneumatic Controllers</b>	
<ul style="list-style-type: none"> <li>Individual continuous bleed, natural gas-driven pneumatic controller at a natural gas processing plant.</li> </ul>	<ul style="list-style-type: none"> <li>Natural gas bleed rate of zero standard cubic feet per minute (scfm) for pneumatic controllers, safety and positive actuation that require higher bleed rate.</li> </ul> <p>ESNG does not operate any natural gas processing plants.</p>
<ul style="list-style-type: none"> <li>Individual continuous bleed natural gas-driven pneumatic controller located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline.</li> </ul>	<p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p>
<b>Pneumatic Pumps</b>	
<ul style="list-style-type: none"> <li>Individual natural gas-driven diaphragm pump located at a natural gas processing plant.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual natural gas-driven diaphragm pump located at a well site.</li> </ul>	<ul style="list-style-type: none"> <li>Require routing of VOC emissions from the pump to an existing onsite control device/process.</li> <li>Require 95% control, unless the onsite existing control device/process is not available.</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> <li>Maintain records if there is no existing control device at the location of the pump.</li> </ul>
<ul style="list-style-type: none"> <li>Individual natural gas-driven diaphragm pump located at a well site that is in operation for any period of time each calendar day for less than a total of 90 days per calendar year.</li> </ul>	<p>Not covered; RACT would not apply.</p> <p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p>

Final VOC Control Techniques Guidelines for the Oil and Natural Gas Industry Summary of Recommendations, cont.	
Sources Covered	Reasonably Available Control Technology (RACT) Recommendation
<b>Compressors (Centrifugal &amp; Reciprocating)</b>	
<ul style="list-style-type: none"> <li>Individual reciprocating compressor located between the wellhead and point of custody transfer to the natural gas transmission and storage segment.</li> </ul>	<p>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</p> <p>operation or 36 months since the most recent rod</p> <ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site.</li> </ul>	Not covered; RACT would not apply.
<ul style="list-style-type: none"> <li>Individual centrifugal compressor using wet seals that is located between the wellhead and point of custody transfer to the natural gas transmission and storage segment.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual centrifugal compressor using wet seals located at a well site, or an adjacent well site and servicing more than one well site.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Individual centrifugal compressor using dry seals.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG operates reciprocation compressors, not centrifugal.</li> </ul>
<b>Leaks (Equipment Leaks and Fugitive Emissions)</b>	
<ul style="list-style-type: none"> <li>Equipment leaks from components in VOC service located at a natural gas processing plant.</li> </ul>	<ul style="list-style-type: none"> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Fugitive emissions (leaks) from individual well sites with wells with a gas-to-oil ratio (GOR) <math>\geq 300</math> that produce, on average, &gt; 15 barrel of oil equivalents (boe) per well per day.</li> </ul>	<ul style="list-style-type: none"> <li>Develop and implement semiannual optical gas imaging (OGI) monitoring and repair emission area.</li> <li>Method 500 ppm</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>
<ul style="list-style-type: none"> <li>Fugitive emissions (leaks) at individual gathering &amp; boosting stations located from the wellhead to the point of custody transfer to the natural gas transmission and storage segment, or an oil pipeline.</li> </ul>	<ul style="list-style-type: none"> <li>Develop and implement semiannual OGI monitoring and repair emission area.</li> <li>Method 500 ppm repair threshold.</li> <li>ESNG is a transmission pipeline, downstream of any production area, wellhead, or processing plants.</li> </ul>

*Proposal*

**Delaware State Implementation Plan Revision  
Under the 2008 Ozone National Ambient Air Quality Standard**

**Certification of Delaware's Non-attainment New Source Review (NNSR) and Emissions Statement Programs**

Submitted To

**U.S. Environmental Protection Agency**

Submitted By

Delaware Department of Natural Resources and Environmental Control

September 12, 2017

**1. Introduction**

On February 3, 2017 the EPA issued Findings of Failure to 15 states and the District of Columbia to submit certain required State Implementation Plan (SIP) elements for 2008 8-hour ozone standard nonattainment areas (82 FR 9158). According to EPA's action, Delaware failed to certify its Non-attainment New Source Review (NNSR) program for the Seaford, DE and Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA further determined Delaware's Emissions Statement program must also be certified for adequately addressing the 2008 ozone NAAQS.

