
Delaware Register of Regulations

Issue Date: September 1, 2018

Volume 22 - Issue 3, Pages 173 - 242

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



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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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.

Emergency Regulations

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

§ 10119. Emergency regulations.

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

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 **Del.C.** §§314, 2101 & 505; 29 **Del.C.** Ch. 101; 29 USC §1144(b)(6)(A)(i);
and in response to 29 CFR 2510.3-5
18 **DE Admin. Code** 1405

EMERGENCY ORDER**1405 Filing Requirements for Multiple Employer Welfare Arrangements**

Pursuant to 29 **Del.C.** §10119, it is necessary to repeal Regulation 1405, Filing Requirements for Multiple Employer Welfare Arrangements [Formerly Regulation 67] and replace it with new Regulation 1405, Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans.

REASONS FOR EMERGENCY ACTION

- A. On June 19, 2018, the Federal Department of Labor (DOL) released a new regulation, to be codified at 29 CFR pt. 2510, that redefines "employer" under Section 3(5) of the Employee Retirement Income Security Act (ERISA) (hereinafter the "Final Rule"). The Final Rule was published in the *Federal Register* on June 21, 2018. See 83 FR 28,912.
- B. The Final Rule allows small businesses to band together in an association formed primarily to offer insurance, and then offer health insurance that qualifies as a "large group plan" if the employers are in the "same trade, industry, line of business, or profession" or "have a principal place of business within a region that does not exceed the same State or the same metropolitan area (even if the metropolitan area includes more than one State)." *Id.* at 28,922. Such an association could attempt to offer to its members a large group health insurance plan by considering, "in the aggregate," all of the employees of the association's members, even if no member is a large employer. *Id.* at 28,934-35.

- C. Large group health insurance plans do not contain the same protections or provisions that are required by the federal Patient Protection and Affordable Care Act, Public Law 111-148 (2010), to be included in individual and small group health insurance.
- D. In the Final Rule, DOL made clear that States will be able to apply their insurance laws to association health plans (AHPs) that are not fully insured and to apply certain insurance laws to AHPs that are fully insured. *Id.* at 28,936. The Final Rule expressly states that it does not preempt state law, and it makes clear that state regulators maintain their full authority under state law to regulate their state insurance markets. DOL stated that, "[T]he final rule importantly depends on state insurance regulators for oversight and enforcement to, among other things, prevent fraud, abuse, incompetence and mismanagement, and avoid unpaid health claims." *Id.* at 28,960.
- E. The Final Rule contains a series of effective and applicability dates. It became effective on August 20, 2018, *id.* at 28,912, and allows "fully insured plans to begin operating under the new rule on September 1, 2018" *id.* at 28,953. In addition, "[e]xisting self-insured AHPs can begin operating under the new rule on January 1, 2019, and new self-insured AHPs can begin on April 1, 2019." *Id.* at 28,953.
- F. DOL stated that the months-long delays in applicability of the Final Rule for self-insured AHPs would allot "additional time for the Department and State authorities to address concerns about self-insured AHPs' vulnerability to financial mismanagement and abuse." *Id.* at 28,953. The Final Rule noted that "[t]he Department and State authorities both need time to build and implement adequate supervision and possible infrastructure to prevent fraud and abuse," *id.*, and, with respect to the April 1, 2019 date for new self-insured AHPs, to "provide sufficient time for the Department and the States to implement a robust supervisory infrastructure and program" *id.*
- G. DOL notes that the Final Rule's relaxation of legal requirements would, without safeguards, create "cause for concern about fraud," *id.* at 28,928, but the Final Rule lacks measures to address the likelihood of fraud and abuse that the Final Rule may cause. Accordingly, DOL acknowledges that the Final Rule "will introduce increased opportunities for mismanagement or abuse, in turn increasing oversight demands on the Department and State regulators," *id.* at 28,953.
- H. The Emergency Regulation requires fully-insured AHPs and MEWAs operating in Delaware to offer comprehensive health insurance coverage to their members that complies with all state benefit mandates. This requirement will protect fully insured AHP and MEWA members and their dependents who experience serious health conditions and, at the same time, will help limit upward premium pressure on Choose Health Delaware, Delaware's free official program that helps individuals and businesses learn more about the low-cost, high-quality health coverage available through the Health Insurance Marketplace (HIM). If there were no requirement that fully insured AHPs and MEWAs provide comprehensive coverage, fully-insured AHPs and MEWAs would be able to offer limited benefit or "skinny" health insurance plans that appeal to the youngest and healthiest lives on HIM.
- I. The Department is not able to complete the process of repealing and replacing the existing regulations, including the requirement to meet the publication and public notice provisions of the Delaware Administrative Procedures Act, by September 1, 2018, which is the date that AHPs are allowed under the Final Rule to begin operating in Delaware.
- J. Emergency rule-making is therefore necessary to ensure that fully-insured AHPs, which begin operating on or after September 1, 2018, provide affordable, comprehensive health care coverage, rather than limited benefit plans that erode the stability of Delaware's HIM.
- K. The Department has completed the work necessary to submit the proposed new regulations for public comment and by issuing this emergency order will permit a timely transition for the regulatory oversight of AHPs during the time required for public comment on the proposed new regulation.

DECISION AND ORDER

1. Regulation 1405 as currently promulgated is rescinded and the attached revised version of Regulation 1405 is substituted in lieu thereof as a new emergency regulation effective September 1, 2018.
2. This order shall be effective until December 31, 2018 or until the attached proposed new Regulation 1405 is adopted pursuant to the Delaware Administrative Procedures Act, whichever shall first occur. The Department

will receive, consider and respond to petitions by any interested person for the reconsideration or revision of the emergency regulation.

3. The Department gives public notice of proposed new Regulation 1405 as required by 29 **Del.C.** §10115 as follows:

PUBLIC NOTICE OF PROPOSED DEPARTMENT OF INSURANCE REGULATION RELATING TO REQUIREMENTS FOR FULLY INSURED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS [FORMERLY REGULATION 67] AND ASSOCIATION HEALTH PLANS

INSURANCE COMMISSIONER TRINIDAD NAVARRO hereby gives notice of proposed new Department of Insurance Regulation 1405 relating to Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans. The docket number for these proposed amendments is 3880-2018.

As a result of the enactment of a new federal regulation, to be codified at 29 CFR pt. 2510, that redefines "Employer" under Section 3(5) of the Employee Retirement Income Security Act (ERISA) (hereinafter the "Final Rule"), the Department has determined to rescind and replace Regulation 1405 relating to Requirements for Multiple Employer Welfare Arrangements [Formerly Regulation 67], and replace it with Regulation 1405 relating to Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans. The Delaware Code authority for the change is 18 **Del.C.** §314, 18 **Del.C.** §2101, 18 **Del.C.** §505, 29 **Del.C.** Ch. 101, and 29 USC §1144(b)(6)(A)(i), and in response to 29 CFR 2510.3-5. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, October 2, 2018 by mailing to:

Delaware Department of Insurance
Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist
Docket No. 3880-2018
841 Silver Lake Boulevard,
Dover, DE 19904

or by emailing them to leslie.ledogar@state.de.us.

4. Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 **Del.C.** §10115.

IT IS SO ORDERED this 15th day of August, 2018.

Trinidad Navarro
Insurance Commissioner

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

1405 Filing Requirements for Multiple Employer Welfare Arrangements

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE
FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 101(1), (3) and (6) (3 **Del.C.** §101(1), (3) & (6))

PUBLIC NOTICE**302 Produce Safety Regulations****Summary**

The Department of Agriculture proposes to amend its Regulations adopted in accordance with Title 3, Chapter 1 of the Delaware Code to add new Produce Safety Regulations at 3 **DE Admin. Code** 302. The purpose of the amended regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms under the federal Food Safety Modernization Act. Title 21 of the CFR Part 112 of the Code of Federal Regulations. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the September 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before October 1, 2018. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after October 1, 2018, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

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

<http://regulations.delaware.gov/register/september2018/proposed/22 DE Reg 183RFA 09-01-18.pdf>

302 Produce Safety Regulations**1.0 Authority**

These regulations related to the federal Food Safety Modernization Act's Produce Safety Rule are promulgated pursuant to the authority provided in 3 Del.C. § 101 (1), (3), and (6).

2.0 Purpose

The Department of Agriculture has enforcement responsibility for the Produce Safety Rule of the Food Safety Modernization Act (FSMA), Title 21, Part 112 of the Code of Federal Regulations. The purpose of these proposed regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms as currently appear in the FSMA and as the FSMA may be amended from time to time.

3.0 Registration

- 3.1 In order to determine the farms subject to the Food Safety Modernization Act Produce Safety Rule, the Department of Agriculture will require that all farms within Delaware that grow produce register with the Department of Agriculture.
- 3.2 The registration form, available from the Department of Agriculture, shall include at a minimum the following required fields:
 - 3.2.1 Name
 - 3.2.2 Address
 - 3.2.3 Farm Location(s)
 - 3.2.4 Telephone number and email address of owner/producer
 - 3.2.5 Approximate average annual income from produce sales
 - 3.2.6 Description of all produce grown
 - 3.2.7 Seasonal Growing Period
- 3.3 The registration form may include additional fields as determined by the Department of Agriculture.
- 3.4 Forms will be provided by the Department of Agriculture and must be returned to the Department of Agriculture upon completion. The Department of Agriculture may provide the registration forms in electronic format. Other timely information may also be sent to the registrants.

4.0 Inspections

- 4.1 Department of Agriculture personnel are authorized, at any time, to enter any farm or facility that grows, harvests, packs or holds produce for human consumption to:
 - 4.1.1 Inspect the farm or facility to determine whether the rules promulgated under these regulations are being violated.
 - 4.1.2 Request to review and copy the farm or facility's records pursuant to the federal regulations on recordkeeping.
 - 4.1.3 Secure and test samples as needed to verify compliance.
- 4.2 Inspection Results will be given in an Inspectional Report form.

5.0 Product Retention and Condemnation

- 5.1 In the event that the Department of Agriculture discovers produce that is contaminated, unfit for consumption, or otherwise in violation of these regulations, the Department of Agriculture is authorized at all times to seize, take possession of, condemn, destroy, or require the destruction of any covered produce that the Department of Agriculture believes to be in violation of 21 C.F.R Part 112. Enforcement actions may continue to be imposed until corrective actions are taken by the owner/producer in violation.
- 5.2 If objectionable conditions are found, the Inspector (working under federal authority) is obligated to report the findings to the Food and Drug Administration (FDA) and work in collaboration with FDA to control/rectify the situation.

6.0 Program Termination

These regulations shall remain in effect for the duration of the federal Food Safety Modernization Act's Produce Safety Rule. If the federal Produce Safety Rule is abolished, then the Department of Agriculture may also abolish these regulations.

7.0 Violations and Hearing Procedures

- 7.1 Failure to comply with this chapter shall result in the assessment of a civil penalty.
- 7.2 No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture or the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29 of the Delaware Code. The Secretary or the Secretary's designee shall mail a written decision to the alleged violator within 30 days after the conclusion of the administrative hearing. Failure to comply with the 30-day period shall have no effect on the Secretary's or designee's decision.
- 7.3 The person(s) charged with a violation of these regulations will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel and to provide witnesses in his or her behalf.
- 7.4 The Secretary or the Secretary's designee, for the purposes of investigation of a possible violation of these regulations and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.
- 7.4.1 The Department of Agriculture shall preserve a record of the proceedings and a transcript may be purchased by any interested person.

8.0 Appeal

A person who feels aggrieved by the Department of Agriculture as a result of the administrative hearing held under the authority of this chapter may file an appeal, within 30 days, with the Superior Court. Written notice of such appeal, together with the grounds therefor, shall be served upon the Secretary of the Department of Agriculture.

9.0 Civil Penalties

- 9.1 Any person who interferes with the Department of Agriculture in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.2 Any person who is not a Department of Agriculture employee or its authorized representative who removes markings placed by the Department of Agriculture for the purpose of identification is interfering with the Department of Agriculture's enforcement of these regulations, as determined in an administrative hearing, and shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.

PROPOSED REGULATIONS

- 9.3 Any person(s) who willfully or knowingly ships contaminated produce, as determined in an administrative hearing, shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 on each count.
- 9.4 Any person(s) who refuses to comply with these regulations shall be assessed a civil penalty of no less than \$1,000 nor more than \$5,000 for each violation.
- 9.5 The payment of penalties assessed under this chapter may be made on a payment schedule approved by the Secretary or the Secretary's designee.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

1008 DIAA Junior High and Middle School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 DE Admin. Code 1008 DIAA Junior High and Middle School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 DE Admin. Code 1008. The amendments include adding five defined terms to subsection 1.1; revising the Junior High and Middle School Transfer Rule (subsection 2.4), Passing Work Rule (subsection 2.6), and Years of Participation Rule (subsection 2.7) to be consistent with changes to 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics that went into effect in 2017; clarifying the concussion protocol in Section 3.0; specifying the required concussion training course for coaches in Section 7.0; adding the requirement that all football coaches complete Heads Up Football training to subsection 7.4; and revising subsection 7.6, which concerns coaching out of season, in accordance with Senate Concurrent Resolution No. 79.

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

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns interscholastic athletics at the junior high and middle school level.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns interscholastic athletics at the junior high and middle school level.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation is intended, in part, to help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to interscholastic athletics at the junior high and middle school level.

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

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

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the amended regulation.