**2. Delaware Non-attainment Areas Designated Under the 2008 Ozone National Ambient Air Quality Standards (NAAQS)**

EPA final designations under the 2008 ozone NAAQS for Delaware counties were finalized in April 2012. EPA included New Castle County in the marginal Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area and established Sussex County as the stand-alone marginal Seaford nonattainment area.

On April 23, 2015, Delaware submitted the 2011 base year inventory of ozone precursors to EPA for New Castle and Sussex Counties. EPA issued a direct final rule approving Delaware's base year inventory on October 1, 2015. On April 12, 2015 Delaware submitted a RACT SIP revision certifying that Delaware, as part of the Ozone Transport Region, meets its obligation to establish RACT controls for VOC and NOx. On September 12, 2017, EPA published a proposal in the Federal Register (82 FR 42767) to approve Delaware's RACT SIP.

**3. Certification of NNSR program**

EPA previously approved a state-wide NNSR SIP revision on February 28, 2013 (78 FR 13496) which covered the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Seaford, DE nonattainment areas for the 2008 ozone NAAQS. Delaware has not subsequently amended the SIP-approved NNSR program. Upon review of the approved NNSR program, Delaware finds and certifies that no changes are necessary to comply with the 2008 ozone NAAQS NNSR requirements. The State of Delaware is certifying that its existing NNSR program is at least as stringent as the requirements at 40 CFR 51.165 for ozone and its precursors, as amended by the final rule titled *Implementation of the 2008 National Ambient Air Quality Standard for Ozone: State Implementation Plan Requirements* (80 FR 12264, March 6, 2015). The requirements necessary to appropriately implement Delaware's NNSR program are included in Table 1.

**4. Certification of Emission Statement Program**

Section 182(a)(3)(B) of the Clean Air Act (CAA) requires states with ozone nonattainment areas to develop emission statement programs for VOC and NOx sources. The required state program and associated regulation defines how states obtain emissions data directly from facilities and report it to the EPA. EPA approved Delaware's Emission Statement program on April 29, 1996 (61 FR 7415). The approved emission statement rule, in force for the 1997 ozone NAAQS and the 1-hour ozone NAAQS, covers all portions of Delaware's nonattainment areas for the 2008 ozone NAAQS, and is sufficient for purposes of the emissions statement requirements for the 2008 ozone NAAQS. Delaware has reviewed its previously approved emission statement rule and is certifying to EPA that it meets the emission statement requirements for the 2008 ozone NAAQS. The requirements necessary to

appropriately implement Delaware's Emission Statement program are included in Table 1.

<b>Table 1: 2008 Ozone NAAQS SIP Requirements</b>	
<b>Non-attainment New Source Review</b>	
<b>40 CFR 51.165</b>	<b>Delaware Requirements</b>
(a)(1)(iv)(A)(I)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	7 DE Admin Code 1125 Section 2.2.
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	7 DE Admin Code 1125 Section 2.2.3.
(a)(1)(v)I: Significant net emissions increase of Nox is significant for ozone	7 DE Admin Code 1125 Section 1.9, Definitions – <b>“Major Modification”</b> .
(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	Not applicable since no Delaware nonattainment area is or has previously been designated as Extreme.
(a)(1)(x)(A)-(C) and I: Significant emissions rates for VOC and Nox as ozone precursors	7 DE Admin Code 1125 Section 1.9, Definitions – <b>“Significant”</b> .
(a)(3)(ii)(C)(I)-(2): Provisions for emissions reduction credits	7 DE Admin Code 1125 Section 2.5.
(a)(8): Requirements for VOC apply to Nox as ozone precursors	7 DE Admin Code 1125 Section 2.2.4.
(a)(9)(i)-(iii): Offset ratios for VOC and Nox for ozone nonattainment areas [ <i>subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)</i> ]	7 DE Admin Code 1125 Section 2.4.3.
(a)(12): Anti-backsliding provision(s), where applicable	Sources in Kent and New Castle Counties remain subject to requirements and major source thresholds based on the Severe designation for the 1-hour ozone standard. Sussex County remains subject to requirements and major source thresholds based on the Moderate designation as part of an ozone transport region.
<b>Emission Statement Program</b>	
<b>CAA Section 182(a)(3)(B)</b>	<b>Delaware Requirements</b>
182(a)(3)(B)(i) – Submit yearly	7 DE Admin Code 1117 Section 7.3.
182(a)(3)(B)(i) – Source certification	7 DE Admin Code 1117 Section 7.2.
182(a)(3)(B)(ii) – Reporting thresholds	7 DE Admin Code 1117 Section 7.1.