***Please Note:**

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

<http://regulations.delaware.gov/register/september2018/proposed/22 DE Reg 186RFA 09-01-18.pdf>

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

[1008 DIAA Junior High and Middle School Interscholastic Athletics](#)

OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1009

PUBLIC NOTICE

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

[1009 DIAA High School Interscholastic Athletics](#)

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Secretary of Education seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** 1009 High School Interscholastic Athletics. The Delaware Interscholastic Athletic Association ("DIAA"), working in consultation and cooperation with the Department of Education, developed the amendments to 14 **DE Admin. Code** 1009. The amendments include adding two defined terms to subsection 1.1; clarifying the concussion protocol in Section 3.0; specifying the required concussion training course for coaches in Section 7.0; adding the requirement that all football coaches complete Heads Up Football training to subsection 7.4; and revising subsection 7.6, which concerns coaching out of season, in accordance with Senate Concurrent Resolution No. 79.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2018 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401

Federal Street, Suite 2, Dover, Delaware 19901 or email to DOeregulations.comment@doe.k12.de.us. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Department of Education's Office of the Secretary, located at the address above.

C. IMPACT CRITERIA

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

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

<http://regulations.delaware.gov/register/september2018/proposed/22 DE Reg 187RFA 09-01-18.pdf>

1009 DIAA High School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts, Equivalency Rules, and Definitions

1.1 Definitions

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

(Break in Continuity Within Section)

"Qualified Healthcare Professional" means a Doctor of Medicine (MD); a Doctor of Osteopathic Medicine (DO); or a school nurse, nurse practitioner, physician assistant, or athletic trainer. Qualified Healthcare Professionals shall be licensed by their state and in good standing with the State of Delaware.

"Qualified Physician" means a Doctor of Medicine (MD) or a Doctor of Osteopathic Medicine (DO) who is licensed by their state and in good standing with the State of Delaware.

"Relative Caregiver" means, pursuant to 14 Del.C. §202(f)(1), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half

sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the student.

(Break in Continuity Within Section)

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

(Break in Continuity of Sections)

3.0 Physical Examinations, Concussion Protocol, Weight Control Program for Wrestling and Required Medical Personnel in Attendance at All Football Games

3.1 Physical examinations

3.1.1 A student shall not be eligible to try out, practice, scrimmage, or compete in an interscholastic contest unless a licensed physician (~~M.D.~~MD or ~~D.O.~~DO), a licensed nurse practitioner, or a licensed physician's assistant verifies in writing on or after April 1 and before beginning such athletic activity for the current school year that the student has been adequately examined within the last 12 months and is cleared medically to participate. However, should any conditions found in subsection 3.1.3 of this regulation occur since the last examination, a reexamination is required before the student can be medically cleared. A student who participates in a contest without a preparticipation physical evaluation shall be considered an ineligible athlete and the athlete and the school shall be subject to the penalties stipulated in subsection 2.10.

3.1.2 A DIAA approved form certifying the examination as well as the parent's, legal guardian's, or Relative Caregiver's consent, shall be on file with the ~~administrative head of the school~~ Administrative Head of School prior to the student participating in a practice, scrimmage, or game.

(Break in Continuity Within Section)

3.1.4 The medical history of the student ~~should~~ shall be available at the time of each examination.

3.1.5 A player is temporarily ineligible to participate if the player who is otherwise properly certified to participate in interscholastic athletics is physically unable to participate due to illness or injury for five (5) consecutive days on which a practice, scrimmage or contest is held. Prior to resuming participation, the player must present to the ~~administrative head of school~~ Administrative Head of School or his or her designee, a statement from a licensed physician (MD or DO), a nurse practitioner, or a physician's assistant that the player is again physically able to participate. If a player is physically unable to participate due to a head injury, the concussion protocol in subsection 3.2 shall be followed.

~~3.1.6.3.2~~ Concussion Protocol

~~3.1.6.1 The DIAA Board of Directors shall adopt a concussion protocol. The concussion protocol may be amended or updated as necessary by the Sports Medicine Advisory Committee with approval of the DIAA Board of Directors.~~

~~3.1.6.2 The concussion protocol shall require that any athlete removed from play for a suspected concussion must be evaluated by a qualified healthcare professional. If the qualified health care professional is unable to rule out a concussion, the athlete must be referred for further evaluation and written clearance before the athlete may return to play. A qualified healthcare professional shall be defined as a MD or DO; or school nurse, nurse practitioner, physician assistant, or athletic trainer, with collaboration and/or supervision by a MD or DO as required by their professional state laws and regulations. The qualified healthcare professional must be licensed by their state, be in good standing with the State of Delaware, and if the evaluation is provided on site, must also be approved or appointed by the administrative head of school or designee, or the DIAA Executive Director.~~

~~3.1.6.3 The concussion protocol shall require that an athlete receive written clearance to return to play when the athlete received a concussion or the qualified healthcare professional was unable to rule out a concussion. Written clearance for return to play after a concussion shall be from a qualified physician (MD/DO) only.~~

PROPOSED REGULATIONS

~~3.1.6.4~~ Failure to comply with medical requirements of the DIAA concussion protocol shall result in that individual or school being considered ineligible and shall be penalized according to DIAA regulation 2.10.

3.2.1 If an athlete is suspected of sustaining a concussion or exhibits signs or symptoms of a concussion, he or she shall be removed from the practice or game immediately.

3.2.2 A Qualified Healthcare Professional shall determine whether an apparent concussion has occurred. The Qualified Healthcare Professional shall be approved by the host to provide on-site evaluations of athletes who are suspected of sustaining a concussion or exhibit signs or symptoms of a concussion. If a Qualified Healthcare Professional is not present or is not appointed or approved by the host, the injury shall be treated as a concussion and the athlete shall not return to play until he or she is evaluated by a Qualified Healthcare Professional in an appropriate medical setting.

3.2.3 If a Qualified Healthcare Professional determines that an athlete did not sustain a concussion, the athlete may return to play.

3.2.4 If a Qualified Healthcare Professional determines that the athlete sustained a concussion or is unable to rule out a concussion, the athlete shall be referred for further evaluation by a Qualified Physician. The athlete shall be ineligible to participate in practices, scrimmages, or contests until he or she receives written clearance from a Qualified Physician on the DIAA Acute Concussion Evaluation (ACE) and Return to Play Form.

3.2.5 Failure to comply with the requirements of this regulation shall result in the athlete being considered ineligible. The athlete and member school shall be penalized according to subsection 2.10 of this regulation.

3.2.6 If an official observes an apparent injury, the official shall report the injury to the athlete's coach.

3.2.7 The Sports Medicine Advisory Committee may recommend amendments to the Concussion Protocol to the Rules and Regulations Committee and the Board.

~~3.23.3~~ Wrestling Weight Control Program

~~3.2.13.3.1~~ For health and safety reasons, the DIAA State Wrestling Committee has established the Delaware Wrestling Weight Control Program which requires each wrestler to establish their minimum weight class via body composition testing. The Delaware Wrestling Weight Control Program as established by the DIAA State Wrestling Committee is adopted and may be amended or updated as necessary by the Delaware Wrestling Committee with approval of the DIAA Board of Directors. The program requires hydration testing with a specific gravity not greater than 1.025, which immediately precedes the body composition assessment. A minimum weight class is determined by a body fat assessment. Male wrestlers may not compete at a weight class lower than 7% body fat and female wrestlers may not compete at a weight class lower than 12% body fat. Any wrestler's assessment that is below seven percent for males and twelve percent for females shall require a medical release signed by a licensed physician (MD or DO). The release shall not allow a wrestler to participate at a weight class below that for which the initial assessment allows. The program restricts wrestlers to an average weight loss of 1.5 percent a week, with descent, until the wrestler has reached the minimum weight determined by the initial body composition testing. A two-pound growth allowance shall be permitted on or after December 26th each year for wrestlers who have certified at their approved minimum weight class. Wrestlers shall not receive the two pound growth allowance until they have certified at their minimum weight.

~~3.2.13.3.1.1~~ Wrestlers must certify at their minimum weight class on or before the last competition date for wrestling in order to be eligible to participate at their minimum weight class in the dual meet and state tournaments series including qualifying tournaments.

~~3.2.23.3.2~~ The Delaware Wrestling Weight Control Program includes an online roster management program utilizing the National Wrestling Coaches Association weight management program. The program creates an "alpha master roster" which must be presented to the opposing coach or tournament director prior to weighing in. Each DIAA member school shall have access to the alpha master roster of all DIAA member schools.

~~3.33.4~~ Required Medical Personnel In Attendance at All Football Games

~~3.3.13.4.1~~ Provision shall be made for a ~~qualified healthcare professional~~ Qualified Healthcare Professional to be present at all interscholastic football games in which a Member school School participates. A ~~qualified health care professional shall be defined as an MD or DO; or school nurse, nurse practitioner, physician assistant, or athletic trainer with collaboration and/or supervision by a MD or DO as required by their professional state laws and regulations.~~ The ~~qualified healthcare professional must be licensed and in good standing with the State of Delaware and~~ Qualified Healthcare Professional must be approved or appointed by the ~~administrative head of school~~ Administrative Head of School or his or her designee. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$250.00 fine.

(Break in Continuity of Sections)

7.0 Certified, Emergency, and Volunteer Coaches, Student Teaching and Coaching, and Coaching Out of Season

7.1 Certified Coaches:

7.1.1 Only those professional employees certified by the Department of ~~Education~~ and whose salary is paid by the State or local Board of Education, or in the case of charter and nonpublic schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment must be for the regular school year and the professional assignment shall be no less than half of the school day, exclusive of coaching duties.

7.1.2 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA office. A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if the head coach fails to attend the DIAA rules clinic or pass the open book rules examination in their respective sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

(Break in Continuity Within Section)

7.1.2.2 Certified coaches at all levels of competition shall ~~be required to complete an approved concussion course~~ the NFHS' "Concussion in Sports" course online through NFHSLearn.com every two years.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of ~~Education~~, or is certified by the Department of ~~Education~~ but is not employed for the regular school year or whose professional assignment is less than half of the school day. An individual who meets the requirements of a certified coach but whose professional assignment is located in a different school or district than their coaching assignment shall not be considered an emergency coach by DIAA.

(Break in Continuity Within Section)

7.2.1.2 ~~Certified Emergency~~ coaches at all levels of competition shall ~~be required to complete an approved concussion course~~ the NFHS' "Concussion in Sports" course online through NFHSLearn.com every two years.

(Break in Continuity Within Section)

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

(Break in Continuity Within Section)

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

PROPOSED REGULATIONS

7.2.3.3.1 Emergency coaches must be officially appointed by the local Board of Education. The ~~superintendent~~ Superintendent or their his or her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

7.2.3.3.2 The Emergency Coaches' coaching salary must be paid exclusively by the local Board of Education.

7.47.3 Volunteer Coaches

~~7.4.47.3.1~~ In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school, ~~and who have been approved by that school's local governing body, and who are supervised by a certified or emergency coach.~~ A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed. Volunteer coaches at all levels of competition shall complete the NFHS' "Concussion in Sports" course online through NFHSlern.com every two years.

7.4 Football Coaches

7.4.1 All football coaches (including certified, emergency, and volunteer coaches) at all levels of competition shall annually complete Heads Up Football training.

7.37.5 Student Teaching and Coaching

~~7.3.47.5.1~~ Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.57.6 Coaching Out of Season

~~7.5.47.6.1~~ From August 2nd through the first day after the last spring sport DIAA state tournament event, a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in their his or her assigned sport to ~~returning members of the varsity or subvarsity teams of the school at which they coach or transfer students from other schools who play the coach's sport~~ any student registered in the school at which he or she coaches. Coaches shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school. A rising ninth grader is a student who has completed eighth grade requirements, but is not yet enrolled in ninth grade. A rising eighth grader is a student who has completed seventh grade requirements, but is not yet enrolled in eighth grade.

~~7.5.1.47.6.1.1~~ A coach shall not be allowed to participate on a team in their his or her assigned sport with the aforementioned players.

~~7.5.1.27.6.1.2~~ A coach shall also be prohibited from officiating contests in their his or her assigned sport if the aforementioned players are participating except in organized league competition.

~~7.5.1.2.47.6.1.2.1~~ The league shall not be organized, ~~and~~ conducted, and funded by the employing school, the employing school's booster club, or the employing school's coaching staff.

~~7.5.1.2.27.6.1.2.2~~ The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

~~7.5.1.2.37.6.1.2.3~~ The league shall have registration and entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

~~7.5.1.37.6.1.3~~ A certified, emergency, or volunteer coach shall not be allowed to provide instruction or coach during the designated season in their his or her assigned sport to current members of the varsity or subvarsity teams of the school at which ~~they coach~~ he or she coaches outside of school sponsored practices, scrimmages, and contests.

~~7.5.1.47.6.1.4~~ A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

~~7.5.2.7.6.2~~ From the first day after the last spring sport DIAA state tournament event through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in their his or her assigned sport to ~~returning members of the varsity or subvarsity teams~~ all accepted and registered students of the school at which ~~he/she~~ he or she coaches. Instructional contact with ~~the aforementioned returning school team members~~ all accepted and registered students must be approved by the member school and shall be subject to the following conditions:

~~7.5.2.4~~ A coach may provide instruction to an unlimited number of returning school team members in formal league or tournament competition or in formal instructional camps or clinics provided the league or tournament or instructional camp or clinic is insured, organized and conducted by a non-school affiliated organization.

~~7.6.2.1~~ Participation in a formal league and tournament or instructional camp or clinic, or informal instruction, shall be open, voluntary, and equally available to all accepted and registered students of the member school.

~~7.5.2.2~~ A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting which means student initiated and non-scheduled. A coaching staff may have multiple two-hour sessions in any given day. Returning school team members shall not receive more than 2 hours of sports instruction per day.