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## CALENDAR OF EVENTS/HEARING NOTICES

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### DEPARTMENT OF AGRICULTURE

#### HARNESS RACING COMMISSION

#### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission (DHRC) pursuant to 3 **Del.C.** §10005, proposes to amend its rules and regulations. The proposed regulation changes address needed amendments to the "racing conditions" thereby allowing additional conditions and more racing opportunities for Delaware horsemen, reference 6.2.2.

After discussions, which included technical experts, regulatory officials, and harness racing stakeholders, on August 2, 2017, the DHRC Rules Committee voted to recommend this rule amendment package to the full DHRC. On August 8, 2017, at its regular monthly meeting, the DHRC unanimously approved these proposed amendments. The DHRC rules committee meetings and DHRC regular monthly meetings are publically noticed open meetings. Subsequent to a 30-day comment period from October 1 to 31, 2017 and notice in the *Register of Regulations*, the DHRC plans to finalize the regulations on November 14, 2017 during its regularly scheduled monthly meeting. The meetings are held at the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE at 10:00am. Written comments must be received by COB October 31, 2017. Those comments should be sent to the same address listed above for meeting location, attention Mr. Mark Davis.

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### DEPARTMENT OF EDUCATION

#### PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, October 19, 2017 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

#### PUBLIC NOTICE

#### Division of Developmental Disabilities Services (DDDS) Lifespan Waiver

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 Delaware Social Services Manual (DSSM) regarding the Developmental Disabilities Services (DDDS) Lifespan Waiver, specifically, to *clarify internal policy and procedures*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [Nicole.M.Cunningham@state.de.us](mailto:Nicole.M.Cunningham@state.de.us), or by fax to 302-255-4413 by 4:30 p.m. on October 31, 2017. Please identify in the subject line: Division of Developmental Disabilities Services (DDDS) Lifespan Waiver.

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

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**DEPARTMENT OF INSURANCE****OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1801 Insurance Holding Company System Regulation With Reporting Forms and Instructions**

THE DEPARTMENT OF INSURANCE hereby gives notice of a proposed amendment to Department of Insurance Regulation 1801 relating to reporting forms and instructions for Insurance Holding Company System Regulation.

The purpose of the proposed amendment to Regulation 1801 is to add new subsection 4.5. This new subsection puts filers of reporting forms on notice that any statement submitted to the Department pursuant to the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act, 18 Del.C. Ch. 50, should not be considered "filed" until the Commissioner of the Department of Insurance determines that the statement is complete. The Department is also making edits to Section 8.0, Definitions, to comport with the Delaware Administrative Code Drafting and Style Manual.

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

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, 1<sup>st</sup> day, November, 2017. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist  
Attn: Regulatory Docket No. 3607-2017  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, 19904  
(302) 674-7379  
Email: [Leslie.Ledogar@state.de.us](mailto:Leslie.Ledogar@state.de.us)

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR QUALITY****PUBLIC NOTICE****1123 Standards of Performance for Steel Plants: Electric Arc Furnaces**

The purpose of this action is to repeal 7 DE Admin Code 1123, pursuant to an HB-147 review. This regulation currently applies to no source in Delaware and other more restrictive State and Federal requirements would apply should a new electric arc furnace be constructed in the future.

A public hearing on the proposed repeal will be held on October 25, 2017 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may present oral or written comments regarding the proposed changes at the public hearing, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. The hearing record will remain open until November 9, 2017.

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**DIVISION OF AIR QUALITY****PUBLIC NOTICE****1136 Acid Rain Program**

7 DE Admin Code 1136 adopts the federal acid rain regulations by reference. Pursuant to an HB-147 review DNREC has determined that there have been a number of updates to portions of 40 CFR Parts 72 -78 (Acid Rain

Program provisions) that should be adopted. The purpose of this action is to update 7 **DE Admin. Code** 1136 to adopt the current federal requirements.

A public hearing on the proposed amendment will be held on October 25, 2017 beginning at 6:00PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Individuals may present oral or written comments regarding the proposed changes at the public hearing, or via email to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. The hearing record will remain open until November 9, 2017.

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**DIVISION OF AIR QUALITY**  
**PUBLIC NOTICE**

**1140 Delaware Low Emission Vehicle Program**

Congress sought to reduce public health impacts due to air pollutants in various sections of the Clean Air Act. Under Subsection 202(a), Congress stipulated that the EPA promulgate standards applicable to the emissions of any pollutant from new motor vehicles or motor vehicle engines that contribute to the endangerment of the public health or welfare. To avoid disruption in the motor vehicle manufacturing industry, Congress prohibited State and local agencies from regulating new motor vehicles or motor vehicle engines under Subsection 209(a). Recognizing that California had been regulating this industry segment prior to March 30, 1966, Congress allowed California to continue adopting new motor vehicle standards, pending the EPA's review and approval of those standards under Subsection 209(b). Under Section 177, Congress allowed States in non-attainment areas to adopt new motor vehicle or motor vehicle engine standards, if such standards are identical to the California standards.

On December 1, 2013, Delaware adopted California's Low Emission Vehicle III standard and the Greenhouse Gas standard into 7 **DE Admin Code** 1140. On August 30, 2014, Delaware submitted 7 **DE Admin Code** 1140, requesting the EPA to incorporate this updated version of Delaware's low emission vehicle program into Delaware's State Implementation Plan (SIP). The EPA approved Delaware's low emission vehicle program SIP revision on October 14, 2015. California has subsequently revised 14 sections in those standards that Delaware incorporated by reference on December 1, 2013.

The purpose of this action is to update the adoption by reference of those 14 California sections in 7 **DE Admin Code** 1140 to ensure that Delaware's standards remained identical to the EPA approved California standards, as mandated in Section 177.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, October 25, 2017 in the DNREC Auditorium in the Richardson & Robbins Building located at 89 Kings Highway, Dover, DE. If you are unable to attend or wish to submit your comments in advance of the public hearing, please send your comments to address below. Interested parties may also submit written comments to the Department, to the same address below, up until the end of the comment period, which will extend through November 9, 2017, unless a longer period is designated by the hearing officer at the public hearing.

This hearing will be one of four separate hearings being held in succession, beginning at 6:00PM. Persons interested in one or more of the hearings should arrive by 6:00PM, as these changes are expected to be non-controversial and the hearings may progress quickly.