~~7.6.2.2~~ Coaches are permitted to hold an organizational practice for formal league/tournament competition only as permitted by the written, pre-established rules of the formal league/tournament. In no event shall more than one organizational practice be permitted and the number of games and practice shall not exceed three in one week. If the formal league/tournament does not have written, pre-established rules regarding practice, then no practice is permitted.

~~7.5.2.3~~ ~~7.6.2.3~~ A coach shall not receive any compensation, from any source, for the instruction of their returning school team members. Reimbursement for out of pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues or tournaments or instructional camps or clinics are not prohibited provided that no local school or state educational funds are used.

~~7.5.2.4~~ Participation in the formal league and tournament or instructional camp or clinic, or informal instruction, shall be open, voluntary and equally available to all returning school team members as well as members of the student body.

~~7.6.2.4~~ A coach may provide instruction to an unlimited number of accepted and registered students in formal league or tournament competition or in formal instructional camps or clinics provided the league or tournament or instructional camp or clinic is insured, organized and conducted by a non-school affiliated organization. A coach may provide instruction to returning accepted and registered students with the member school's permission.

~~7.5.2.5~~ ~~Coaches are permitted to hold an organizational practice for formal league/tournament competition only as permitted by the written, pre-established rules of the formal league/tournament. In no event shall more than one organizational practice be permitted and the number of games and practice shall not exceed three in one week. If the formal league/tournament does not have written, pre-established rules regarding practice, then no practice is permitted.~~

~~7.6.2.5~~ Use of school equipment shall be approved by the Principal or Headmaster and shall be subject to the following conditions:

~~7.6.2.5.1~~ Helmets and shoulder pads shall not be used in lacrosse and football.

~~7.6.2.5.2~~ Protective equipment, the primary purpose of which is to protect the wearer from physical injury, may be used in the following sports: baseball, field hockey, and softball.

PROPOSED REGULATIONS

~~7.5.2-67.6.2.6~~ A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.6.3 Effective Date

7.6.3.1 Subsection 7.6 shall be effective on June 2, 2019.

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

1009 DIAA High School Interscholastic Athletics

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Home Health Services

*** Please Note: The Proposed Regulation for Home Health Services that was published in the June 1, 2018 issue of the Delaware Register of Regulations (21 DE Reg. 951) is being republished as Proposed. After consideration of public comments, the Proposed regulation is reprinted below with the resulting changes.**

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 Home Health Services, specifically, to add accreditation as an option to Medicare certification for Medicaid providers.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2018. Please identify in the subject line: **Home Health Services**.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Home Health Services, specifically, to add accreditation as an option to Medicare certification for Medicaid providers.

Statutory Authority

- 1902(a)(10)(D) of the Social Security Act, *Home health services*

Background

Currently, to receive reimbursement, Delaware Medicaid providers must obtain Medicare certification.

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) has worked closely with the provider community to develop an alternative which provides flexibility and removes limitations.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add accreditation as an option to Medicare certification for Medicaid providers.

Summary of Proposed Changes

Effective for services provided on and after September 1, 2018 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend Attachment 3.1-A Page 3.1 Addendum and Attachment 4.19-B Page 6 of Title XIX Medicaid State Plan regarding Home Health Services, specifically, to *add accreditation as an option to Medicare certification for Medicaid providers.*

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 1, 2018.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

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

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

<http://regulations.delaware.gov/register/september2018/proposed/22 DE Reg 194RFA 09-01-18.pdf>

AMENDED

Attachment 3.1-A
Page 3.1 Addendum

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

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY

6.d. 2. Licensed Behavioral Health Practitioner Continued:

Services which exceed the initial pass-through authorization must be approved for re-authorization prior to service delivery. In addition to individual provider licensure, service providers employed by addiction treatment services and co-occurring treatment services agencies must work in a program

PROPOSED REGULATIONS

licensed by the Delaware Division of Substance Abuse and Mental Health (DSAMH) and comply with all relevant licensing regulations. Licensed Psychologists may supervise up to seven (7) unlicensed assistants or post-doctoral professionals in supervision for the purpose of those individuals obtaining licensure and billing for services rendered. Services by unlicensed assistants or post-doctoral professionals under supervision may not be billed under this section of the State Plan. Instead, those unlicensed professionals must qualify under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program or rehabilitation sections of the State Plan or provide services under Home and Community-based authorities.

Inpatient hospital visits are limited to those ordered by the beneficiary's physician. Visits to a nursing facility are allowed for LBHPs if a Preadmission Screening and Resident Review (PASRR) indicates it is a medically necessary specialized service in accordance with PASRR requirements. Visits to Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) are non-covered. All LBHP services provided while a person is a resident of an Institute for Mental Disease (IMD) such as a free standing psychiatric hospital or psychiatric residential treatment facility are part of the institutional service and not otherwise reimbursable by Medicaid. Evidence-based Practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by Delaware Health and Social Services (DHSS) and/or its designee. A unit of service is defined according to the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) approved code set consistent with the National Correct Coding Initiative unless otherwise specified.

6. Home Health Services

Home Health agencies must be certified by Medicare or accredited by an accreditation organization and be properly licensed by the State in which they are located.

An "accreditation organization" means a professional organization that evaluates Home Health agencies and certifies that services are being performed in accordance with acceptable practices and standards established by the accreditation organization. A current list of approved accreditation organizations can be found at <https://www.nahc.org/consumers-information/home-care-hospice-basics/accrediting-agencies/>

TN No. SPA #18-002	Approval Date
Supersedes	
TN No. SPA #13-0018	Effective Date <u>September 1, 2018</u>

AMENDED

Attachment 4.19-B
Page 6

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

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

HOME HEALTH SERVICES

42 CFR 440.70

Home Health Services are reimbursed as follows:

Home Health Services are reimbursed in accordance with ~~42-CFR~~ 42 CFR 440.70 and when provided as defined in Attachment 3.1-A of this State Plan, subject to the requirements of 42 CFR 441.15 and 42 CFR 441.16.

~~Home Health agencies must be certified by Medicare and be properly licensed by the State in which they are located.~~

Payment for Home Health Services shall be reimbursed as follows:

The rates are prospective and are arrayed to determine the seventy-fifth (75th) percentile for each procedure code. The 75th percentile refers to the array of rates with regard to the Delaware Medicaid enrolled providers at the time of the new rate methodology consideration. The rates are then inflated by the four (4) quarter moving average within the CMS Home Health Market Basket Index. The Inflated average cost is per fifteen (15) minutes for each procedure code. Supply cost will be reimbursed as part of the skilled nursing and home health aide prospective rates.

An inflation factor will be applied to the prior year's rates to determine the current year's rates. The inflation indices are obtained from the CMS Home Health Market Basket Index.

TN No. SP# <u>18-002</u>	Approval Date
Supersedes	
TN No. SP# <u>15-007</u>	Effective Date <u>September 1, 2018</u>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §§122(3)bb and 139 (16 **Del.C.** §§122(3)bb & 139)

PUBLIC NOTICE

4502 Regulations for Certification of Animal Welfare Officers

On September 1, 2018, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare, plans to publish proposed regulations for Certification of Animal Welfare Officers and hold them out for public comment per Delaware law. The regulations are being developed under the authority established in 16 **Del.C.** §§122(3)bb and 139.

The purpose of the regulations is to establish minimum training requirements for the certification of animal welfare officers working in the State of Delaware. They also establish procedures for documenting all complaints filed against the officers and conducting investigation of complaints concerning violations of this chapter.

The regulation has been established to include:

- training and certification requirements for animal welfare officers in Delaware;
- procedures for obtaining a certification from the Office of Animal Welfare;
- the training course approval process;
- continued education and recertification obligations;
- disciplinary sanctions; and
- complaint documentation and investigation procedures.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Monday, October 1, 2018 to:

Jamie Mack

Delaware Division of Public Health

Jesse Cooper Building

417 Federal St.
Dover, DE 19901
Phone: 302-744-4832
Fax: 302-739-6659

***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/september2018/proposed/22 DE Reg 197RFA 09-01-18.pdf>

4502 Regulations for Certification of Animal Welfare Officers

1.0 Authority and Purpose

- 1.1 These regulations are promulgated by the Delaware Department of Health and Social Services pursuant to 16 Del.C. §§122(3)bb and 139 pertaining to training and certification requirements for animal welfare officers.
- 1.2 The overall purpose of these regulations is to establish minimum training requirements for the certification of animal welfare officers working in the State of Delaware. These regulations also establish procedures for documenting all complaints filed against the officers/agents, and conducting investigations of complaints concerning violations of this chapter.
- 1.3 These regulations define:
 - 1.3.1 training and certification requirements for animal welfare officers;
 - 1.3.2 procedures for obtaining a certification from the Office of Animal Welfare;
 - 1.3.3 training course approval processes;
 - 1.3.4 continuing education and recertification obligations;
 - 1.3.5 disciplinary sanctions; and
 - 1.3.6 complaint documentation and investigation procedures.

2.0 Definitions

The following words or terms, when used in these regulations, shall have the meaning indicated, unless the context otherwise requires:

"Animal welfare officer" means any person qualified to act pursuant to 11 Del.C. §1325 and 16 Del.C. §3041F, notwithstanding additional training/certification requirements listed in those sections.

"Certified Animal Welfare Officer" means an individual who has been certified by the Office to perform animal control pursuant to Section 3.0.

"Department" means the Department of Health and Social Services or its duly authorized representatives.

"Office" means the Division of Public Health Office of Animal Welfare or its duly authorized representatives.

3.0 Animal Welfare Officer Certification

- 3.1 Except as permitted by subsection 4.7, below, no person shall serve as a Delaware animal welfare officer unless such person is trained and certified by the Office of Animal Welfare ("Office") as set forth in this section.
- 3.2 Individuals seeking certification as an animal welfare officer shall submit a written application to the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare ("Office").
- 3.3 In order to qualify for certification as an animal welfare officer, an applicant shall submit proof of the following requirements with their application:
 - 3.3.1 Is eighteen (18) years of age or older;

- 3.3.2 Is employed as an animal welfare officer in Delaware. A letter of intent from an organization hiring the individual as an animal welfare officer may be accepted;
 - 3.3.3 A Certified Delaware Criminal History, obtained at the State Bureau of Identification not more than 90 days prior to submitting an application for certification, showing the individual has no convictions or pending criminal charges of a crime against person or property;
 - 3.3.4 Has successfully completed an animal control/welfare training course that has been approved by the Office;
 - 3.3.5 Has passed an examination given by or approved by the Office; and
 - 3.3.6 Has completed a minimum of 80 hours of infield training under the direction of one or more Certified Animal Welfare Officers currently working in that capacity. The infield training shall commence upon successful completion of the animal control/welfare training course and exam.
- 3.4 The Office may, by endorsement, without written examination, certify an animal welfare officer who has completed a training program that meets the educational requirements for certification defined in Section 4.0 and who, in the opinion of the Office, meets the qualifications specified by these regulations for an animal welfare officer.

4.0 Training of Certified Animal Welfare Officers

- 4.1 An animal welfare officer training course shall provide at least forty (40) hours of instruction.
- 4.2 The course must be administered by or approved by the Office and minimum curriculum requirements shall include:
 - 4.2.1 Role and authority of an animal welfare officer;
 - 4.2.2 Delaware laws governing rabies control, animal control and protection, dangerous dogs, animal cruelty, and enforcement powers;
 - 4.2.3 Animal health and disease recognition, control, and prevention;
 - 4.2.4 First aid for injured animals;
 - 4.2.5 Principles and procedures for humanely capturing and handling domestic animals, wildlife, and livestock;
 - 4.2.6 Criminal justice system, investigative techniques, rules of evidence, and report writing;
 - 4.2.7 Principles of courtroom testimony and prosecution;
 - 4.2.8 Communications, conflict resolution, and officer safety; and
 - 4.2.9 Emergency management.
- 4.3 Following the training detailed in subsection 4.2, the applicant shall take an examination provided by or approved by the Office. Applicants who fail to obtain a minimum score of 75% after testing two times must repeat the training course before additional testing is permitted.
- 4.4 Upon completion of an examination outlined in subsection 4.3, the applicant shall complete a minimum of eighty (80) hours of infield training under the direction of one or more Certified Animal Welfare Officers currently working in that capacity.
- 4.5 The Office may waive the completion of all or part of the curriculum required in subsection 4.2 upon presentation of documentary evidence that the individual has satisfactorily completed equivalent training or experience.
- 4.6 An animal welfare officer, if serving as such on the effective date of this Rule shall, within 6 months after the effective date of this Rule, complete the certification requirements outlined in Section 3.0. Persons who fail to complete the certification requirement within 6 months after the effective date of this Rule will not be authorized to act as an animal welfare officer in the State of Delaware and shall be subject to penalties pursuant to 16 Del.C. §107(a).
- 4.7 An animal welfare officer hired on or after the effective date of this Rule shall, within 60 days after the date of hire, complete the certification requirements outlined in Section 3.0. Officers that have not completed the certification requirement within 60 days after the date of hire will not be authorized to act as an animal welfare officer in the State of Delaware.

5.0 Approval of Training Course

- 5.1 Any organization or institution desiring to conduct an animal welfare officer education program shall apply to the Office for approval. The organization must submit evidence, deemed satisfactory by the Office, that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying animal welfare officers, and that it is prepared to meet other standards which may be established by the Office.
- 5.2 If the Office determines that any approved educational program is not maintaining the standards required by these regulations and by the Office, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be issued to the program. The Office shall withdraw such program's approval if it fails to correct the deficiency within the time proscribed. The organization or institution may reapply for approval to the Office once the program meets standards established by the Office.

6.0 Issuance of Certification

- 6.1 The Office shall issue a certificate to each qualified applicant who has successfully met the requirements under subsection 3.3.
- 6.2 A copy of the certificate shall be kept on file at the animal welfare officer's place of employment.
- 6.3 The employer shall notify the Office in writing, no later than 10 days from the date of termination or resignation, of an animal welfare officer's employment. The employer shall state the reason for termination in the notification.
- 6.4 The Office shall maintain a current registry of all persons certified as animal welfare officers in the state.
- 6.5 If a certified animal welfare officer resigns or leaves the employment of an animal control/cruelty agency in good standing and is no longer working in the role of animal welfare officer, the officer's certification shall become inactive. If the officer is rehired as an animal welfare officer within 12 months, the certification will be reinstated to active. If the officer is not rehired within 12 months, the certification shall be revoked. The officer can apply for recertification once they become employed as an animal welfare officer.
- 6.6 If a certified animal welfare officer has been found by an employer to be unfit or incompetent, the Office may impose sanctions as outlined in subsection 10.2.

7.0 Continuing Education and Recertification

- 7.1 A certified animal welfare officer shall complete 8 hours of continued education and training by December 31 every calendar year, commencing the year after initial certification in order to maintain certification. The Office may grant an officer additional time for good cause, not to exceed one year, to complete the training.
- 7.2 Evidence of completion of the training shall be submitted to the Office within 30 days after training is completed to satisfy the continuing education requirement in subsection 7.1.
- 7.3 The certification of an animal welfare officer shall be suspended if the officer fails to satisfactorily complete the training in accordance with subsection 7.1. Training must be completed before the suspension may be lifted.

8.0 Conducted Electrical Weapon (CEW)

In order for an animal welfare officer to carry/use a conducted electrical weapon (CEW), he/she must complete a training program taught by a certified instructor and all certifications or re-certifications must be on file with the Office of Animal Welfare.

9.0 Denial, Revocation and Disciplinary Sanctions

- 9.1 The Office may impose sanctions, defined in this chapter singly or in combination when it finds a certified or former certified animal welfare officer committed any offense described below:

- 9.1.1 Engages in fraud or deceit in procuring or attempting to procure a certification/license;
- 9.1.2 Is guilty of a crime against person or property;
- 9.1.3 Has been found by an employer to be unfit or incompetent;
- 9.1.4 Has had a certification or license to serve as an animal welfare officer suspended or revoked in any jurisdiction; or
- 9.1.5 Has willfully or negligently violated this chapter.
- 9.2 In determining whether to impose sanctions, the Department shall consider the following factors:
 - 9.2.1 The seriousness of the offense;
 - 9.2.2 The circumstances surrounding the offense; and
 - 9.2.3 The relation of the offense to the duties of a certified animal welfare officer.
- 9.3 Disciplinary sanctions shall include one or more of the following:
 - 9.3.1 Permanently revoking a certification;
 - 9.3.2 Refusing a certification or certification renewal;
 - 9.3.3 Suspending a certification;
 - 9.3.4 Issuing a letter of reprimand;
 - 9.3.5 Requiring additional training; or
 - 9.3.6 Placing a certification on probationary status and requiring the individual to:
 - 9.3.6.1 Report regularly to the Office upon the matters which are the basis of probation;
 - 9.3.6.2 Limit practice to those areas prescribed by the Office; or
 - 9.3.6.3 Continue or renew professional education until satisfactory degree of skill has been attained in those areas which are the basis of the probation.
- 9.4 An animal welfare officer may request an administrative hearing if they wish to contest the disciplinary sanctions.
 - 9.4.1 The request shall be made in writing to the Secretary of the Department within 20 calendar days after issuance of the final written report and associated sanctions.
 - 9.4.2 As soon as possible, but not later than 30 calendar days of receipt of the request for an administrative hearing, the Department shall set a time and place to conduct a hearing.
 - 9.4.3 Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, 29 Del.C. Ch. 101, and the Freedom of Information Act, 29 Del.C. Ch. 100.
 - 9.4.4 The Department shall make a determination based upon the evidence presented.
 - 9.4.5 A written copy of the determination and the reasons upon which it is based shall be sent to the officer within 30 calendar days.
- 9.5 During an administrative hearing:
 - 9.5.1 The animal welfare officer has the right to be represented by counsel.
 - 9.5.2 All statements made shall be under oath.
 - 9.5.3 The animal welfare officer has the right to examine and cross-examine witnesses.
 - 9.5.4 A stenographer recording will be made by a qualified court reporter. At the request and expense of any party, such record shall be transcribed with a copy to the other party.
- 9.6 The decision of the Department shall be based upon sufficient legal evidence. The Department may continue, modify or revoke the disciplinary sanctions.
- 9.7 All decisions of the Department shall be final and conclusive. Where the officer is in disagreement with the action of the Department, the officer may appeal the Department's decision to the Superior Court within 30 days of service or of the postmarked date of the copy of the decision mailed to the officer. The appeal shall be on the record to the Superior Court and shall be as provided in 29 Del.C. §§10142-10145.

10.0 Documenting and Investigating Complaints

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- 10.1 The Office shall document all complaints filed directly with the Office, the employer, or with a contracting government entity against certified animal welfare officers of alleged violations of 16 Del.C. §139.
- 10.2 All complaints must be received in writing and shall be reviewed. Only complaints concerning violations of this chapter will be investigated by the Office. Complaints that do not involve alleged violations of 16 Del.C. §139 may be referred to the employer, another agency or entity as appropriate according to the subject matter of the complaint.
- 10.3 The Office shall notify the animal welfare officer, the officer's employer, and contracting entity, if applicable, of the complaint investigation within 10 days of receipt of said complaint.
- 10.4 The Office shall issue a final written report of the complaint investigation findings and any associated disciplinary sanctions outlined in subsection 10.2 to the animal welfare officer, the officer's employer, and the contracting entity, if applicable, sent by Certified Mail or hand delivered. If the complaint concerns an officer employed by the Office of Animal Welfare, the complaint will be forwarded to the Division Director or Deputy Director for investigation.

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Del.C. §§314, 2101 & 505; 29 Del.C. Ch. 101; 29 USC §1144(b)(6)(A)(i);
and in response to 29 CFR 2510.3-5
18 DE Admin. Code 1405

PUBLIC NOTICE

1405 Filing Requirements for Multiple Employer Welfare Arrangements

A. Type of Regulatory Action Required

Repeal of Existing Regulation and Proposed New Regulation

B. Synopsis of Subject Matter of the Regulation

Pursuant to 29 Del.C. §10119, it is necessary to repeal Regulation 1405, Filing Requirements for Multiple Employer Welfare Arrangements [Formerly Regulation 67] and replace it with new Regulation 1405, Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans.

Elsewhere in this edition of the *Register of Regulations*, the Commissioner of the Delaware Department of Insurance (the Commissioner) issued an order for the publication of an emergency regulation that is identical to the below-reproduced repeal and of Regulation 1405 replacement with the new rule that is proposed in this concurrent proposal. At paragraph 3 of the Commissioner's emergency order, the Commissioner ordered the public be notified of this concurrent proposal and be given an opportunity to comment on it. The purpose of this proposal is to comply with paragraph 3 of the emergency order.

Accordingly, the Department of Insurance hereby gives notice of proposed new Department of Insurance Regulation 1405 relating to Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans. The docket number for this proposed new rule is 3880-2018.

As a result of the enactment of a new federal regulation, to be codified at 29 CFR pt. 2510, that redefines "Employer" under Section 3(5) of the Employee Retirement Income Security Act (ERISA) (hereinafter the "Final Rule"), the Department has determined to rescind and replace Regulation 1405 relating to Requirements for Multiple Employer Welfare Arrangements [Formerly Regulation 67], and replace it with Regulation 1405 relating to Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans. The Delaware Code authority for the change is 18 Del.C. §314, 18 Del.C. §2101, 18 Del.C. §505, 29 Del.C. Ch. 101, and 29 USC §1144(b)(6)(A)(i), and in response to 29 CFR 2510.3-5. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person may file written comments, suggestions, briefs, and compilations of data or other materials

concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, October 2, 2018 by mailing to:

Delaware Department of Insurance
Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist
Docket No. 3880-2018
841 Silver Lake Boulevard
Dover, DE 19904
or by emailing them to leslie.ledogar@state.de.us.

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

***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/september2018/proposed/22 DE Reg 202RFA 09-01-18.pdf>

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

[1405 Filing Requirements for Multiple Employer Welfare Arrangements](#)

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

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

PUBLIC NOTICE

1322 Prevailing Wage Regulations

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations.

HOW TO COMMENT ON THE PROPOSED REGULATION

In May 2018 the Department proposed amendments to regulations for the Prevailing Wage Law. The Department received public comment at a hearing held on May 21, 2018 and additional commentary in the form of written suggestions. The Department has not proceeded with final promulgation of the amendments and now seeks to add additional amendments to the regulations.

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be fifteen (15) days after the public hearing is held on these regulations on September 24, 2018 from 4:00 to 6:00 pm and will be held at:

**Delaware Department of Labor/Fox Valley
Annex/Harold Stafford Training Center
19 E. Lea Blvd**

Wilmington, DE 19802

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Julie Petroff, Division of Industrial Affairs, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8175. Members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Petroff at the address of the Delaware Department of Labor as set forth above. The deadline for the filing written comments will be the latter of thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, or fifteen (15) days after the public hearing, which, in this case, is October 9, 2018.

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

The Department of Labor proposes to amend its regulations for the Prevailing Wage Law as described in 29 Del.C. §6960. The proposed amendments will limit the number of fringe benefits deductions the Department will recognize; expand the scope of the circumstances under which the Department shall hold administrative hearings; and make minor changes to the conduct of those hearings themselves. The proposed amendments will also add a Diver Classification and will include that Classification in the Classification booklet.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

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

OTHER REGULATIONS AFFECTED

None.

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

<http://regulations.delaware.gov/register/september2018/proposed/22 DE Reg 203RFA 09-01-18.pdf>

1322 Prevailing Wage Regulations (Break in Continuity of Sections)

3.0 Concepts and Definitions

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

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

(Break in Continuity Within Section)

- 3.1.3 Laborers and Mechanics. The terms "**laborer**" and "**mechanic**" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and Supportive Service Program (SSP) trainees. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are deemed to be laborers and mechanics for the time so spent.

The terms "**laborers**" and "**mechanics**" do not apply to watchmen, guards, dispatchers, or weighmasters. The following classifications of workers are recognized by the Department:

Asbestos Workers

Boilermakers
Bricklayers
Carpenters
Cement Finishers
Diver
Diver Tender
Electrical Line Worker
Electricians
Elevator Constructors
Glaziers
Insulators
Iron Workers
Laborers
Millwrights
Painters
Pile Driver
Plasterers
Plumbers/Pipefitters/Steamfitters
Power Equipment Operators
Roofer- Composition
Roofer - Shingle, Slate and Tile
Sheet Metal Workers
Soft Floor Layers
Sprinkler Fitters
Terrazzo/Marble/Tile Setters
Terrazzo/Marble/Tile Finishers
Truck Drivers

Definitions for each classification are contained in a separate document entitled, "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers shall be classified by the Department of Labor. Classification determinations shall be recorded by the Department as they are made.

Laborers and mechanics are to be paid the appropriate wage rates for the classification of work actually performed, without regard to skill.

3.1.4 Apprentices and Supportive Service Program Trainees.

3.1.4.1 Definitions. As used in this section:

3.1.4.1.1 The term "**apprentice**" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered ~~by the program sponsor~~ with the Delaware Department of Labor.

(Break in Continuity Within Section)

3.1.4.2 Employment of Apprentices and SSP Trainees on State Projects.

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

(Break in Continuity Within Section)

3.1.10 Fringe Benefits.

3.1.10.1 Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. ~~As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as~~

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health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would not be considered fringe benefits. To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:

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

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

- 3.1.10.1.1 The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor-employee contributory plan. For example, employer contributions to Individual Retirement Accounts (IRAs) approved by IRS are permissible. However, any contributions made by employees must be voluntary. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.
- 3.1.10.1.2 The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and supplemental unemployment benefits.
- 3.1.10.1.3 The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.
- 3.1.10.1.4 Except as provided in subsection 3.1.10.2, the contractor's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that the contractor, its owners, officers, or business, will not be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit.
- 3.1.10.2 Unfunded self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which by their nature are normally unfunded) under which contractors allegedly make "out of pocket" payments to provide benefits as expenses may arise, rather than making irrevocable contributions to a trust or other funded arrangement as required under subsection 3.1.10.1.4, are not normally considered "bona fide" plans or equivalent benefits.
 - 3.1.10.2.1 A contractor may request approval by the Administrator of an unfunded self-insured plan, in advance, in order to allow credit for payments under the plan to meet the fringe benefit requirements. In considering whether such a plan is bona fide, the Administrator will consider such factors as whether it could be reasonably anticipated to provide the prescribed benefits, whether it represents a legally enforceable commitment to provide such benefits, whether it is carried out under a financially responsible program, and whether the plan has been communicated to the employees

in writing. The Administrator in his/her discretion may direct that assets be set aside and preserved in an escrow account or that other protections be afforded to meet the plan's future obligation. The Administrator will not approve, under any circumstances, a plan that benefits the contractor, its owners, officers, or business.