DNREC - Division of Air Quality  
Subject: 1140 Public Hearing 10/25/17  
100 W. Water Street, Suite 6A  
Dover, DE 19904

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**DIVISION OF WATER**  
**GROUND WATER DISCHARGES SECTION**  
**PUBLIC NOTICE**

**7102 Regulations Governing Underground Injection Control**

The purpose of the proposed revisions is to bring the regulations into compliance with current federal requirements, as determined by the United States Environmental Protection Agency (EPA). The EPA issued the

*Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells*, effective April 2000 and December 2011. With this, the State of Delaware Regulations Governing Underground Injection Control is to be amended. The revised State regulations will also expand the existing regulations to include additional requirements for multiple water management activities. The regulations were published in the May 1, 2017, Delaware *Register of Regulations* and a public hearing was held on May 25, 2017. As a result of additional review and comments received, changes were made to the initial proposed UIC regulations. Since changes were made by the Department subsequent to the hearing record having closed for public comment, the decision was made to republish this revised proposed regulation and to reopen the public comment period for an additional 30 days to provide complete transparency to the public.

The hearing record on the proposed changes to State of Delaware Regulations Governing Underground Injection Control will be re-opened October 1, 2017 for a 30-day public comment period ending at the close of business on October 31, 2017. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042.

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **DIVISION OF GAMING ENFORCEMENT**

#### **PUBLIC NOTICE**

#### **Interactive Fantasy Sports Contests Regulations**

The Delaware Division of Gaming Enforcement, pursuant to 29 **Del.C.** §4866, proposes to adopt the following regulations governing the practice of interactive fantasy sports contests in the State of Delaware. The Delaware Interactive Fantasy Contests Act was enacted on July 26, 2017. At that time the Governor designated the Delaware Division of Gaming Enforcement to promulgate regulations to implement the provisions of and effectuate the policy and objectives of the Act. These regulations are comprehensive, and all newly created.

Written comments regarding the proposed regulations should be sent to Gregory Nolt, Director of the Delaware Division of Gaming Enforcement, 655 S. Bay Road, Blue Hen Mall Corporate Center, Suite 1A, Dover, DE 19901. Written comments will be accepted until October 31, 2017 pursuant to 29 **Del.C.** §10118(a).

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## **OFFICE OF MANAGEMENT AND BUDGET**

### **DIVISION OF FACILITIES MANAGEMENT**

#### **PUBLIC NOTICE**

#### **4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects**

On June 1, 2017 (Volume 20, Issue 12), the Office of Management and Budget (OMB) published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** § 6908(a)(6). It was requested that written materials and suggestions from the public concerning the proposed amendments to 19 **DE Admin. Code** 4104 be delivered to OMB by July 18, 2017, or be presented at a public hearing on June 23, 2017, after which time OMB would review information, factual evidence and public comment to the proposed regulations. Considerable public comment was received by individuals representing the following groups:

- Jake Collins, President, Regulations Solutions Inc.
- Brandi Redrow, President, American Flag Inc.
- Tamara Curran, Vice President of Finance, SC&A Construction

The comments that were received have been considered and resulted in substantive changes to the form and content of the initially proposed amendments to the regulation. In accordance with 29 **Del.C.** §10118(c), the amended regulation is hereby proposed as a newly amended regulation.

Members of the public may receive a copy of the existing regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South

Dover, DE 19901.

Or by email at: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

The current regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that are incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

Proposed amendments to this regulation accomplish the following:

- A) Clarifies that a Contractor or Subcontractor's Program does not need to be Jobsite specific.
- B) Allows for a Contractor or Subcontractor to participate in a Consortium.
- C) Corrects and clarifies substances tested and thresholds.
- D) Increases pre-employment testing requirement from 60 - 180 days.
- E) Clarifies procedures for Accident Triggered Testing.
- F) Decreases the percentage of employees to be randomly tested per month from 10% to 5 % for drugs, and from 10% to 2.5% for alcohol.
- G) Removes the requirement that a Contractor or Subcontractor must submit testing forms to the project Owner.
- H) Allows for alternate methods of data review by the Owner in lieu of on site auditing of Contractor/ Subcontractor records.

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed new regulations must submit them to:

Robert Scoglietti  
Delaware Office of Management and Budget  
122 Martin Luther King Jr. Blvd. South  
Dover, DE 19901

Or

Email: [robert.scoglietti@state.de.us](mailto:robert.scoglietti@state.de.us)

no later than the close of business on November 3, 2017.

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