- 3.1.10.3 No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a fringe benefit.
- 3.1.10.4 The furnishing to an employee of board, lodging, or other facilities, are not "bona fide" wages or fringe benefits or equivalent benefits.
- 3.1.10.5 The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items, for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's state contract, by law, or by the nature of the work to wear such items.
- 3.1.10.6 Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits.
- 3.1.10.7 The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits. The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays \$160 for the employee's health insurance for the month. The value of the benefit is \$1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

(Break in Continuity of Sections)

7.0 Enforcement

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

(Break in Continuity Within Section)

- 7.1.2 Investigation. A complaint may be filed with the Department by any employee upon a public project or any interested party. The complaint shall be in writing. Upon receipt of a complaint or upon its own motion the Department shall initiate an investigation.
- 7.1.2.1 The Department shall notify the employer by certified and First Class mail that a complaint has been filed and/or that an investigation has been initiated. The Department may request (or subpoena, if necessary) records, documents, or testimony necessary to make a determination as to the validity of the complaint or the employer's compliance with the law.
- 7.1.2.2 ~~Upon finding that an employer has not paid or is not paying the correct prevailing wage rates, if the Department of Labor shall notify the employer of the violations by certified mail and make an effort to obtain compliance is unable to obtain voluntary compliance, the~~

PROPOSED REGULATIONS

Department shall notify the employer by certified and First Class mail that it has made a final determination that the employer is in violation and that the employer has the right to appeal the final determination to the Secretary (the "Final Notice"). All appeals of a Final Notice to the Secretary shall be in writing and must be received by the Secretary within fifteen (15) days from the receipt of the Final Notice. For purposes of determining "receipt," the failure to accept certified mail, combined with the lack of return of First Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service. The Secretary shall acknowledge receipt of appeals within twenty (20) days and propose a schedule to determine the appeal. The Secretary may designate a neutral third party to preside over an appeal. Final Determinations shall be reviewable for an abuse of discretion or clear error of law.

- 7.1.2.3 ~~Upon failure to obtain compliance within fifteen (15) days of receipt of said certified mail, Consistent with the prevailing wage law, the Department may direct the contracting agency and/or the prime contractor to withhold payments to the employer (in an amount equal to the prevailing wage deficiencies, as determined by the Department) which are to be remitted to the Department for distribution upon resolution of the matter. The determination of when a matter shall be resolved shall be at the sole discretion of the Department.~~ In addition, the Secretary may terminate all rights of the employer to proceed with the work under the contract and the employer shall be responsible for all damages resulting therefrom.
- 7.1.2.4 ~~If the dispute between the Department and the employer pertains to the classification of workers as determined by the Office of Labor Law Enforcement, the determination shall be reviewable by the Secretary or his/her designee and shall be reversed only upon a finding of abuse of discretion. Such appeals from the Office of Labor Law Enforcement's decision must be made in writing and must be received by the Secretary within fifteen (15) days from receipt of the Department's certified letter. Employers may request, in writing, expedited treatment of an investigation and/or an appeal to the Office of the Secretary. In such cases, the employers shall state with particularity the reason for the request and provide all information requested by the Department. The Department shall respond to requests for expedition within seven (7) days. If expedited relief is granted, the Department shall make every effort to expedite the investigation and/or appeal to the Secretary or his/her designee. The Department shall have sole discretion to grant or deny requests for expedition and such decisions are not reviewable.~~
- 7.1.3 ~~Hearings. A hearing shall be held only in cases involving the termination of rights to proceed with the work under the public construction contract. A hearing shall also be held in cases involving classification disputes. However, any such party's appeal request must be received by the Department of Labor within fifteen (15) days of said party's receipt of the final decision of the Office of Labor Law Enforcement. For purposes of determining "receipt," the failure to accept certified mail, combined with the lack of return of First Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service. A hearing otherwise required by this subsection may be voluntarily waived at the request of the employer.~~
- 7.1.4 ~~Hearing Practices and Procedures.~~
- 7.1.4.1 ~~Scope of Rules. These rules shall govern the conduct of prevailing wage hearings initiated held by the Department of Labor pursuant to 29 Del.C. §6960(d) to terminate all rights of the contractor or subcontractor to proceed with work under a public construction contract for failure to pay prevailing wage rates.~~
- 7.1.4.2 ~~Initiation of Hearing. The Secretary of Labor may shall initiate a hearing by notifying the contractor or subcontractor by registered mail that said contractor or subcontractor is alleged to have violated 29 Del.C. §6960 the prevailing wage law. The notice shall give 20 days prior notice from receipt to all parties as follows:~~

(Break in Continuity Within Section)

- 7.1.4.2.5 The notice shall inform the parties that the Department will reach its decision based upon the evidence received.
For purposes of determining "receipt," the failure to accept certified mail, or the lack of return of First Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service.
- 7.1.4.3 Conduct of Hearing.
- 7.1.4.3.1 The hearing ~~may~~ shall be conducted by the Secretary of Labor or by a hearing officer designated for that purpose by the Secretary.
- 7.1.4.3.2 In connection with such hearing, the Secretary or hearing officer ~~may~~ shall:
(Break in Continuity Within Section)
- 7.1.4.3.2.5 Hold ~~prehearing~~ prehearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and to expedite the course of the hearing.
- 7.1.4.3.3 ~~The conduct of hearing shall not be bound by technical rules of evidence pursuant to 19 Del.C. 105(8)~~ The rules of evidence applied in civil cases by the courts of the State of Delaware shall not be strictly followed. The Secretary or hearing officer may allow evidence not admissible under these rules of evidence where, in his or her judgment, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs. Hearsay may be admissible in administrative hearings, but may not constitute the sole basis for the Secretary or hearing officer's determination upon the factual issue addressed by the hearsay evidence.
- 7.1.4.3.3.1 All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.
(Break in Continuity Within Section)
- 7.1.4.3.6 A party's failure to appear at a hearing that has been duly noticed shall not mandate the continuance of the hearing. At the discretion of the Secretary or hearing officer, the hearing shall proceed in the party's absence, which shall be noted on the record.
- 7.1.4.3.7 If a party, or counsel to a party, engages in conduct in violation of an order of the independent reviewer, or other disruptive conduct during an oral hearing, the independent reviewer may impose non-monetary sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the hearing; (ii) striking briefs from the record; (iii) providing that certain facts shall be taken to be established for purposes of the appeal; or (iv) providing for such other relief as is just and equitable under the circumstances.
(Break in Continuity Within Section)
- 7.1.4.5 Record. With respect to each case, all notices, correspondence between the agencies and the parties, all exhibits, documents in testimony admitted into evidence and all recommended orders, summary of evidence and findings of all interlocutory and final orders of the agency shall be included in the agency's record of the case and shall be retained by the agency for three (3) years.

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

1322 Prevailing Wage Regulations

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF CLIMATE, COASTAL AND ENERGY**

Statutory Authority: 29 Delaware Code, Section 8059(h) (29 Del.C. §8059(h))
7 DE Admin. Code 2105

**REGISTER NOTICE
SAN # 2017-14****2105 Regulations Governing Evaluation, Measurement, and Verification Procedures and Standards****1. TITLE OF THE REGULATIONS:**

2105 Evaluation, Measurement and Verification Procedures and Standards

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

These regulations define the standards for evaluation, measurement and verification (EM&V) procedures as they are administered by the Energy Efficiency Advisory Council (EEAC). EM&V is a vital tool in creating consensus around the impact of current and future investments to reduce energy use and peak demand in Delaware. Results from EM&V are critical to the assessment of progress in meeting Delaware's energy efficiency and peak demand targets outlined in the Energy Efficiency Resource Standards Act, the State's "Lead by Example" policy, and the Delaware Sustainable Energy Utility's legislated goals. The results from EM&V provide valuable feedback to improve programs during implementation or suggest their cancellation, inform the development of new programs, and guide the allocation of resources.

The purpose of these EM&V regulations is to: develop an overall approach to the evaluation of energy efficiency and demand response programs in Delaware; standardize evaluation approaches for the assessment of energy efficiency and demand response programs; provide specific guidance to Program Administrators, contractors and stakeholders for the evaluation of energy efficiency and demand response programs; and ensure consistency between Program Administrators' energy efficiency evaluations plans, analysis, and reporting efforts.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

29 Delaware Code §8059(h)

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

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed regulations 2105 Evaluation, Measurement and Verification Procedures and Standards will be open September 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on September 25, 2018 beginning at 6:00 pm in the State Street Commons building located on 100 W. Water Street Dover, DE 19904.

Public comments will be accepted through close of business Wednesday October 10, 2018.

7. PREPARED BY:

Patty Murray patricia.murray@state.de.us (302) 735-3480

***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/september2018/proposed/22 DE Reg 210RFA 09-01-18.pdf>

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

[2105 Regulations Governing Evaluation, Measurement, and Verification Procedures and Standards](#)

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(c) (7 Del.C. §4006(c))
7 DE Admin. Code 5101

REGISTER NOTICE SAN #2015-10

5101 Sediment and Stormwater Regulations

1. TITLE OF THE REGULATIONS:

5101 Sediment and Stormwater Regulations

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

A Superior Court decision of October 7, 2015, upheld by the Supreme Court on April 15, 2016, invalidated the 2013 and 2014 version of the Delaware Sediment and Stormwater Regulations on procedural grounds because the accompanying Technical Document referenced by the regulations was not published in the State Register in accordance with Administrative Procedure Act requirements. The Department issued Emergency Regulation Order 2016-WS-0019 on April 16, 2015 including both the 2014 Sediment and Stormwater Regulations and the latest version of the Technical Document, dated April 2016, as regulation to correct the procedural flaw.

The Sediment and Stormwater Regulatory Advisory Committee has spent approximately 234 hours in public meeting time since November 2015 reviewing the regulations as well as the Technical Document for inclusion of required elements into the regulations.

- All standard plan applicability criteria and conditions have been reviewed and included in subsection 3.7.
- Each of 17 standards and specifications for post construction stormwater management BMPs have been reviewed by the RAC's Technical Subcommittee and required elements brought into the regulation as a new Section 11.0 Post Construction BMP Standards and Specifications.
- Section 12.0 Supplemental Requirements for Best Management Practices was added to provide clear requirements for soil investigation procedures and setbacks for stormwater management BMPs.
- Section 13.0 Stormwater Management Offsets was added to take the place of subsection 1.7 and provide more definition to stormwater management offsets, including fees-in-lieu, banking and stormwater management offset districts.
- Section 5.0 Performance Criteria for Post Construction Stormwater Management has been updated to address compliance methods updated by Senate Bills 253 and 204.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for these regulations.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law, Section 4006(c)

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

None.

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on proposed revisions to the *Delaware Sediment and Stormwater*

Regulations, Regulation No. 5101 Sediment and Stormwater Regulations. The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Wednesday, October 10, 2018, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following location:

Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

The proposed regulation revisions may also be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website:

<http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, October 25, 2018, or as designated by the hearing officer at the public hearing. Statements and testimony may be presented either verbally or in writing at the October 10, 2018 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Z. Webb
DNREC Division of Watershed Stewardship
89 Kings Highway
Dover, DE 19901

7. PREPARED BY:

Elaine Z. Webb
Elaine.Webb@state.de.us
(302) 729-9921

***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/september2018/proposed/22 DE Reg 211RFA 09-01-18.pdf](http://regulations.delaware.gov/register/september2018/proposed/22%20DE%20Reg%20211RFA%2009-01-18.pdf)

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

5101 Sediment and Stormwater Regulations

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

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

24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rules in 24 **DE Admin. Code 1300** Board of Examiners of Private Investigators and Private Security Agencies: Rule 4.0 Training Requirements. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present

views may submit them in writing, by October 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 11, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

***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/september2018/proposed/22 DE Reg 212RFA 09-01-18.pdf>

1300 Board of Examiners of Private Investigators & Private Security Agencies (Break in Continuity of Sections)

4.0 Training Requirements

- 4.1 Each person licensed as a security guard under 24 Del.C. Ch. 13 shall successfully complete a training program approved by the Board, and any such additional training as the Board deems appropriate. Satisfactory completion of the training program shall be certified by mandatory testing with a passing grade of 75%. The test will be administered by a Board approved training/testing facility.
- 4.1.1 The required training shall include, but not be limited to, instruction in rules and regulations, legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.
- 4.1.42 Individuals engaged in any violation of academic integrity which is validated by the testing facility will be required to repeat the testing process and incur any additional costs involved. If a subsequent violation of the academic standard is discovered and validated by the testing facility, the individual will be barred from taking any further tests and their license or application will be denied/suspended. No provision of this Section will exclude the individual from a due process hearing before the Board, if requested.
- 4.1.3 Individuals may complete the training with either a Board approved training facility or the agency that employs them. The employer must hold either a Class B or Class C agency license.
- 4.2 ~~The required training shall include, but not be limited to, instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary. Certified instructors must be employed by a Board approved training facility or a Class B or C agency providing the training. All instructors' certifications will be pursuant to subsection 4.2.1.~~
- 4.2.1 Instructors for the training program must be certified by a Board approved training facility by completing an Instructor Certification Course. This course will be developed by an approved training/testing facility with collaboration from the Professional Licensing Section, and approved by the Board. An instructors test shall be mandatory with a passing grade of 75%. If this test is failed, the instructor shall re-take the course and the test until receiving a passing grade before being certified. Instructors who were approved by rules set by previous versions of this Section would remain eligible to instruct as long as they do so pursuant to this Section.
- 4.2.2 Updates to the training curriculum, approved by the Board, will be sent out to the certified instructors and shall be implemented into the course of instructions. The Board approved training facility shall be responsible for notifications of the updates.
- 4.2.3 The approved training facility shall provide the Professional Licensing Section with the names and test scores of all instructors certified. This information will be forwarded to the Board.
- 4.2.4 An instructors approval may be suspended or revoked as deemed necessary by the Board.
- 4.3 The Professional Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this ~~regulation~~ Section.
- 4.4 Training and test certifications shall be submitted with each new application or ~~re-application~~ renewal application, and the training shall be completed no more than one year prior to submission of the application.
- 4.5 ~~Instructors for the training program must take a Train the Trainer session through the Professional Licensing Section. Updates to the training curriculum will be sent out as approved by the Board, and~~

PROPOSED REGULATIONS

~~shall be implemented into the course of instruction. An instructors test shall be mandatory with a passing grade of 75%. If this test is failed, the instructor shall re take the session and the test until receiving a passing grade before being approved.~~

- ~~4.5.1 Instructors that have previously taken the class and the test must take the instructors test with a passing grade to maintain their instructor approval.~~
- ~~4.5.2 The instructor certification approval may be suspended or revoked as deemed necessary by the Board.~~

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

1300 Board of Examiners of Private Investigators & Private Security Agencies

DIVISION OF STATE POLICE 5500 BAIL ENFORCEMENT AGENTS

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

PUBLIC NOTICE

5500 Bail Enforcement Agents

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55, proposes to amend the following adopted rules in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 9.0 Conducted Electrical Weapon (CEW). If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, November 15, 2018, 10:00 am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

***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/september2018/proposed/22 DE Reg 214RFA 09-01-18.pdf>

5500 Bail Enforcement Agents (Break in Continuity of Sections)

9.0 Conducted Electrical Weapon (CEW)

- ~~9.1 In order for a BEA to carry/use a conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or re certifications must be on file with the Professional Licensing Section.~~
- ~~9.2 GEW Instructors~~
 - ~~9.2.1 All CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 **Del.C.** Ch. 55.~~
- 9.1 Anyone licensed under 24 **Del.C.** Ch. 55 wishing to carry/use a conducted electrical weapon (CEW), while in the performance of their duties as a BEA under 24 **Del.C.** Ch. 55, must first complete a training program with an instructor certified by the manufacturer of the CEW. All certifications and re-certifications must be on file with the Professional Licensing Section.
 - 9.1.1 All individuals certified to carry/use a CEW, while in the performance of their duties as a BEA under 24 **Del.C.** Ch. 55, must be re-certified in a timeframe consistent with the manufacturer and by an instructor and recertification program approved by the CEW's manufacturer.

- 9.1.2 The Board shall have the right to deny the carrying of any CEW that is found to not be within accepted industry standards or unsafe for the purposes of conducting apprehensions under 24 Del.C. Ch. 55.
- 9.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to not be within generally accepted practices for the manufacturer of the CEW. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

5500 Bail Enforcement Agents

DEPARTMENT OF STATE DIVISION OF CORPORATIONS

Statutory Authority: 8 Delaware Code, Section 132; 6 Delaware Code, Sections 15-111, 17-104 and 18-104 (8 Del.C. §132; 6 Del.C. §§15-111, 17-104 & 18-104)

PUBLIC NOTICE

Registered Agent Customer Entity Verification Requirements

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 Del. Laws, Ch. 334, which modifies 8 Del.C. §132 and 6 Del.C. §§15-111, 17-104 and 18-104, the Delaware Department of State proposes to introduce regulations related to the requirements for registered agents with respect to entities and entity filings with the Department.

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Kristopher Knight
Deputy Secretary of State
Department of State
820 N. French St., 4th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to dos_corpregs@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of State no later than 4:30 p.m. EST, Monday, October 15, 2018.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the written comments and any other written materials filed by the public.

Background

On July 17, 2018, the Governor of Delaware signed into law House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 Del. Laws, Ch. 334.

This legislation clarifies that registered agents must comply with regulations established by the Secretary of State regarding both the verification of the identity of the communications contacts for which the Registered Agent maintains a record and the reduction of risk of unlawful business purposes. In order to establish consistent and uniform expectations for Registered Agents to verify customer entities with respect to filings with the Department of State, the Department of State has proposed these regulations to communicate to the public how these issues will

be administered in the Department of State.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Department of State proposes to promulgate rules and regulations to establish the requirements for registered agents with respect to entities and entity filings with the Department of State. The regulations provide a framework to ensure that Registered Agents understand their responsibilities to verify customer entities in accordance with House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334. These responsibilities include searching the federal Office of Foreign Asset Control to protect the public against the formation of entities in Delaware by individuals, groups or entities that are blocked from making transactions in the United States. The proposed regulations are to be implemented consistently, so as to ensure fair and uniform treatment of Registered Agents in their filings with the Department of State on behalf of entities.

Statutory Authority

House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334; 8 **Del.C.** §132; 6 **Del.C.** §§15-111, 17-104 and 18-104; 29 **Del.C.** §8703(7).

***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/september2018/proposed/22 DE Reg 215RFA 09-01-18.pdf>

Registered Agent Customer Entity Verification Requirements

1.0 **Enabling Legislation**

House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334, modifies 8 **Del.C.** §132; 6 **Del.C.** §§17-104 and 18-104 to enable the Secretary to establish regulations for Registered Agents to verify the identification of their customer business entities.

2.0 **Purpose**

The purpose of this regulation is to clarify the obligation of Registered Agents in Delaware to comply with regulations issued by the Secretary pertaining to Business Entity Formation in matters involving filings submitted to the Secretary on behalf of corporations, partnerships, trusts, limited partnerships, and limited liability companies. This regulation outlines the standards for Registered Agents regarding verification of customer entities in accordance with House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334.

3.0 **Definitions**

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

"Blocked Persons" means those persons or entities listed as such with the Office of Foreign Assets Control.

"Business Entity Formation" means any person, partnership, association, corporation, company, singly or jointly with others, that organizes under the Delaware Code and files the required documents with the Division of Corporations in the Department of State, but shall expressly exclude a nonprofit association as set forth at 6 **Del.C.** §1910.

"Business Entity Representation" means any person, partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), association, corporation, company, singly or jointly with others, that acts and/or speaks on behalf of any person or entity as a registered agent.

"Corporation" means an entity that is organized or incorporated in accordance with the Delaware Code and as expressly set forth at Title 8 of the Delaware Code.

"Customer Information" means any and all information or documents relating to the true and correct identity of a potential customer of a Registered Agent that includes, but is not limited to, full name, complete address (to include background information related to a P.O. Box address), photographs, background information, or any other information as needed to verify identification.

"Department" means the Delaware Department of State.

"Limited Liability Company" means an entity that is organized or created in accordance with the requirements of a "limited liability company" as set forth in the Delaware Code and as expressly defined at 6 Del.C. §18-101, as amended.

"Limited Liability Partnership" means an entity that is organized or created in accordance with the requirements of a "limited liability partnership" as set forth in the Delaware Code and as expressly defined at 6 Del.C. §17-101 as amended.

"Office of Foreign Assets Control" means the office or its equivalent office(s) as created by federal laws and administered by order of the United States Department of the Treasury or its successor(s) or equivalent department(s).

"Partnership" means an entity that is organized or created in accordance with the requirements of a "partnership" as set forth in the Delaware Code at 6 Del.C. §15-202 as amended.

"Registered Agents" means an agent or agents as defined or described in accordance with the Delaware Code and as expressly set forth at 8 Del.C. §132 and 6 Del.C. §§15-111, 17-104 and 18-104.

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

"Specially Designated Nationals" means individuals, groups and entities as defined or described as "Specially Designated Nationals" by the Office of Foreign Assets Control.

"Trust" means a statutory trust as set forth in the Delaware Code and as expressly defined in 12 Del.C. Ch. 38 as amended.

4.0 Procedures

- 4.1 Registered Agents are required to complete the following steps to verify filings submitted to the Secretary on behalf of corporations, partnerships, limited partnerships, trusts, and limited liability companies in the course of Business Entity Representation:
- 4.1.1 Prior to engaging in business:
- 4.1.1.1 Registered Agents will take reasonable steps to verify the identity of potential customers. Such steps may include, but are not limited to, the use of software or third party services to perform background or identification verification or obtaining such documents sufficient for identity.
- 4.1.2 New Customer Information:
- 4.1.2.1 Registered Agents shall compare new customer information against the register and lists of the Office of Foreign Assets Control ("OFAC"), before accepting any new customer. Customer information shall include the full name and complete address of the submitting customer (whether business or individual).
- 4.1.2.2 For Business Entity Formation or Business Entity Representation, Registered Agents shall collect and retain the full name, business address and business telephone number of the current communications contact(s) and any other such information that shall hereafter be required by statute. In addition, Registered Agents may collect additional information, including, but not limited to officers, directors, members, managing members, partners, or owners. All such information collected shall be compared against OFAC.
- 4.1.3 Updating names and addresses of related parties:
- 4.1.3.1 Registered Agents shall request (at minimum annually) updates to the communications contact(s) and any other information required by statute. To the extent additional

PROPOSED REGULATIONS

information has been collected, Registered Agents may, at their discretion, request updates to such information. All updated information shall be compared against OFAC.

4.1.4 Entity and Customer Information transferred from another Registered Agent:

4.1.4.1 Registered Agents shall compare all entity and customer information transferred from another registered agent against the register and lists of OFAC, or its successor, before accepting the customer.

4.1.4.2 Entity information shall include the full name, business address and business telephone number of communications contact(s), any other information required by statute along with any additional information collected by the previous registered agent.

4.1.5 Quarterly Review:

4.1.5.1 Registered Agents shall review complete customer registry against the OFAC register or lists at a minimum on a quarterly basis.

4.1.6 Notifications:

4.1.6.1 Registered Agents shall sign up for notifications and updates from OFAC, to include but not limited to updates on specific sanctions.

4.1.7 OFAC Search Lists:

4.1.7.1 Registered Agents shall search for either individuals or corporate entities on all OFAC lists, to include but not limited to "Specially Designated Nationals" and "Blocked Persons" lists. Registered Agents may use software or third party services to perform a search of OFAC lists.

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

290 Approval of Educator Preparation Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on July 1, 2018, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Both entities commented that they support the proposed amended regulation, but commented that: (1) the term "initial certification" should be changed to "licensure and certification" for further clarification. The Department notes that statute (14 **Del.C.** §1266) does not address licensure, and that the term "initial certification" was specifically included due to differences between obtaining an initial and additional certifications; (2) including language referencing 14 **DE Admin. Code** 1507 regarding ARTC teacher's need to fulfill the 120-hour seminar/practicum requirement needing to be cited in subsection 9.1.1.1 for clarification. The Department will clarify the reference by changing the phrase "the 120-hour seminar/practicum requirement" to "any 120-hour seminar/practicum requirement"; and (3) the definition of Educator Preparation Programs should include reference to Section 8 "and Section 9.0". The Department will clarify the reference to the ARTC programs in 9.1.3 by adding "ARTC" to indicate what type of program is

referenced in this section. The Department also made a slight grammatical correction in subsection 9.1.5.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs in order to comply with 14 **Del.C.** §1266, which establishes alternative routes to certification (ARTC) programs for teachers of students with disabilities.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs 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 August 15, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

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

Department of Education

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

Approved this 15th day of August 2018

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

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

9.1 Pursuant to 14 **Del.C.** §1266, alternative routes to certification programs for teachers of students with disabilities must meet the following requirements:

9.1.1 Deliver high quality professional development that is sustained, intensive and classroom-focused:

9.1.1.1 A teacher candidate who is seeking initial certification through participation in an alternative route for teacher licensure and certification program hired after July 1 of a school year shall fulfill ~~the any~~ 120-hour seminar/practicum requirement prior to the start of the following school year.

(Break in Continuity Within Section)

9.1.3 Require completion of the **[ARTC]** program within a period of time that is no longer than three years from the beginning of the candidates' participation in the program;

9.1.4 Require teachers demonstrate satisfactory progress toward standard certification; and

9.1.5 Report on the progress of **[ARTC]** teachers on a form created by the ~~department~~ Department], which may be modified ~~[from time to time as necessary]~~. Reports shall be submitted no later than January 15 and June 15 of each year.

*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2018 issue of the *Register* at page 11 (22 DE Reg. 11). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

290 Approval of Educator Preparation Programs

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

1510 Issuance of Initial License

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation applies to the issuance of an initial license for educators pursuant to 14 **Del.C.** §1210. Proposed changes to make the regulation consistent with amendments to 14 **Del.C.** Ch. 12 were initially published on April 1, 2018. Thereafter, the Board made additional substantive changes, including amending the definition of "educator" in Section 2.0 so that it is consistent with the Delaware Code; clarifying that an applicant for an initial license must achieve a passing score on an approved performance assessment within the first two years of the initial license in subsection 3.3; clarifying that electronic transcripts may be forwarded to the Department from an applicant's hiring authority in subsection 4.1.1; and amending subsection 6.3.1.1, which concerns supervised clinical nursing experience for school nurse applicants. The proposed changes in this regulation include the changes that were initially published on April 1, 2018 and the additional changes.

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

On August 2, 2018, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1510 Issuance of Initial License for adoption by the Department subject to the State Board of Education's approval.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1510 Issuance of Initial License.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1510 Issuance of Initial License subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1510 Issuance of Initial License attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1510 Issuance of Initial License adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1510 Issuance of Initial License in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Department pursuant to 14 **Del.C.** §§1203 and 1205(b) on August 16, 2018. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 16th day of August, 2018.

Department of Education

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

Approved this 16th day of August, 2018.

State Board of Education

Whitney Townsend Sweeney, President

Dr. Audrey J. Noble, Vice President

Nina Lou Bunting

Candace Fifer

Vincent Lofink

Wali W. Rushdan, II

Terry M. Whittaker, Ed.D.

***Please note that no changes were made to the regulation as originally proposed and published in the July 2018 issue of the *Register* at page 13 (22 DE Reg. 13). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1510 Issuance of Initial License

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

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

ORDER

Medicaid Recovery Audit Contractors Program

REVISION OF THE REGULATION
OF DELAWARE'S
TITLE XIX MEDICAID STATE PLAN
SECTION 4.5 GENERAL PROGRAM
ADMINISTRATION PAGES 36, 36A, AND 36B

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NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, to request an exception to the RAC contracting requirements. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

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

SUMMARY OF PROPOSAL

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

Background

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

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

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

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

Statutory Authority

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

Purpose

Purpose

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

Summary of Proposed Changes

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

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

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

Summary of Comments Received with Agency Response and Explanation of Changes

No public comments were received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Medicaid Recovery Audit Contractor (RAC) Program, specifically, *to request an exception to the RAC contracting requirements*, is adopted and shall be final effective September 12, 2018.

8/17/18

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

FINAL

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

36

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

Citation

42 CFR 455.12

AT-78-90

48 FR 3742

52 FR 48817

§1902(a)(42)(B)

P.L. 111-148

§42 CFR 455 Subpart A

§42 CFR 455 Subpart F

4.5 Medicaid Agency Fraud Detection and Investigation Program

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

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

FINAL

36a

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

4.5 Medicaid Recovery Audit Contractor Program

Citation

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

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

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

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

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

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

Place a check mark to provide assurance of the following:

- The State will make payments to the RAC(s) only from amounts recovered.
- The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.

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

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

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

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

FINAL

36b

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

4.5 Medicaid Recovery Audit Contractor Program

Citation

- The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate.
- The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee.

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

- The following payment methodology shall be used to determine State payments to Medicaid RACs for the identification of underpayments (e.g., amount of flat fee, the percentage of the contingency fee):

~~**The Medicaid RAC will be paid an equivalent percentage contingency fee for the identification of underpayments.**~~

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

- The State has adequate appeal process in place for entitles to appeal any adverse determination made by Medicaid RAC(s).

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

- The State assures that the amounts expended by the State to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State plan or waiver of the plan.

- Section 1902(a)(42)(B)(ii)(IV)(bb) of the Act The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.
- Section 1902 (a)(42)(B)(ii)(IV)(cc) of the Act Efforts of the Medicaid RAC(s) will be coordinated with other contactors or entities performing audits of entities receiving payments under the State plan or waiver in the State, and/or State and Federal law enforcement entities and the CMS Medicaid Integrity Program.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b), & (e) (7 **Del.C.** §§901 and 903(a), (b), & (e))
7 **DE Admin. Code** 3507

SECRETARY'S ORDER NO.: 2018-F-0047

Date of Issuance: August 27, 2018

Effective Date of the Amendment: September 11, 2018

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

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

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 **DE Admin. Code** 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*. This action is being taken by the Department to adopt provisions consistent with federal measures proposed for the recreational Black Sea Bass fishery in compliance with Addendum XXX to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass. Specifically, the proposed action will eliminate Delaware's September 22 through October 21 closure, and set the open season from May 15 through December 31 for the recreational Black Sea Bass fishery.

Black Sea Bass are cooperatively managed by the ASMFC and the Mid-Atlantic Fishery Management Council ("MAFMC") through the joint Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwise 2018 recreational harvest limit for Black Sea Bass of 3.66 million pounds. Addendum XXX uses a combination of exploitable biomass information from the latest stock assessment and historical harvest to allocate the coastwise recreational harvest limit between three regions. The ASMFC's Black Sea Bass Management Board approved measures that require the southern region states (Delaware to North

Carolina) to implement recreational fishery management measures for Black Sea Bass consistent with those measures required for federal waters. The MAFMC's recommended federal measures for the recreational fishery include a fifteen (15) fish possession limit, a twelve and one-half (12.5) inch minimum size limit, and an open season from May 15 through December 31. These measures, when combined with measures being implemented in the other regions (Massachusetts through New York and New Jersey), are predicted to constrain recreational Black Sea Bass landings at or below the 2018 coastwise recreational harvest limit.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to **7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quota**, pursuant to **7 Del.C.** §901 and §903(a), (b), and (e). The Department's Division of Fish and Wildlife commenced this regulatory development process with Start Action Notice #2018-09, dated May 15, 2018. The Department published its initial proposed regulation Amendments in the July 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 26, 2018. No members of the public attended that public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on August 10, 2018, with no comment having been received by the Department during any phase of this proposed regulatory promulgation. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Vest prepared a Hearing Officer's Report dated August 24, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to **7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quota** are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these revised regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to **7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quota**, pursuant to **7 Del.C.** §901 and §903(a), (b), and (e);
2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C.** Ch. 60, to issue an Order adopting these revised proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 26, 2018, and during the 15 days subsequent to the hearing (through August 10, 2018), before making any final decision;
4. Promulgation of the revised proposed Amendments to **7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quota** will enable the Department to bring Delaware's existing Black Sea Bass Regulations into compliance with current federal measures proposed for the recreational Black Sea Bass fishery, consistent with Addendum XXX to the ASMFC's Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, specifically, by eliminating Delaware's September 22 through October 21 closure, and setting the open season from May 15 through December 31 for the recreational Black Sea Bass fishery;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C.** Ch. 104, and has selected Exemption "B1" regarding same, as this promulgation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the July 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to **7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quota** to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

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

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in **7 Del.C.** §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned a an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:

- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. January 1, and ending midnight May 14, ~~and beginning at 12:01 a.m. September 22 and ending mid-night October 21.~~
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 15 through ~~September 21 and during the period October 22 through~~ December 31.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING

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

ORDER

801 Regulations of the Delaware Council on Police Training

NATURE OF THE PROCEEDINGS

At 22 **DE Reg.** 26 (July 1, 2018), The Council on Police Training (COPT), pursuant to 11 **Del.C.** §8404(a)(14) and in accordance with 29 **Del.C.** §10115, published notice of intent to adopt regulations that update, clarify and provide more detailed information regarding minimum training requirements, firearms training and qualifications for instructors. At the same time, the COPT submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The COPT solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. The public comment period was open from July 1, 2018 through July 31, 2018. During this period, the COPT only received one written response.

FINDINGS OF FACT

The public was given the required notice of the Council's intention to adopt the proposed revised regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement

for this proposed revised regulation was submitted. Only one written response was received during the comment period and the comments are addressed as explained in the Summary of Comments. Thus, the COPT finds that the proposed revised regulations should be adopted as submitted with the one recommendation provided by the State Council for Persons with Disabilities.

SUMMARY OF COMMENTS RECEIVED WITH RESPONSE AND EXPLANATION OF CHANGES

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations. The Council on Police Training (COPT) has considered each comment and responds as follows.

SCPD

First, §16.17 Handling Persons with disabilities 8 Hours. The SCPD recommends to avoid the use of the word "Handle", as it can have a negative connotation. The SCPD suggested using the word "interactions".

COPT Response: The COPT has reviewed this request and agrees that the recommendation is an appropriate alternative and that it does not substantively change the regulation as proposed. The revision will read "Interactions with Persons with Disabilities".

SCPD

Second, the SCPD endorses all added provisions that incorporated "de-escalation techniques" to the curriculum.

COPT Response: The COPT appreciates the endorsement.

SCPD

Third, §3.4.1, 3.4.3, 3.4.5, and 3.10. The SCPD raised concern that these sections exclude individuals with physical disabilities and that § 3.10 specifically has no mention of providing testing accommodations.

COPT Response: The COPT acknowledges this comment; however, these sections were not under review at this time and were not part of the proposed revisions. These sections will be reviewed at a later time by the COPT.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the COPT pursuant to 11 **Del.C.** §8404(a)(14). The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Council on Police Training does hereby ORDER this 10th day of August, 2018 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 10th day of August 2018.

COUNCIL ON POLICE TRAINING

Robert M. Coupe, Chairman COPT

Robert J. Irwin,
Proxy for Attorney General Matthew P. Denn

Susan Bunting, Secretary,
Department of Education

Robert Tracy, Chief of Police,
Wilmington Police Department

Paul Tiernan, Chief of Police,
Newark Police Department

Robert Hudson, Major, Delaware State Police,
Proxy for Superintendent of State Police

Marvin Mailey, Chief of Police,
Dover Police Department

Robin R. Christiansen, Mayor, Kent County

FINAL REGULATIONS

Diane Smith, Captain, New Castle County Police
Department, Proxy for Colonel Vaughn Bond, Jr.

William West,
Mayor, Sussex County (absent from voting)

William E. Bryson,
Chair, Delaware Police Chiefs' Council

Vacant, President,
Delaware League of Local Government

801 Regulations of the Delaware Council on Police Training (Break in Continuity of Sections)

16.0 Basic Curriculum

(Break in Continuity Within Section)

16.167 ~~[Handling Interactions With]~~ Persons With Disabilities 8 Hours

*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2018 issue of the *Register* at page 26 (22 DE Reg. 26). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

801 Regulations of the Delaware Council on Police Training

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1770 RESPIRATORY CARE PRACTICE ADVISORY COUNCIL

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

24 DE Admin. Code 1770

ORDER

1770 Respiratory Care Practice Advisory Council

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 11, 2018 at a scheduled meeting of the Respiratory Care Practice Advisory Council ("the Council") of the Board of Medical Licensure and Discipline ("the Board") to receive comments regarding proposed amendments to the Council's rules and regulations. The Council proposed revisions to Section 9.0 to clarify and streamline the licensure application process. A new Section 10.0 adds a "Duty to Update Address" requirement for all licensees. Subsection 10.2 is stricken as it is encompassed by the new Section 10.0.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 21, Issue 9, on March 1, 2018. The public hearing took place on April 11, 2018 at a scheduled Council meeting. Notice of the April 11, 2018 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 Del.C. §10118(a), the date to receive final written comments was April 26, 2018, 15 days following the public hearing. The Council deliberated on the proposed revisions at its regularly scheduled meeting on July 11, 2018.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There was no public comment presented in the form of testimony at the April 11, 2018 hearing. Further, no written comment was submitted either before the hearing or during the 15 day period following the hearing.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Council with comments in writing and by

testimony on the proposed amendments to the Council's rules and regulations. The Council did not receive any written comments and no members of the public attended the hearing to offer testimony.

Pursuant to 24 **Del.C.** §1775(c), the Council has the statutory authority to promulgate rules and regulations governing the practice of respiratory care after a public hearing and subject to the approval of the Board. Given the absence of comments, either by testimony or in writing, the Council recommends to the Board that it approve the rules and regulations as published, attached hereto as Exhibit A.

RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

By the unanimous affirmative vote of the undersigned members, the Respiratory Care Practice Advisory Council hereby adopts the rules and regulations as published in the *Register of Regulations* of March 1, 2018, Volume 21, Issue 9 and recommends approval of such rules and regulations to the Board of Medical Licensure and Discipline.

If approved by the Board, these rules and regulations will be effective ten days after publication of the Board's final order in the *Register of Regulations*.

Respectfully submitted this 11th day of July, 2018.

Charles McElroy, Chairperson
Crystal Cordrey
Lori Boylan
Paul O'Brien

Jefferson Mixell, Vice Chairperson
Francis Gott, III (absent)
Stephen Lawless, M.D. (absent)

AND NOW, this 17th day of July, 2018;

WHEREAS, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Respiratory Care Practice Advisory Council for approval of amended rules and regulations related to the licensure process and licensees' duty to update their addresses; and

WHEREAS, the Board has determined to approve the aforesaid rules and regulations as proposed by the Respiratory Care Practice Advisory Council and attached hereto as Exhibit A.

NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:

1. The rules and regulations recommended by the Respiratory Care Practice Advisory Council governing the licensure process and licensees' duty to update their addresses are hereby approved by the Board of Medical Licensure and Discipline.
2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

IT IS SO ORDERED this 17th day of July, 2018:

Georges A. Dahr, M.D., President
Sharon Williams-Mayo, Public Member
Malvine Richard, Public Member
Joseph M. Parise, D.O.
Mary Lomax, Public Member (absent)
Bryan D. Villar, M.D.
Stephen G. Cooper, M.D. (absent)

Garrett H. Colmorgen, M.D., Vice-President
Karyl Rattay, M.D.
Barry L. Bakst, D.O.
Janice Truitt, Public Member
N. C. Vasuki, Public Member
Stephen Lawless, M.D., Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the March 2018 issue of the *Register* at page 685 (21 DE Reg. 685). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1770 Respiratory Care Practice Advisory Council

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION 1795 MIDWIFERY ADVISORY COUNCIL

Statutory Authority: 24 Delaware Code, Section 1799HH(c) (24 Del.C. §1799HH(c))
24 DE Admin. Code 1795

ORDER

1795 Midwifery Advisory Council

The Midwifery Advisory Council, pursuant to 24 Del.C. §1799HH(c), proposed to amend the regulations governing the practice of midwifery in the State of Delaware. The amendment establishes that records requested must be provided within 30 days from the closure of the record or the assembly of a complete record.

Summary of the Evidence and Information Submitted

Following publication in the Delaware *Register of Regulations* on March 1, 2018 a public hearing was held on April 16, 2018. Written comment periods were held open for thirty days following the initial publication on March 1, 2018, and an additional fifteen days following the April 16, 2018 public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

The Council received no public comment either during the written public comment period or during the public hearing.

Summary of the Findings of Fact

At its open public meeting, the Council discussed a question received from a midwife regarding the turn-around time required for producing medical records requested. The Council then conducted a review of its regulations and determined that clarification was needed. Tracking the language of the Board of Medical Licensure & Discipline's statute, with appropriate editing pertinent to the practice of midwifery, the Council drafted the proposed regulation. The Board of Medical Licensure & Discipline approved the proposed language, and the language was put out for public comment.

Decision of the Board

Having found that the proposed regulations are necessary as outlined herein, the Council finds that the regulations shall be adopted as final in the form as proposed. These regulations will become effective ten days following publication of this order in the Delaware *Register of Regulations*.

IT IS SO ORDERED this 16th day of July, 2018 by the Midwifery Advisory Council.

Philip Shlossman, M.D.

Susan DiNatale, CPM

Shannon Burdeshaw, CPM

Pat Gallagher, CPM

Francis Montone, D.O.

Kathleen McCarthy, CNM (absent)

WHEREAS, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Midwifery Advisory Council for approval of amended rules and regulations related to the licensure process and licensees' duty to update their addresses; and

WHEREAS, the Board has determined to approve the aforesaid rules and regulations as proposed by the Midwifery Advisory Council and attached hereto.

NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:

1. The rules and regulations recommended by the Midwifery Advisory Council governing the licensure process and licensees' duty to update their addresses are hereby approved by the Board of Medical Licensure and Discipline.

2. The rules and regulations shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

IT IS SO ORDERED this 17 day of July, 2018:

Georges A. Dahr, M.D. President

Stephen Lawless, M.D., Secretary

Sharon Williams-Mayo, Public Member

Malvine Richard, Public Member

Joseph M. Parise, D.O.

Bryan D. Villar, M.D.

Mary Lomax, Public Member (absent)

Garrett H. Colmorgen, M.D., Vice-President

Stephen G. Cooper, M.D. (absent)

Karyl Rattay, M.D.

Barry L. Bakst, D.O.

Janice Truitt, Public Member

N. C. Vasuki, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the March 2018 issue of the *Register* at page 689 (21 DE Reg. 689). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1795 Midwifery Advisory Council

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 4006(i) (7 **Del.C.** §4006(i))

REGISTER NOTICE

5101 Sediment and Stormwater Regulations

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released regulatory guidance documents for public review. The regulatory guidance documents include the Delaware Erosion and Sediment Control Handbook and the Standards and Specifications for Post Construction Stormwater BMPs. These documents support Regulation No. 5101 Sediment and Stormwater Regulations, as set forth at 7 **Del.C.** §4006(h) and (i).

The DNREC Sediment and Stormwater Program hereby provides notice of these regulatory guidance documents, pursuant to 7 **Del.C.** §4006(i), which incorporates the provisions of 7 **Del.C.** §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending September 16, 2018. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

The regulatory guidance documents may be reviewed online at the following website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

The regulatory guidance documents may also be reviewed at the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901

For appointments to review the regulatory guidance documents, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, or email elaine.webb@state.de.us.

PREPARED BY:

Elaine Z. Webb

(302) 729-9921

Elaine.webb@state.de.us

DEPARTMENT OF AGRICULTURE
FOOD PRODUCTS INSPECTION
PUBLIC NOTICE
302 Produce Safety Regulations

The Department of Agriculture proposes to amend its Regulations adopted in accordance with Title 3, Chapter 1 of the Delaware Code to add new Produce Safety Regulations at 3 **DE Admin. Code** 302. The purpose of the amended regulations is to establish the procedures for farm registration, produce inspection, on-farm produce and environmental sampling, and addressing non-compliance of regulated farms under the federal Food Safety Modernization Act. Title 21 of the CFR Part 112 of the Code of Federal Regulations. Other regulations issued by the Department of Agriculture are not affected by this proposal. The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the September 1, 2018 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Department of Agriculture at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before October 1, 2018. Written materials submitted will be available for inspection at the above address.

On or after October 1, 2018, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, September 20, 2018 at 5:00 p.m. at the Marion E. Proffitt Training Center, Appoquinimink School District, 118 South 6th Street, Odessa, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Home Health Services

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 Home Health Services, specifically, to add accreditation as an option to Medicare certification for Medicaid providers.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@state.de.us, or by fax to 302-255-4413 by 4:30 p.m. on October 1, 2018. Please identify in the subject line: **Home Health Services**.

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

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4502 Regulations for Certification of Animal Welfare Officers**

On September 1, 2018, the Department of Health and Social Services, Division of Public Health, Office of Animal Welfare, plans to publish proposed regulations for Certification of Animal Welfare Officers and hold them out for public comment per Delaware law. The regulations are being developed under the authority established in 16 **Del.C.** §§122(3)bb and 139.

The purpose of the regulations is to establish minimum training requirements for the certification of animal welfare officers working in the State of Delaware. They also establish procedures for documenting all complaints filed against the officers and conducting investigation of complaints concerning violations of this chapter.

The regulation has been established to include:

- training and certification requirements for animal welfare officers in Delaware;
- procedures for obtaining a certification from the Office of Animal Welfare;
- the training course approval process;
- continued education and recertification obligations;
- disciplinary sanctions; and
- complaint documentation and investigation procedures.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation should submit such comments by Monday, October 1, 2018 to:

Jamie Mack

Delaware Division of Public Health

Jesse Cooper Building

417 Federal St.

Dover, DE 19901

Phone: 302-744-4832

Fax: 302-739-6659

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1405 Filing Requirements for Multiple Employer Welfare Arrangements**

Pursuant to 29 **Del.C.** §10119, it is necessary to repeal Regulation 1405, Filing Requirements for Multiple Employer Welfare Arrangements [Formerly Regulation 67] and replace it with new Regulation 1405, Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans.

Elsewhere in this edition of the *Register of Regulations*, the Commissioner of the Delaware Department of Insurance (the Commissioner) issued an order for the publication of an emergency regulation that is identical to the below-reproduced repeal and of Regulation 1405 replacement with the new rule that is proposed in this concurrent proposal. At paragraph 3 of the Commissioner's emergency order, the Commissioner ordered the public be notified of this concurrent proposal and be given an opportunity to comment on it. The purpose of this proposal is to comply with paragraph 3 of the emergency order.

Accordingly, the Department of Insurance hereby gives notice of proposed new Department of Insurance Regulation 1405 relating to Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans. The docket number for this proposed new rule is 3880-2018.

As a result of the enactment of a new federal regulation, to be codified at 29 CFR pt. 2510, that redefines "Employer" under Section 3(5) of the Employee Retirement Income Security Act (ERISA) (hereinafter the "Final Rule"), the Department has determined to rescind and replace Regulation 1405 relating to Requirements for Multiple Employer Welfare Arrangements [Formerly Regulation 67], and replace it with Regulation 1405 relating to Requirements for Fully Insured Multiple Employer Welfare Arrangements and Association Health Plans. The Delaware Code authority for the change is 18 **Del.C.** §314, 18 **Del.C.** §2101, 18 **Del.C.** §505, 29 **Del.C.** Ch. 101,

and 29 USC §1144(b)(6)(A)(i), and in response to 29 CFR 2510.3-5. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, October 2, 2018 by mailing to:

Delaware Department of Insurance
Attn.: Leslie W. Ledogar, Esq., Regulatory Specialist
Docket No. 3880-2018
841 Silver Lake Boulevard
Dover, DE 19904
or by emailing them to leslie.ledogar@state.de.us.

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

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

The State of Delaware, Department of Labor's Division of Industrial Affairs ("the Division") hereby gives notice of its intention to adopt amended regulations.

In May 2018 the Department proposed amendments to regulations for the Prevailing Wage Law. The Department received public comment at a hearing held on May 21, 2018 and additional commentary in the form of written suggestions. The Department has not proceeded with final promulgation of the amendments and now seeks to add additional amendments to the regulations.

The Department solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be fifteen (15) days after the public hearing is held on these regulations on September 24, 2018 from 4:00 to 6:00 pm and will be held at:

Delaware Department of Labor/Fox Valley
Annex/Harold Stafford Training Center
19 E. Lea Blvd
Wilmington, DE 19802

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Julie Petroff, Division of Industrial Affairs, Delaware Department of Labor, 4425 North Market Street, Wilmington Delaware 19802, telephone number 302-761-8175. Members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Petroff at the address of the Delaware Department of Labor as set forth above. The deadline for the filing written comments will be the latter of thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, or fifteen (15) days after the public hearing, which, in this case, is October 9, 2018.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF CLIMATE, COASTAL AND ENERGY****PUBLIC NOTICE****2105 Regulations Governing Evaluation, Measurement, and Verification Procedures and Standards**

These regulations define the standards for evaluation, measurement and verification (EM&V) procedures as they are administered by the Energy Efficiency Advisory Council (EEAC). EM&V is a vital tool in creating consensus around the impact of current and future investments to reduce energy use and peak demand in Delaware. Results from EM&V are critical to the assessment of progress in meeting Delaware's energy efficiency and peak demand targets outlined in the Energy Efficiency Resource Standards Act, the State's "Lead by Example" policy, and the Delaware Sustainable Energy Utility's legislated goals. The results from EM&V provide valuable feedback to improve programs during implementation or suggest their cancellation, inform the development of new programs, and guide the allocation of resources.

The purpose of these EM&V regulations is to: develop an overall approach to the evaluation of energy efficiency and demand response programs in Delaware; standardize evaluation approaches for the assessment of energy efficiency and demand response programs; provide specific guidance to Program Administrators, contractors and stakeholders for the evaluation of energy efficiency and demand response programs; and ensure consistency between Program Administrators' energy efficiency evaluations plans, analysis, and reporting efforts.

The hearing record on the proposed regulations 2105 Evaluation, Measurement and Verification Procedures and Standards will be open September 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on September 25, 2018 beginning at 6:00 pm in the State Street Commons building located on 100 W. Water Street Dover, DE 19904.

Public comments will be accepted through close of business Wednesday October 10, 2018.

DIVISION OF WATERSHED STEWARDSHIP**PUBLIC NOTICE****5101 Sediment and Stormwater Regulations**

A Superior Court decision of October 7, 2015, upheld by the Supreme Court on April 15, 2016, invalidated the 2013 and 2014 version of the Delaware Sediment and Stormwater Regulations on procedural grounds because the accompanying Technical Document referenced by the regulations was not published in the State Register in accordance with Administrative Procedure Act requirements. The Department issued Emergency Regulation Order 2016-WS-0019 on April 16, 2015 including both the 2014 Sediment and Stormwater Regulations and the latest version of the Technical Document, dated April 2016, as regulation to correct the procedural flaw.

The Sediment and Stormwater Regulatory Advisory Committee has spent approximately 234 hours in public meeting time since November 2015 reviewing the regulations as well as the Technical Document for inclusion of required elements into the regulations.

- All standard plan applicability criteria and conditions have been reviewed and included in subsection 3.7.
- Each of 17 standards and specifications for post construction stormwater management BMPs have been reviewed by the RAC's Technical Subcommittee and required elements brought into the regulation as a new Section 11.0 Post Construction BMP Standards and Specifications.
- Section 12.0 Supplemental Requirements for Best Management Practices was added to provide clear requirements for soil investigation procedures and setbacks for stormwater management BMPs.
- Section 13.0 Stormwater Management Offsets was added to take the place of subsection 1.7 and provide more definition to stormwater management offsets, including fees-in-lieu, banking and stormwater management offset districts.
- Section 5.0 Performance Criteria for Post Construction Stormwater Management has been updated to address compliance methods updated by Senate Bills 253 and 204.

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on proposed revisions to the *Delaware Sediment and Stormwater Regulations*, **Regulation No. 5101 Sediment and Stormwater Regulations**. The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Wednesday, October 10, 2018, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following location:

Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

The proposed regulation revisions may also be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website:

<http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, October 25, 2018, or as designated by the hearing officer at the public hearing. Statements and testimony may be presented either verbally or in writing at the October 10, 2018 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Z. Webb
DNREC Division of Watershed Stewardship
89 Kings Highway
Dover, DE 19901

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with 24 **Del.C.** Ch. 13 proposes to amend the following adopted rules in 24 **DE Admin. Code** 1300 Board of Examiners of Private Investigators and Private Security Agencies: Rule 4.0 Training Requirements. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 11, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DIVISION OF STATE POLICE

5500 BAIL ENFORCEMENT AGENTS

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Bail Enforcement Agents, in accordance with 24 **Del.C.** Ch. 55 proposes to amend the following adopted rules in 24 **DE Admin. Code** 5500 Bail Enforcement Agents: Rule 9.0 Conducted Electrical Weapon (CEW). If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 2, 2018, to Delaware State Police, Professional Licensing Section, P. O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, November 15, 2018, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE**DIVISION OF CORPORATIONS****PUBLIC NOTICE****Registered Agent Customer Entity Verification Requirements**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334, which modifies 8 **Del.C.** §132 and 6 **Del.C.** §§15-111, 17-104 and 18-104, the Delaware Department of State proposes to introduce regulations related to the requirements for registered agents with respect to entities and entity filings with the Department.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Kristopher Knight
Deputy Secretary of State
Department of State
820 N. French St., 4th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to dos_corpregs@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of State no later than 4:30 p.m. EST, Monday, October 15, 2018.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the written comments and any other written materials filed by the public.

DIVISION OF PROFESSIONAL REGULATION**2600 EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS****PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §2604(a)(1), the Delaware Examining Board of Physical Therapists and Athletic Trainers ("Board") has proposed revisions to its rules and regulations.

Revisions to Section 7.0 modify the examination process for physical therapist and physical therapist assistant applicants. Specifically, subsection 7.3.1.3 gives the Board the discretion to identify a third-party as its authorized designee to approve applicants to sit for the examination. In addition, subsection 7.3.1.3.1 authorizes a physical therapist student or physical therapist assistant student to take the examination up to 90 days prior to graduation from a CAPTE accredited program.

A public hearing was scheduled for June 26, 2018 but due to lack of a quorum the meeting was cancelled. Therefore, the public hearing has been rescheduled for September 25, 2018 at 4:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be October 10, 2018, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.